Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 04-227
Competition in the Market for the	)	
Delivery of Video Programming	)	

COMMENTS OF BROADBAND SERVICE PROVIDERS ASSOCIATION

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SUMMARY

Members of the Broadband Service Providers Association ("BSPA") deploy and operate new, facilities-based, advanced, last-mile broadband networks for the delivery of innovative bundles of voice, multichannel/on-demand video, and high-speed data/Internet services directly to homes and small businesses across the country.[1] BSPA's mission is to promote and support the development of a competitive, facilities-based, broadband industry that will increase infrastructure investment, create customer choice, lower prices, and provide critical network redundancy.

The General Accounting Office[2] ("GAO") Report on *Wire-Based Competition Benefited Consumers in Selected Markets*[3] largely validated the view that competition among wireline providers of multichannel video programming distributors ("MVPDs") results in lower prices and increased consumer choice, when compared with competition between cable operators and satellite providers. The Report offered a review of actual competition created by broadband service provider ("BSP") entry in select markets. The GAO concluded that rates for cable services were 15 to 41 percent lower in markets where a BSP offered services in competition with an incumbent cable provider. This demonstrates the importance of BSP entry into the market for delivery of video programming to offer consumers competitive services and prices, as well as the fallacy of the view that competition from the DBS industry sufficiently constrains the monopoly power of incumbent cable operators. It is also significant that the GAO report

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[1] The current members of BSPA, all of which are last-mile, facilities-based providers, are: Everest Connections, Gemini Networks, Knology, RCN, Astound, Starpower Communications, Utilicom Networks, PrairieWave Communications, Black Hills Fibercom, and SureWest Communications.

[2] Effective July 7, 2004, GAO's name changed to the Government Accountability Office.

[3] General Accounting Office (GAO), *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets*, Feb. 2004 ("*GAO Wire-Based Competition Report*").

documented lower prices for telephone and high-speed Internet service due to the presence of BSP competition.

BSPA commends the Commission for continuing to investigate the barriers to entry faced by BSPs and other competitors to cable operators. As discussed more fully below, BSPs continue to face significant barriers with respect to access to programming. In addition, as the distribution of video programming moves to Internet-based platforms, the Commission must take those steps necessary to curtail strategies that impede competition in the delivery of next generation Internet content. Other significant barriers to entry that continue to be of concern to BSPA members include the continued use of discriminatory and predatory pricing campaigns by incumbent cable operators in an effort to force BSPs from the market, and barriers associated with access to multiple dwelling units ("MDUs") and utility poles. These issues significantly impact current BSP operations, but more importantly, have the potential to negatively impact future investment in new BSP facilities to the detriment of competition and consumer welfare.

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The Broadband Service Providers Association ("BSPA") hereby submits these comments in response to the Federal Communications Commission's ("Commission's") Notice of Inquiry in the captioned proceeding.[4] In the *Notice*, the Commission seeks information, comment, and analysis regarding competition in the market for the delivery of video programming and barriers to such competition.

INTRODUCTION AND BACKGROUND

Through the *Notice,* the Commission has begun the process of preparing its *Eleventh Annual Report* to Congress on competition in the market for delivery of video programming. In the last ten years, particularly since passage of the Telecommunications Act of 1996,[5] new competitors, such as the members of the BSPA, have made significant inroads in the multichannel video programming distribution market.[6]

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[4] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, FCC 04-136, MB Docket No. 04-207 (rel. June 17, 2004)("*Notice*").

[5] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §151 *et seq.*("1996 Act").

[6] The current members of BSPA are: Everest Connections, Gemini Networks, Knology, RCN, Astound, Starpower Communications, Utilicom Networks, PrairieWave Communications, Black Hills Fibercom, and SureWest Communications.

The BSPA is the trade association representing next-generation companies deploying facilities-based, advanced, last-mile broadband networks offering bundles of voice, multichannel/on-demand video, and high-speed data/Internet services directly to homes and small businesses across the country. The BSPA's mission is to promote the development of a competitive, facilities-based, broadband industry that will increase infrastructure investment, create customer choice, lower prices, and provide critical network diversity.

As providers of state-of-the-art cable, telephone, and Internet service over advanced local networks in many large cities and rural areas throughout the country, BSP's are key examples of the entry of new, facilities-based competitors envisioned by the 1996 Act. The interconnection provisions of the 1996 Act created the opportunity for new entrants, like BSPs, to offer telephone service. With the advent of cable modems, allowing the delivery of broadband access services, along with the deployment of hybrid coax fiber, BSPs have emerged as multi-faceted competitors offering significant price and service options to consumers for video, voice, and broadband access.[7]

BSPs are leaders in migrating video to all-digital platforms, consistent with mandates added by the 1996 Act and the Commission's digital television transition. BSPs are building high-capacity digital networks needed to host the current and next generation services emerging in today's digital environment. BSPs, which directly compete with incumbent cable operators and other multichannel video programming distributors ("MVPDs"), therefore offer a unique insight into the status of competition in the market for delivery of video programming.

[7] The late 1980's and early 1990's business model of cable overbuilders differed dramatically from today's BSPs in that the business model of the previous generation relied exclusively on a single revenue stream from cable television services as the basis for building new networks.

The BSP business strategy is unique in philosophy and infrastructure. The offering of video, voice, and high-speed data services over a unified network – the so-called "triple play" – is central to the BSP business model. By creating three potential revenue streams from each home served, BSPs are able to amortize the cost of their fiber-rich networks (which are capable of delivering all digital or a mix of digital and analog signals) over customers purchasing a single service or a bundle of services. BSPs deliver these advanced service options to rural, suburban and urban areas, advancing a fundamental purpose of the 1996 Act to provide advanced services to all Americans.

The BSP model has expanded the deployment of advanced services to average consumers. Because BSPs provide a combination of voice, video and Internet services over a single network, they can maintain healthy operations without attaining the highest market share in any one service. As discussed more fully below, the existence of a BSP in a market increases competition by adding consumer choice, which places downward pressure on prices. The BSP business model, which entails creating efficient bundles of services, makes advanced services affordable to a wider array of customers, cutting across market demographics, and increasing overall penetration rates. As a result, BSP entry expands the number of consumers with access to advanced services at affordable prices. It is no surprise that in local markets throughout the country, consumers and local officials are enthusiastically endorsing BSP competition and BSPs have evolved to become a significant competitive force in the markets they serve.

