BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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	)	

REPLY COMMENTS OF COMCAST CORPORATION

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Comcast Corporation ("Comcast") hereby replies to the comments submitted in response to the Commission's Notice of Inquiry ("*Notice*") in the above-captioned proceeding.[1] These reply comments serve two additional purposes. First, Comcast presents additional evidence, accumulated in the few weeks subsequent to the submission of initial comments, attesting to the dynamism of and ever-growing competition in the video marketplace. Second, now that the company has released financial data for the second quarter of 2004, we provide company-specific market data, as of June 30, 2004, as the *Notice* requested.

I. INTRODUCTION AND SUMMARY

The first-round comments provide powerful support for the main points in Comcast's initial comments. Once again the evidence shows that competition among multichannel video programming distributors ("MVPDs") and other distributors of video programming not only is vibrant but continues to grow. In particular, DBS providers continue to report blistering growth, multichannel subscription broadcast services continue to make progress, and video streaming services continue to develop rapidly. Meanwhile, cable operators continue to expand the availability of new features and

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[1] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 04-227, FCC 04-136 (June 17, 2004) ("*Notice*").

services in their unceasing effort to deliver consumers the most compelling array of programming choices, increased convenience and control, and unparalleled value.

Notwithstanding the intense competitiveness and dynamism of the marketplace, certain parties use this proceeding (as they do perennially) to complain about one aspect or another of the regulatory landscape, to seek to impose additional regulatory burdens on cable operators, to recount unsubstantiated allegations of anticompetitive conduct, and so on. Little of this warrants a detailed response in these reply comments, and even less of it warrants mention in the Commission's year-end video competition report. Most of the allegations made by the Broadband Service Providers Association ("BSPA") and one of its members and by the National Association of Telecommunications Officers and Advisors ("NATOA") are vague and unsubstantiated. The purported grievance of the DBS providers and their trade association rings hollow after yet another quarter of record DBS growth. Still, to the extent necessary, Comcast responds herein to those allegations that have enough specificity to warrant a response.

II. THE VIDEO MARKETPLACE IS COMPETITIVE AND GROWING MORE SO EACH DAY.

Comcast's first-round comments demonstrated that the video marketplace is robustly competitive, with consumers enjoying an ever-growing array of options for multichannel video services, video rentals and sales, movie downloads and other forms of video streaming, and other means for accessing video programming.[2] Numerous other commenters agreed.[3] And events of the past several weeks provide further proof.

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2 Comcast Comments at 4-21.

3 *See* DIRECTV Comments at 7-9; Satellite Broad. & Communications Ass'n ("SBCA") Comments at 8-13; Broadband Serv. Providers Ass'n ("BSPA") Comments at 6-7; RCN Comments at 4-6; Nat'l Telecomm. Coop. Ass'n ("NTCA") Comments at 1-2; BellSouth Comments at 1; Nat'l Cable & Telecomm. Ass'n ("NCTA") Comments at 6-28; Nat'l Ass'n of Telecomm. Officers & Advisors

In the month since parties filed their initial comments, any fair-minded observer would have seen abundant additional evidence attesting to the dynamism and ever-growing competition in the video marketplace. For example, both DIRECTV and EchoStar announced record second-quarter results that exceeded most analysts' expectations. DIRECTV announced that it "added an all-time record 944,000 gross owned and operated subscribers" and reduced its monthly churn rate to 1.4% to yield 455,000 net owned and operated subscriber additions.[4] Meanwhile, EchoStar announced that it added approximately 340,000 net new subscribers in the second quarter of 2004,[5] beating analysts' estimates.[6]

EchoStar CEO Charlie Ergen has made clear which customers EchoStar is pursuing the hardest: "The real focus is cable companies. . . . They have 67 million customers. If we're going to grow our business, we've got to get customers, for the most part, from those guys."[7] That effort will reportedly be strengthened by recent Commission efforts to accelerate the broadcast digital transition because customers will

("NATOA") Comments at 3-6 (describing the efforts of more than 570 municipal electric utilities providing communications service).

4 Press Release, DIRECTV Group, Inc., *The DIRECTV Group Announces Second Quarter 2004 Results* (Aug. 5, 2004) ("*DIRECTV Earnings Release*"), *available at* http://ir.thomsonfn.com/InvestorRelations/PubNewsStory.aspx?partner=5276&StoryId=118703; *see* Mike Farrell, *Unlike Cable, DIRECTV Adds Subs in 2Q*, Multichannel News, Aug. 5, 2004 (reporting that "DirecTV Group Inc. reported blowout net subscriber additions in the second quarter, trouncing analysts' estimates"), *available at* http://www.multichannel.com/article/CA443291?display. DIRECTV's net additional subscribers in the second quarter of 2004 represents a 151% increase over the second quarter of 2003, and DIRECTV now serves over 13 million subscribers. *See DIRECTV Earnings Release*, *supra*.

5 Press Release, EchoStar Communications Corp., *EchoStar Reports Second Quarter 2004 Financial Results; Company's DISH Network Adds 340,000 Net New Subscribers* (Aug. 10, 2004), *available at* http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=602512.

6 *See* Mike Farrell, *Stealing Subs*, Multichannel News, Aug. 16, 2004, *available at* http://www.multichannel.com/article/CA445132?display.