BSPs deploy new infrastructure to support their integrated business model. Each system has a state of the art headend facility, which aggregates programming content and a telecommunications switching platform, that connects customers to the public switched telephone network ("PSTN") and Internet. A fiber optic distribution network connects the headend to distribution nodes. Distribution nodes link to anywhere from 20 to 500 potential customers. Member companies use different technologies for linking nodes to customer premises, using combinations of coaxial cable and twisted copper pair (most common), exclusively coaxial cable to the home, or fiber to the home ("FTTH"). Many systems include dark fiber, which will facilitate easy expansion and upgrades as new technologies emerge.

These advanced networks enable BSPs to distinguish themselves in the marketplace by offering the most technically advanced services, bundled in packages responsive to customer demand. These bundles include three basic services – multichannel video/media, telephone (local and long distance primary line basic telephone service plus enhanced services, *e.g.*, voice mail),[8] and high-speed Internet access (mostly via a cable modem at speeds up to 3.0 Mbps, typically with the option for customers to choose their Internet Service Provider ("ISP")).

The multichannel video/media component of member offerings includes next generation digital television, and typically includes over 180 channels of both video and music entertainment options. BSPA member companies have achieved some of the highest penetration rates of enhanced digital television in the industry, with many systems having take rates for digital packages of 60 to 90 percent of their video customers. BSPA member companies have also been some of the first operators to offer next generation services such as video-on-demand ("VOD"), subscription video-on-demand ("SVOD"),[9] and interactive television, made possible by their advanced system topology.

[8] Members provide telephony using circuit-switched or IP-enabled networks. Most telephony offerings are equivalent to primary line service that is fully powered with access to enhanced 911.

[9] SVOD refers to services that allow a subscriber to access content from a particular library on a subscription fee basis, and provides typical VOD functionality, including the ability to select particular programming from the library on demand, and to control program capabilities (*e.g.*, start/stop, pause, fast forward, rewind, etc.).

The remainder of these comments responds directly to the Commission's request for statistics that would enable it to analyze actual competition in this industry, as well as the Commission's request for information about barriers that inhibit competition from BSPs, or foreclose market entry altogether. Despite the effectiveness of the BSP business model and the success of BSPA members in the markets where they have entered, a key component of the BSP model is the ability to access programming necessary to compete in the market for the delivery of video programming. In addition, because BSPs publicly secure franchising prior to builds, and because actual network construction begins many months before services are deployed, there exists an opportunity for incumbent cable providers to pursue foreclosure strategies prior to system construction of service being offered. Discriminatory and predatory pricing by incumbent cable operators, access to MDUs and access to poles also continue to be competitive concerns of BSPA members. In short, as recognized by the Commission in the *Tenth Annual Report*, many of the barriers reported by the Commission in its *First Annual Report*, still persist today.[10]

[10] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 19 FCC Rcd 1606 (2004) ("*Tenth Annual Report*").

DISCUSSION

I. BSPs CONTINUE TO EXPAND SERVICE AND ARE A COMPELLING MODEL FOR COMPETITION IN THE MARKET FOR THE DELIVERY OF VIDEO PROGRAMMING

A. Statistics in Response to the *Notice*

In an effort to more accurately depict the BSP segment of the industry to the Commission, the following section consolidates statistics for BSPA members as well as additional BSPs who, although not BSPA members, have agreed to permit the BSPA to incorporate their figures into the statistics reported herein.[11]

BSPs, all of whom have entered the market since the 1996 Act, have operations in nearly half the states in the country, including all major regions other than the Pacific Northwest.[12] BSPs continue to invest in new networks, expand their customer base and increase the number of services sold.

BSPs have over 16 million households under active franchises where they offer service, and have 2 million additional households under franchise in anticipation of future access to the capital necessary to build. Constructed systems now operate over 47 headend facilities and pass approximately 4.2 million homes, representing over 48,000 miles of fiber distribution network and over $6 billion of capital investment. In the aggregate, BSPs have over 1.2 million customers. Of all these systems, approximately eight percent of these homes passed are

[11] Included in these statistics as BSPs are facilities-based providers that hold local franchises and/or OVS authority and provide voice, video and broadband access services. Municipal overbuilders and other public entities that provide cable and additional services are not included in these statistics. Beyond these basic statistics, all comments and policy positions presented in these comments are the represented position of the listed BSPA members.

[12] BSPs currently have operations in Alabama, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, D.C., and Wisconsin.

operating with an OVS license as compared to a local cable franchise authority. Active BSPA members represent about two thirds of the total current BSP industry segment.

Despite many continuing challenges, most BSPs witnessed increases in customer penetration and services sold from continuing operations from 2002 to 2003 and into 2004. BSPA members have an average customer penetration rate of over 28 percent, with several systems in early stages of development. On a service category basis, BSPA members have an average service penetration rate of 92% for cable television, 65% for voice telephone, and 43% for High Speed Data. More importantly, over 30 percent of BSPA member customers have upgraded to a digital tier of service. Viewing each service category as a separate "revenue generating unit" ("RGU"), on average, BSPA members have sold over 2 RGU's or services per customer over their networks.

B. ***The GAO Wire-Based Competition Report* Confirms that BSP Competition Delivers Significant Benefits to Consumers**

At the request of the Senate Judiciary Committee, the U.S. General Accounting Office (GAO) designed a study to determine the impact of BSP market entry on incumbent cable company conduct and on consumer prices for cable and telecommunications services.[13] The GAO ultimately concluded in its *Wire-Based Competition Report* that a second cable company's "entry into a market benefited consumers in the form of lower prices for subscription television, high-speed Internet access, and local telephone services. Incumbent cable operators often responded to BSP entry by lowering prices, enhancing the services that they provide, and improving customer service."[14] Specifically, in all but one market studied, expanded basic cable

[13] General Accounting Office (GAO), *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets*, Feb. 2004 ("*GAO Wire-Based Competition Report*").

[14] *GAO Wire-Based Competition Report*, at 4.

television rates were 15 to 41 percent (an average of over 23 percent) lower in markets with a BSP, when compared with similar markets that did not have a wireline competitor.[15] The GAO reported that incumbent cable operators responded to BSP entry by lowering prices.[16] In some but not all cases, the lowest price in the BSP market was that offered by the BSP.[17] BSPs, on average, gain over twenty-five percent of homes passed as subscription television service customers in each market entered.

The *GAO Wire-Based Competition Report,* while based on a limited sample,[18] accurately depicts the impact of direct, head-to-head wireline competition that the Commission has been chronicling on an anecdotal basis in its annual competition reports. The GAO report confirms these benefits. The GAO did not compare the rates in the markets studied to national averages, but instead engaged in a match-pair case study that compared the market containing a BSP with a market with similar demographics without a BSP. Because competition in the subscription video market from wire-based providers exists in only about two percent of markets, the six case study markets account for more than twenty percent of households nationwide where residents have an option to subscribe to a BSP for voice, video and data.

In sum, the *GAO Wire-Based Competition Report* accurately depicts the competitive impacts associated with BSP entry. The conclusion of the report further corroborates that wireline competition, as opposed to satellite competition, curbs rising cable prices. As such, the Commission should collect the data necessary for it to better assess when, if ever, satellite is the kind of competitor to cable that will lower prices and increase service offerings.

[15] *Id.*

[16] *Id.* at 15.

[17] *Id.* at 4.

[18] Approximately half of the members of the BSPA were interviewed at length in the development of the report.

C. The Cable Industry Overstates the Competitive Impact of DBS Service in the Market For Delivery of Video Programming

Distributors of video programming, including the BSPA and members of the cable industry, assist the Commission with its statutory responsibility to report to Congress on the *status of competition* in the market for delivery of video programming by providing relevant data and information pertaining to competition in the market. In order to assess competition in any market, whether it is for video programming or cola, a determining factor is defining the market—in other words, which products are substitutes for one another. The genesis of this entire inquiry is to assess whether competition in the market for the delivery of video programming is providing consumers with increased choice, better services, higher quality, and greater technological innovation. The BSPA submits, that it is competition among wire-based competitors, not between wire-based competitors and satellite providers, that delivers the most significant competitive benefits to consumers.

When the cable industry argues that the market for the delivery of video programming is "fully competitive,"[19] it relies almost exclusively on DBS. The cable industry insists that the Commission should declare that "the market for the delivery of video programming is fully competitive and that cable cannot be considered dominant given the availability of fully substitutable alternative multichannel services and other video programming options."[20] Incumbent cable operators imply that the most recent annual reports released in this proceeding

19 *Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Reply Comments of NCTA, MB Docket No. 03-172, at 1, 7 (filed Sept. 26, 2003) (*"NCTA Reply Comments in MB Docket No. 03-172"*) (NCTA stated that "alternatives to cable television are virtually universally available to consumers.") *See also* Comments of Comcast in MB Docket No. 03-172, at 12 (filed Sept. 11, 2003); Comments of NCTA in MB Docket No. 03-172, at 24-27 (filed Sept. 11, 2003).

20 NCTA Reply Comments in MB Docket No. 03-172, at 19.

demonstrate that the Cable Television Consumer Protection and Competition Act of 1992[21] can be repealed. The BSPA disagrees.

There are several potential reasons why satellite competition does not deliver the benefits to consumers compared with direct, wireline competition. First, because the cable industry holds more than 75 percent market share of even a broadly defined MVPD market,[22] its declaration that the market is "fully competitive" is suspect and self-serving. Second, competition from satellite in the market for the delivery of video programming has not curbed prices—cable rates have continued to rise faster than inflation, inciting Congress to conduct hearings on cable prices, as well as to commission studies in an effort to better understand the phenomenon.[23] Third, the substitutability or comparability of the service offerings is subject to debate. Satellite systems do not support the level of interactive programming offered by upgraded cable systems. They cannot offer the same bundle of services and when they offer Internet service, it typically has lower speeds than terrestrial, wire-based networks. In addition, in many urban settings, there are situations where it is either impossible or impractical to mount dish antennas.

In comparison, in markets with BSP entry, customers enjoy fifteen to forty-one percent lower prices, more robust service offerings and increased provider choice. Unfortunately, only

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[21] Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act").

[22] Tenth Annual Report, 19 FCC Rcd at 1619-21.

[23] *See, e.g.*, General Accounting Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, Oct. 2003; *Telecommunications: Issues in Providing Cable and Satellite Television Service*, Oct. 15, 2003; *see also* Testimony of Gene Kimmelman, Senior Director Public Policy and Advocacy Consumers Union Oversight of the Satellite Home Viewer Improvement Act Subcommittee on Telecommunications and the Internet, Mar. 10, 2004 ("During the period when satellite subscription increased to cover about 20 percent of the multichannel TV market, cable rates soared almost three-times faster than inflation -- up about 53 percent -- since Congress launched rate deregulation in the 1996 Telecommunications Act. Today, if consumers nationwide had a second cable wire serving their community, instead of one cable company and two satellite providers, they could be saving as much as $4.5 billion a year").

about two percent of Americans receive the benefits of wireline competition in the market for the delivery of video programming.[24]

Relying on national statistics related to the total size and growth of the satellite industry, the cable industry overstates the impact of DBS competition. A market-by-market analysis is a more accurate means of analyzing competition in the market for the delivery of video programming. For instance, DBS providers possess one hundred percent of customers in geographic markets where they have no cable competition, which would tend to artificially bolster penetration rates shown in national averages. Similarly, DBS enjoys a significant share in markets where they offer content that is not available from other sources, especially in circumstances where DBS is offered in competition to a legacy analog cable system.

In addition to the inherent problems associated with using national statistics to analyze the impact of satellite competition, the BSP experience contradicts the cable industry's "fully competitive" assertion. For instance, in response to BSP entry, cable incumbents typically upgrade their system to offer bundled service. In these circumstances, the perceived market share of satellite has dropped below ten percent. The *GAO Wire-Based Competition Report* suggests that in some markets where BSPs compete with upgraded cable incumbents, satellite penetration rates fell below five percent.

Congress has also recognized that actual market shares of DBS and cable providers across different geographic markets and competitive conditions are critical to this analysis. Specifically, Senators DeWine and Kohl commissioned a new GAO study that is scheduled to be

[24] See GAO Wire-Based Competition Report, at 7. *See also* Consumer Federation of America and Consumers Union, *The Continuing Abuse Of Market Power By The Cable Industry: Rising Prices, Denial Of Consumer Choice, And Discriminatory Access To Content*, Feb. 2004, at 4.

completed later this year.[25] The new GAO study will represent the first factual assessment of the existence and degree of competition between cable and satellite providers in the market for the delivery of video programming.[26] A declaration that the market is fully competitive is dependent on a complete assessment of competitive market conditions in local not national market statistics. The BSPA looks forward to the GAO releasing its initial data later this year, and believes that this report should be the starting point for the Commission's analysis of these issues.

II. BSPs CONTINUE TO FACE SIGNIFICANT BARRIERS TO ENTRY

A. Access to and Pricing of Video Programming and Other Digital Content Remain a Significant Long-term Threat to BSP Entry

The BSPA applauds the Commission's affirmation that access to video programming content is critically important to the competitive distribution of multichannel video programming.[27] The BSPA in its filing in response to last year's *Notice* in this docket, showed that fair access to video programming is essential to a BSP's ability to offer competitive services, and to the overall success of competition in the MVPD market. Through specific examples, the BSPA demonstrated how BSPs continued to face pervasive discrimination by vertically integrated program suppliers and that BSPs continue to rely on the existing statutory program access protections. Finally, the BSPA explained the critical nature of the expansion of the existing statutory program access protections to cover all forms of digital content, not just video programming, regardless of the platform used for distribution.[28] BSPA showed, for example,

[25] Letter from Mike DeWine, Chairman, Subcommittee on Antitrust, Competition Policy and Consumer Rights and Herb Kohl, Ranking Member, Subcommittee on Antitrust, Competition Policy and Consumer Rights, to David Walker, Comptroller General, General Accounting Office (Feb. 11, 2004).

[26] *Id.*

[27] *See, e.g., Notice* at ¶ 19.

[28] As an example, a movie can now be delivered as part of a broadcast schedule, as a PPV option, as part of Cable TV VOD, as streaming Video on the internet or as a downloadable file for later viewing on a computer.

that the same industry structure that has allowed incumbent cable operators to use access to programming as a means of inhibiting competitive entry, is emerging with respect to video-on-demand services, and potentially, with respect to the Internet delivery of video content.[29]

Fair access to content means that all competing distributors should have the same access to content as cable incumbents at the same prices. Without fair access, those who control the access to content create artificial winners and losers. In many cases, BSPs are dependent on program suppliers that are either partially or fully owned by the incumbent cable operators with which BSPs compete for customers. In these circumstances, suppliers face incentives to discriminate against BSPs and other non-cable competitors with respect to providing fair and equal access to programming and content.

Because these vertical relationships are also being replicated in the high-speed data market, access to digital video content is becoming as critical as access to traditional video content.[30] High-speed Internet networks are now capable of delivering the same video content as historical MVPD systems.

The Commission in its *Tenth Annual Report* affirmed the case for program access regulation by reporting on the continued expansion of vertical integration between MVPDs and content suppliers.[31] Recent transactions in the industry underscore the need for fair access to content protections as vertical integration between MVPDs and content suppliers continues to

[29] Comments of the Broadband Service Provider Association, MB Docket No. 03-172, at 30 (filed Sept. 11, 2003).

[30] For instance, the leading suppliers of High Speed Data connections are incumbent cable operators offering cable modem service. The headend facilities that host the new integrated systems provide significant new opportunities to control the exclusive availability of content they have an equity position in.

[31] *See* Tenth Annual Report, 19 FCC Rcd at 1690-92 (Finding that the number of vertically integrated networks had reached a new high of 110 satellite-delivered national programming networks that were vertically integrated with at least one incumbent MVPD and nine of the top 20 non-broadcast video programming networks, ranked by subscribership, are affiliated with incumbent cable operators. In addition, four of the top six cable operators hold ownership interests in satellite-delivered national programming networks.)

expand. For instance, Time Warner has announced its interest in acquiring MGM. As reported in USA Today, "Clearly, [Richard] Parsons [Time Warner's CEO] is moving from selling to buying mode .… Parsons would like to buy film libraries, cable systems and cable networks."[32] Comcast recently made an unsolicited $66 billion takeover offer for the Walt Disney Co.[33] In one article, *The Wall Street Journal* went so far as to declare Comcast, with its current industry position, as the default "gate keeper" for any new content producer that wants carriage.[34]

Fair access to all forms of content, including video programming, continues to dictate whether BSPs will be able to provide the benefits of wireline competition to consumers. The Commission should encourage Congress to expand existing program access regulations to include all forms of digital content, without reference to a particular distribution platform.

B. Predatory and Discriminatory Pricing Continue as Significant Barriers in Existing BSP Markets and Could Have Broader Impact on New Market Entry

In response to last year's *Notice of Inquiry*, the BSPA raised concerns regarding the long-term impact of targeted cable incumbent pricing schemes on wireline competition. Specifically, the BSPA highlighted examples of cable incumbent discounts that were at best discriminatory, and potentially predatory.[35] These pricing schemes work, because incumbents are able to

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[32] Michael McCarthy, *Time Warner in acquisition mode*, USA Today, July 1, 2004, *available at*, www.usatoday.com/money/media/2004-07-01-mgm_x.htm.

[33] Press Release, Comcast Corp., Comcast Corporation Makes Proposal To Merge With The Walt Disney Company (Feb. 11, 2004), *available at* www.sec.gov/archives/edgar.

[34] George Anders, *Want to Start a TV Channel? See Amy Banse*, Wall St. J., Jan. 19, 2004, at B1.

[35] *See* Comments of the Broadband Service Provider Association, MB Docket No. 03-172, at 34 (filed Sept. 11, 2003). Predatory pricing occurs when "a business rival has priced its products in an unfair manner with an object to eliminate or retard competition and thereby gain and exercise control over prices in the relevant market." *Brooke Group Ltd. v. Brown and Williamson Tobacco Corp.*, 113 S. Ct. 2578, 2587 (1993). To establish predatory pricing, one must show that the alleged predatory prices are below an appropriate measure of costs, and the alleged predator must have a reasonable likelihood of recouping lost profits. *Id.* However, actual predatory conduct is not necessary in order to discourage market entry. Discriminatory pricing, distinct from predatory pricing, is the practice of offering different prices for the same service to similarly situated customers.

selectively target particular customers, rather than offering them to every subscriber in a market. One solution that the Commission should consider in order to make such schemes more costly and provide a disincentive for their use, would be to require cable incumbents to provide a written notice to all customers in their local franchise area of all new rates, including promotional rates. The Commission should also consider its authority to require uniform pricing throughout a franchise area to help minimize the ability of incumbents to sustain such practices, even where incumbent operators are deemed to face "effective competition."[36] Alternatively, the Commission should recommend to Congress that an amendment to the Act be considered that would provide the Commission with authority to impose such requirements.

Targeted pricing schemes on the part of cable incumbents remain a significant barrier to entry for BSPs that the Commission should squarely address. Given that BSPs engage in a public franchising process prior to deployment and given the visibility of construction, cable incumbents are in a position to target offers to only those customers who have a choice of provider. That these offers occur in the face of cable rates that are increasing faster than inflation provides further evidence of their anticompetitive purpose. Moreover, since the BSPA reported on this with respect to last year's *Notice of Inquiry*, abusive pricing behaviors have continued unabated.

For instance, cable incumbent Mediacom has admitted to pricing below cost in an effort to drive BSPA member PrairieWave out of the market. In addition to admitting to losing money

[36] As BSPA discussed in its comments in response to last year's *Notice* (*See* Comments of the Broadband Service Provider Association, MB Docket No. 03-172, at 31-37), as a general matter, the Act prohibits targeted discounting of cable services. For example, Section 623(b) states that "[a] cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system." Section 623(b)(1), provides, however, that such a uniform rates structure is not required in geographic areas in which the cable operator faces "effective competition," as defined in Section 623(l)(1) of the Act, which includes markets where a total of 15 percent of households take satellite service.

in the market, Mediacom government relations manager John Varvel states, "We're doing everything we can to maintain or expand our market share."[37]

Other incumbent cable operators are similarly resorting to predatory pricing behavior in an effort to foreclose BSP competition. For instance, Time Warner targets former customers that have moved to Everest Communications by offering cable households in Everest's serving area three months free of voice, video and data service. The free package, which includes a digital phone package (unlimited long distance telephone and three phone features), Road Runner High-Speed Internet, and Analog/Digital Cable with one premium channel, retails for $99.95 month.[38] Thus, Time Warner is offering $299.85 worth of free service.

Instead of offering free services, Charter and Comcast offer deeply discounted rates on expanded basic cable and cable modem service and guarantee these steeply-discounted rates, in some cases for an entire year. In Astound's serving area in California, for example, Comcast offers "$19.99 Standard Cable for 12 months." Separately, Comcast offers "29.99 High Speed Internet (3Mbps) for 12 months" to non-subscribers.[39] In Concord California, Comcast service representatives make verbal offers of its "silver" package, which includes Digital cable and the choice of one multiplexed premium service, such as HBO, for $29.99 a month for three months -- this represents a 57.5% discount off a regular price of over $72.

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[37] David Lias, *Cable TV Costs scheduled to Rise in Vermillion*, Plain Talk, *at* http://www.plaintalk.net (Jan. 10, 2003) and included in Attachment A, hereto.

[38] If the individual components of the package were sold separately, the total value of the free services during the promotional period would be $434.55. Time Warner sells the Digital Phone Package separately for $39.95, Road Runner High-Speed Internet for $44.95, Analog/Digital Cable for $50 and the Premium Channel for $9.95.

[39] Assuming these are monthly rates, this is a discount of 52-53% and 30-34% off of cable and Internet rates, respectively. Both offers are provided to the same group of customers, in fact, the flyer advertising these deep discounted rates begins: "Attention Astound and Satellite Customers . . .". See Attachment A, hereto.

Charter offers expanded basic and cable modem service to customers in Astound's St. Cloud, Minnesota serving area for $37.99 per month for one year.[40] The offer includes free installation. Charter also offers basic cable for $4.95 per month for six months.[41] In both of these cases, it is likely that the prices offered for expanded basic and cable modem service are priced below cost, even when considering economies of scale associated with bundling the two services together. Moreover, rather than offering these rates throughout an area, Comcast only advertises these promotions door-to-door, targeting the rates to a select number of potential customers that can be served by the BSP entrant. That these offers are available only to limited subscribers, further supports that these are predatory, below-cost prices that are unsustainable in the long-term or over an entire franchise area.

The Commission has previously expressed concern about these types of pricing strategies. In the context of the AT&T Broadband/Comcast merger, for example, the Commission found that the "representations [of AT&T Broadband and Comcast] leave open the substantial possibility that the Applicants may well have engaged in questionable marketing tactics and targeted discounts designed to eliminate MVPD competition and that these practices ultimately may harm consumers"[42] and that "[n]otwithstanding the merger, AT&T and Comcast already have the incentive and ability to target pricing in an anticompetitive manner, as evidenced by the RCN's and BSPA's allegations and Applicants' responses to those allegations."[43] The Commission continued:

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[40] *See* Attachment A, hereto.

[41] *Id.*

[42] *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23292-93 (2002).

[43] *Id.* at 23293.

> We also disagree with Applicants' claim that targeted discounts merely reflect healthy competition; in fact, although targeted pricing between and among established competitors of relatively equal market power may be pro-competitive, targeted pricing discounts by an established incumbent with dominant market power may be used to eliminate nascent competitors and stifle competitive entry . . . . [T]argeted pricing may keep prices artificially high for consumers who do not have overbuilders operating in their areas because of the overbuilder's inability to compete against an incumbent who uses such strategies.[44]

The Commission went on to state that regulatory action may be warranted: "Mounting consumer frustration regarding secretive pricing practices and the threat that such practices pose to competition in this market suggest, however, that regulatory intervention may be required either at the local, state, or federal level."[45]

The Commission has identified targeted discounts offered by cable incumbents as problematic and accepted that regulatory intervention may be required. This is the second year where the BSPA has approached the Commission with concrete examples of pricing conduct targeted toward eliminating BSP competition. It is time for the Commission to directly, or indirectly through Congress, craft policies to eliminate these activities. BSPA proposes that cable operators be required to fully and fairly disclose all rates and promotions offered to any customer in a local franchise area. The Commission should also consider whether, under Section 623, even where a cable operator is deemed to face "effective competition," the Commission may require uniform pricing throughout a franchise area to eliminate such discriminatory and predatory practices, or alternatively recommend to Congress that an amendment to the Act be considered that would provide the Commission with authority to impose such requirements.

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[44] *Id*. at 23292-93.

[45] *Id*. at 23293.

C. <u>**Access to MDUs Continues to be a Barrier to Entry**</u>

Access to MDUs continues to be an issue that will affect expansion of BSPs in geographic areas where MDUs are a significant part of the franchise territory and access to them has been denied through long-term exclusive contracts. In some instances, franchise conditions require a new entrant to match the incumbent's footprint, but the new entrant cannot serve MDU customers using plant it was required to build due to the incumbent's exclusive long term contracts with MDU owners. BSPA members have also seen long term exclusive MDU contracts used as an anticompetitive weapon prior to system build-out. For example, when it became known that BSPA member PrairieWave would be seeking authority to enter just a part of the Sioux Falls, SD franchise area as a competitor, the incumbent cable provider stepped up efforts to obtain exclusive cable service agreements for up to 10 years with landlords of MDUs.

From a consumer viewpoint, an MDU resident can be locked into an older network with very limited capacity and no commitment to upgrade, when a fully upgraded service provider is available at the curb in front of their building. This condition can clearly affect the level of options and available competition for MVPD service but it also affects the availability of high-speed data and competitive telephone services that are hosted on the same new network. This is particularly troublesome when the competitive expansion of high-speed data services is a national priority. Market and regulatory conditions may exist that fully support the deployment of the new system for both high-speed data and telephone, but the economics of the system installation are such that the BSP cannot financially afford to provision service in an MDU facility unless it can offer all three services, including multichannel video services.

MDU access is a matter of consumer choice; long term exclusive arrangements with MDU building owners foreclose opportunities for a significant segment of the market to enjoy the price and service benefits that come with competition. While some states have enacted statutes that prohibit exclusive agreements between incumbent cable operators and building owners,[46] a uniform, national solution is required. Given the impacts of long term MDU exclusives on consumers and competitive providers, the BSPA urges the Commission to revisit its decision last year declining to prohibit perpetual and long term agreements between incumbent cable operators and MDU building owners.[47]

D. Access to Utility Poles

Certain pole owners continue to create barriers to entry with respect to their obligations under the pole attachment provisions in Section 224 of the Communications Act to provide access to utility poles at just and reasonable rates. Currently, in order to obtain relief from unlawful pole attachment rates imposed by these pole owners, BSPs are forced to devote significant time and resources to complaint proceedings before the Commission that take years to resolve. With the introduction of broadband-over-power line deployments, the BSPA is also concerned about additional incentives these utilities may have in connection with providing access to poles. Moreover, BSPs and other wireline MVPDs continue to face issues over access to poles controlled by government-owned utilities, which are exempt from the coverage of Section 224. As demonstrated below, the Commission needs to address repeated abuses of the pole attachment provisions of the Act by particular entities by clarifying the application of the pole attachment formula and by subjecting those pole owners that repeatedly flout their Section 224 obligations to monetary penalties.

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[46] *See* Minn. Stat §§ 238.22-238.27.

[47] *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, First Order on Reconsideration and Second Report and Order, CS Docket No. 95-184, 18 FCC Rcd 1342, 1345 (2003).

The Commission's pole attachment formula establishes the maximum rate to compensate pole owners for actual costs associated with the amount of space used by attaching entities. A typical abuse of the formula is a utility understating the number of entities attaching to its poles. The formula uses a "number of attachers" variable to effectively spread pole costs over the number of attachers (i.e., the higher the number of attachers, the lower the resulting rate). The Commission presumes an average number of three attaching entities for non-urbanized (less than 50,000 population) areas and five for urbanized (more than 50,000 population) areas. In deriving rates, certain utilities have incorporated artificially low numbers that represent the average actual number of attachers instead of using the FCC's presumptions. However, when the resulting artificially high rates are challenged in pole attachment complaint proceedings before the Commission, the utilities have been unable to rebut the FCC presumptions with valid justifications for above-cost rates.

For instance, in 2002, the Commission rejected Georgia Power's attempt to rebut the presumed average number of attachers. Georgia Power was unable to justify the 1.59 attachers it incorporated into the FCC formula to derive its pole attachment rate of $53.35. The FCC resolved the proceeding by adopting a rate of $7.23 for urban areas and $8.24 for suburban areas.[48] Despite this ruling, Georgia Power continues to use the artificially low figure of 2.5 to represent the number of attachers when calculating its current pole attachment rates offered to BSPA member Knology for the Augusta market. In reality, Knology attaches to Georgia Power poles that have an average of over five attachers, which is consistent with the FCC's presumption for urban areas like Augusta. That Knology must again file a complaint against Georgia Power in order to obtain relief is patently unfair and diverts resources that could be used to expand into

[48] *Teleport Communications Atlanta, Inc. v. Ga. Power Co.*, Order on Review, 17 FCC Rcd 19859, 19862 (2002).

new markets. The Commission should clarify the application of the formulas to reduce opportunities for such conduct.

Other FCC rulings in complaint proceedings prove meaningless in curbing abusive behaviors that deny BSPs access to poles at just and reasonable rates. For instance, the Commission ruled that Georgia Power's failure to respond to requests for sufficiently detailed billing information is an unreasonable practice in violation of Section 224.[49] Nonetheless, Georgia Power continues to provide insufficient information that would enable Knology and other attachers to assess the reasonableness of charges. The Commission must expeditiously resolve pole attachment complaints and vigorously enforce its orders in pole attachment complaint proceedings, including through the use of its monetary forfeiture authority for repeated violations of the Communications Act and its regulations. BSPs should not be required to divert resources from building new networks and serving more customers in order to pursue lengthy, repetitive complaint proceedings.

III. THE FCC SHOULD SUPPORT A MARKET TEST OF VOLUNTARY *A LA CARTE*

The BSPA recently filed comments with the Commission related to the evaluation of *a la carte* carriage options for the MVPD industry.[50] The BSPA and its individual members oppose all forms of mandatory *a la carte* where regulation mandates specific carriage of individual channels. On the other hand, BSPA believes that the ability of distributors to create additional and new package options that respond to individual consumer desires -- such as new mini-tiers or individual channels of content, along with the current bundles of content offered by all MVPDs –

[49] *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion and Order, 18 FCC Rcd 24615, 24641-42 (2003).

[50] *Comments Requested on A La Carte and Themed Tier Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, Comments of Broadband Service Providers Association, MB Docket No. 04-207 (filed July 13, 2004).

could potentially further competition at the distribution level by allowing competing distributors the opportunity to define and offer their own solutions to consumer requests for either choice or diversity.[51] At the same time, BSPA recognizes that the flexibility of distributors to offer *a la carte*-type arrangements (what we refer to here as "voluntary *a la carte*") raises numerous questions. These need to be addressed in the marketplace, rather than on paper at the Commission, before any decision can be made regarding the costs and benefits of *a la carte* offerings – whether to consumers, programmers, or distributors.

Accordingly, BSPA proposes that several of its members, together with those program suppliers and other cable providers who agree to participate, initiate focused, multi-year market tests in selected local markets, involving *a la carte*-type offerings. Some of the significant questions that can best be answered through these proposed market tests include:

- What number of subscribers would choose the current structure over a voluntary *a la carte* option?
- What level of "*a la carte*" will balance the needs of consumers, distributors, and content producers?
- How many new customers will come to MVPD systems when offered better choice?
- What really happens to advertising rates and structures as the true value of different subscriber environments is evaluated over time?
- Which channels or types of content may be receiving unfair subsidies in the current structure?
- Which types of content are not legitimately supported by an audience that is significantly large enough to warrant the current carriage?
- What is the potential financial impact on content producers and distributors?

[51] From a technological standpoint any type of a la carte structure, can only be implemented in an all-digital system structure.

The results of these market tests could then be used to assess both the benefits and potential issues presented by this structure. A market test of voluntary *a la carte* can only enhance the Commission's ability to come to the best conclusions and better inform the legislative debate in Congress regarding consumer choice, pricing, and indecency issues. BSPA therefore asks for the full endorsement and support of the FCC for the industry to pursue limited market tests of *a la carte* offerings, and to indicate its support for such an approach in its annual report to Congress in this proceeding.

IV. CONCLUSION AND SUMMARY RECOMMENDATIONS

The underlying purpose of this NOI is to evaluate the state of competition in the MVPD industry. The BSPA believes that the industry is quickly moving to business models and integrated services that require a perspective that goes beyond a more narrow television-only focus. The competitive success of new investments requires new entrants to compete in multiple services hosted on integrated networks that rely on fair access to the same video or other content. At the same time, the Commission must continue to address other impediments that inhibit competitive entry. BSPA therefore recommends the following actions be pursued by the Commission and addressed in its annual report to Congress:

- Evaluate competition on a market-by-market basis, rather than using national proxies that may overstate the true extent of competition in the video distribution market, and establish standards for affective competition that reflect market realities.
- Take steps to eliminate the incentive and ability of incumbent providers to use discriminatory or predatory pricing to foreclose entry, by requiring incumbents to provide information to subscribers on all rate offers and/or requiring uniform pricing in a franchise area (or seeking authority from Congress to require uniform pricing).
- Expand the effective constraints of Section 628 to assure fair access to content when vertical integration exists to all forms of content and all types of

distribution technology. This assures that distributors competing with vertically integrated conglomerates have fair access to content.

- Eliminate exclusive long term MDU agreements and continue to ensure fair and reasonable access to utility poles.
- Support a market test of voluntary a *la carte* anticipating the industry migration to all digital systems.

Respectfully submitted,

BROADBAND SERVICE PROVIDERS ASSOCIATION

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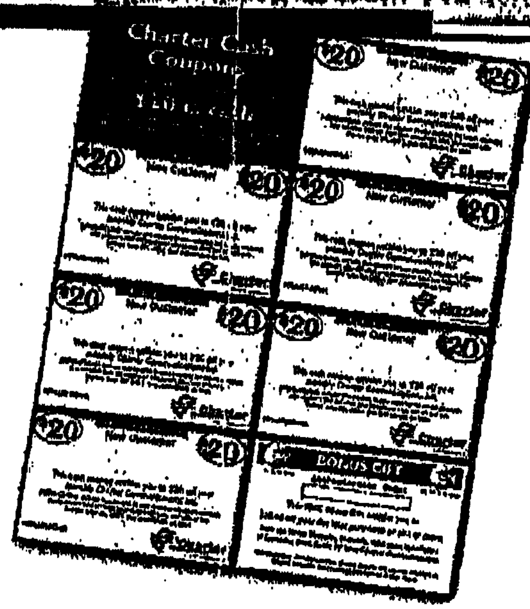
Dated: July 23, 2004

ATTACHMENT A



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3 CSPAN
4 WCCO (CBS)
5 KSTP (ABC)
6 Education Access
7 Education Access
8 Government Access
9 KMSP (FOX)
10 Public Access
11 KARE (NBC)
12 WFTC (UPN)
13 KPXM (PAX)
15 TBS
16 WGN
17 KSTC
18 CSPAN2
19 Government Access
20 WJON Weather / Local
21 Trinity Broadcasting
22 EWTN
23 KMWB (WB)

Expanded Channels

24 QVC
25 Home Shopping Network
26 Fox News
27 Lifetime
28 Fox Sports Net
29 E S P N
30 E S P N 2
31 A & E
32 Headline News
33 Spike TV
34 C N N
35 Animal Planet
36 ABC Family
37 Court TV
38 VH-1
39 M T V
40 T N T
41 TV Land
42 Learning Channel
43 Cartoon Network
44 C N B C
45 M S N B C
46 USA Network
47 Discovery Channel
48 History Channel
49 Sci-Fi Channel
50 Oxygen
51 Weather Channel
52 C M T
53 Comedy Central
54 E !
55 HGTV
56 Turner Classic Movies
57 American Movie Classics
58 Disney Channel
59 Nickelodeon
60 Hallmark
61 Food Network
62 Golf Channel
63 W E
64 Bravo
65 WCMN/Charter Network
66 National Geographic
67 Travel Channel
68 G4TTV
69 Outdoor Life
70 Speed Channel
71 Univision
72 F X
73 FitTV
74 Toon Disney
75 Movie Plex
76 B E T
77 Great American Country
78 Game Show Network
99 Charter Channel

Digital Channels

100 Noggin
104 Nick GAS
106 Nick Toons
108 Nick Too
112 Discovery Kids
120 BBC America
124 Discovery Home
128 Discovery en Espanol
132 Style
136 DIY
140 ESPN Classic
144 Boomerang
200 Biography
202 History International
208 Discovery Science
210 Discovery Times
212 Discovery Health
216 Bloomberg
218 Fox Sports World
228 CNN en Espanol
232 CNNFN/Money
236 CNN International
300 Sundance
302 Lifetime Movie Network
304 Independent Film Channel
306 Fox Movie Channel
310 SoapNet
312 Discovery Wings
314 Fuse
316 MTV2
317 MTV Hits
318 MTV Espanol
320 MTV Jams
322 VH-1 Classic
324 VH-1 Soul
326 VH-1 Country
328 VH-1 Mega Hits

HBO/Cinemax Package

500 HBO
505 HBO Plus
510 HBO Signature
515 HBO Family
520 HBO Zone
525 HBO Comedy
530 HBO Latino
550 Cinemax
555 More Max
560 Action Max
565 Thriller Max

Big Movie Tier

600 Showtime
605 Showtime Too
610 Showtime Showcase
615 Showtime Extreme
620 Showtime Beyond
650 The Movie Channel
655 The Movie Channel Xtra

Starz Super Pak

700 STARZ!
705 STARZ! Cinema
710 Black STARZ!
715 STARZ! Family
750 Encore
755 Encore Love Stories
760 Encore Action
765 Encore Mystery
770 Encore True Stories
775 Encore Westerns

Digital Pay-Per-View & Digital Music Channels

800 PPV Previews
801 30 PPV Channels
865 10 NHL/MLB PPV
894 5 Mature PPV channels
901 45 Digital Music Formats

High Definition Channels

771 HDNet Movies
772 HDNet
773 ESPN HD
777 HBO HDTV
778 Showtime HDTV
781 KARE-HD-NBC
789 KMSP-HD-Fox

Mar. 2004

St. Cloud Cable and Internet Packages

Monthly Price Guide Effective Mar. 2004

Cable TV Packages:

Biggest Value Package .... $ 55.99

Basic, Expanded, Digital Receiver, Big Movie Tier, HBO/Cinemax, and Starz Super Pak

Bigger Value Package .... $ 52.99

Basic, Expanded, Digital Receiver, Big Movie Tier and Choice of HBO/Cinemax or Starz Super Pak

Big Value Package .... $ 39.99

Basic, Expanded, Digital Receiver, Big Movie Tier

Expanded Basic Service .... $ 27.99

Basic and Expanded Service

Basic Service .... $ 12.99

Charter High Speed Internet:

Charter High Speed Internet 3M/256k .... $ 25.99

Cable modem rental for 3M Service .... $ 2.96

Charter High Speed Internet 384k/128k .... $ 21.99

Cable Modem Rental for 384 Service .... $ 4.95

Individual Prices, Equipment Rental and Installation Fees:

Digital Receiver Service ---------- $ 4.95
Digital Channels ---------- $ 9.00
HD Integrated Interactive Services including receiver ---------- $ 9.95
must subscribe to HBO to get HBO HD and Showtime to get Showtime HD
High Definition Tier (HD Net, HDNet Movies and ESPN HD) ---------- $ 3.99
Premium Services pricing in addition to Digital Receiver Rental
HBO/Cinemax Package or Starz Encore Pak ---------- $ 13.00
Wire Protection Plan ---------- $ 2.45
Channel Guide Magazine ---------- $3.95
Installation
Unwired Home (includes up to 3 outlets)
Broadcast Basic Only Install ---------- $ 49.95
Expanded Basic Install ---------- $ 39.95
Digital Install ---------- $ 29.95
High Speed Internet Only Install ---------- $ 19.95
Digital/High Speed Internet Install ---------- $ 9.95
Prewired Home (includes up to 3 outlets)
Basic, Expanded, Digital or High Speed Internet Reconnect ---------- $ 19.95
Digital/Internet Reconnect ---------- $ 9.95
Additional Outlet With Initial Install ---------- $ 14.95
Additional Outlet Special Trip ---------- $ 24.95
Transfer ---------- $ 19.95
Transfer After 1 Year of Service ---------- $ 0.00
Charter High Speed Intenet Self-Install ---------- $ 0.00
Charter High Speed Internet (or failed install) ---------- $ 19.95
Hourly Service Charge (HSC) ---------- $ 29.00

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Why pay $38.65 or more for internet when for $29.99 you get twice the speed?

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- $191.52 or more on Cable Television
- $104.40 or more on Internet Service

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- High Definition Cable
- Digital Video Recording, Video On Demand
- High Speed Internet
- Digital Telephone

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Thanks,

Ron Friender
Voice Mail 549-3307

Web posted **Friday, January 10, 2003**

Cable TV costs scheduled to rise in Vermillion

by David Lias
Plain Talk Editor

John Varvel, the government relations manager for Mediacom, was at Vermillion City Hall Monday night to oversee some needed improvements on the equipment used to broadcast Vermillion City Council meetings on cable channel 3.

While technicians fine-tuned the video and audio in the meeting chamber, Varvel received some static from another source city aldermen.

His grilling by members of the city council Monday comes on the heels of a significant rate hike enacted by the cable television company in Vermillion.

Mediacom included a bit of good news and bad news in billing invoices sent to Vermillion customers beginning Dec. 17.

The good news Mediacom is adding three new channels on or about Feb. 1 WE: Women's Entertainment (channel 69), RFD-TV (channel 73) and Inspirational Network (channel 77).

The bad news starting in February, monthly rates will be going up.

The cost of the basic family cable service which includes five local broadcast stations and 58 cable channels, will go up from $31 to $36.

That's an increase of 16 percent. And it's a rate much higher than Mediacom is charging in Yankton.

Mediacom faces competition in that city from PrairieWave Communications. PrairieWave was formerly known as Dakota Telecommunications Group (DTG) and most recently was a part of McLeodUSA Telecommunications.

Vermillion's former cable television holder, Zylstra Communications, also operated in Yankton and several other communities before being purchased by Mediacom a few years ago.

"Since the changeover in cable TV companies, there has always been a highly significant differential. I think right around 30 percent difference in rates and I'm not sure if that is still at that magnitude today, but I know there is quite a significance difference," Mayor Roger Kozak said to Varvel Monday. "Can you explain how it comes about that there is such a differential between the two communities?"

"The price structure in Yankton is not in the real world," Varvel said. "I don't know what the competition is doing, but Mediacom is losing money in that market. We're doing everything we can to maintain or expand our market share."

Varvel said he believes that in about two or three years, neither Mediacom nor PrairieWave will be able to offer services in Yankton at lower rates.

"I submit to you that both companies will not continue losing money in that market for an indefinite period of time, and prices will come up to normal in that market," he said.

"Are you suggesting that if we can find a competitor, your prices will go down?" asked Alderman Jack Powell.

"I'm suggesting that we do what we have to in each community to maintain market share for a reasonable amount of time," Varvel said, "but I will also go on and suggest that it is a temporary period of time and I don't believe anyone can stay in business by losing money in a market.

"Eventually, you either make money in the market or you abandon that market," he said.

Varvel said Mediacom is not losing money in its Vermillion market. The price increases that become effective next month, he said, are a product of the cost of doing business. "A significant portion of that cost to do business is the cost of the programs that we provide on the television," Varvel said. "The programmers traditionally raise their prices to us in double-digit percentages, some as high as 25 and 30 percent per year.

"We obviously can't pass all of that price increase on, but we have to find some ways of containing costs," he said. "That's why some times very popular programming is dropped from the schedule."

Varvel assured the city council that Mediacom will do all that it can to maintain its recent major upgrade to cable services introduced to Vermillion in recent years, and will work to assure that customers that are experiencing problems with picture, audio or high speed Internet are satisfied.