7 *Id.*

be better able to receive local broadcast HDTV signals without subscribing to cable.[8] DBS providers also have been strengthened by their alliances with the powerful Regional Bell Operating Companies ("RBOCs") to jointly market new bundles of services.[9] Meanwhile, RBOCS are progressing rapidly with their own efforts to expand their presence in the video marketplace by deploying new fiber-optic lines to neighborhoods and directly to customers' homes.[10]

This competition from DBS providers and RBOCs alone proves the video marketplace is competitive. In addition to this competition, new entrants are actively deploying alternative means to distribute multichannel video programming to consumers. The MVPD service delivered by USDTV, which uses digital broadcast frequencies, is attracting additional support from broadcasters -- drawn by the expectation of improved

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[8] *See* Paul Gallant, Schwab Soundview Capital Markets, *FCC High Definition TV Requirement Could Benefit EchoStar and DirecTV* 1-2 (Aug. 3, 2004) ("By requiring local stations to strengthen their digital signals, more satellite customers will be able to receive over-the-air HD programming, which should incrementally help EchoStar and DirecTV retain customers who purchase HD television sets and want the maximum amount of HD programming."). An affiliate of EchoStar also recently was granted federal licenses to provide video programming and high-speed data service terrestrially, which may further enhance EchoStar's ability to provide consumers with the programming they want. *See* Ted Hearn, *EchoStar Affiliate Gains FCC Licenses*, Multichannel News, Aug. 19, 2004, *available at* http://www.multichannel.com/article/CA446334?display.

[9] *See* Almar Latour, et al., *SBC, EchoStar Plot Online Movie Service*, Wall St. J., Aug. 19, 2004, at B1 (reporting that "SBC already has signed up some 120,000 subscribers"; BellSouth ,"which began offering [DIRECTV] satellite service in early August, has signed up 30,000 customers"; and Verizon "has begun heavily advertising its TV offer"); Robert Luke, *BellSouth Campaign Aimed at Cable Foes*, Atlanta Journal-Constitution, Aug. 3, 2004, *available at* http://www.ajc.com/hp/content/business/0804/03bellsouth.html; Robert Mullins, *Cable, Phone Giants Slug It Out*, Silicon Valley/San Jose Bus. J., Aug. 16, 2004 (reporting that SBC "is rolling out an Olympics-themed ad campaign . . . for its new satellite service"). According to Kagan Research, EchoStar and DIRECTV "are on track to add over two million subscribers this year." Peter Grant, *Cable Trouble: Subscriber Growth Stalls as Satellite TV Soars*, Wall St. J., Aug. 4, 2004, at B1.

[10] *See* Christopher Rhoads, *Verizon Makes a Costly Bet with Super-Capacity Lines*, Wall St. J., Aug. 19, 2004, at B1 (reporting that Verizon "crews have been working overtime for months to bring fiber . . . to the doorsteps of 80% of homes in Huntington Beach by year's end," SBC is deploying fiber to neighborhood nodes and "says it expects to deliver all the services that cable offers," BellSouth "already has laid fiber capable of reaching one million houses," and Qwest is installing fiber in "newly constructed homes in its Western-state territory"). "Verizon says it intends to offer video services by the beginning of 2005 over its new fiber lines." *Id.*

receivers, set-top boxes, and compression technologies -- who can provide the capacity crucial to its success.[11] This low-cost, limited-menu service began active marketing in April 2004 but already serves more than 9000 subscribers in three markets.[12] As the service expands to almost 30 markets by the end of this year, USDTV has cut the price of its set-top box from $99 to under $20 to attract new subscribers.[13] Although this service is still in its early stages, USDTV's combination of HDTV offerings, plans to offer digital video recorder ("DVR") functionality by early next year, and strong broadcaster backing, makes it a credible prospect to bring a fourth (or fifth) MVPD competitor to many markets.[14]

Video streaming also provides consumers with additional options and imposes further competitive discipline on MVPDs.[15] Programming networks are reacting to the significant increase in the number of broadband subscribers by making more video

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11 *USDTV Finds Believers, Subscriber Satisfaction, Improved Tech Touted to Broadcasters*, Broadcasting and Cable, Aug. 2, 2004, at 16 ("The service can be launched in any market, provided enough stations are willing to lease part of their digital spectrum so [standard definition] channels can be sent to subscribers, who pay $19.95 per month for the service."), *available at* http://www.broadcastingcable.com/article/CA440882?display.

12 *See USDTV Has Cut the Price of its Set-Top Box to $19.87*, Comm. Daily, Jul. 23, 2004. The service plans to expand to 29 markets by the end of the year. According to USDTV CEO Steve Lindsley, a "little more than half [of USDTV subscribers] are cable nevers, those who, for one reason or another, stuck it out with broadcast. Then the greater percentage of the remaining half is people who've churned away from cable." *5 Qs with USDTV Chmn/CEO Steve Lindsley*, CableFax Daily, Aug. 16, 2004, at 2.

13 *See USDTV Has Cut the Price of its Set-top Box to $19.87, supra* note 12. In a recent customer service survey, 83% of respondents said they would recommend USDTV service to friends or family. *See id.*; *USDTV Finds Believers, supra* note 11.

14 In addition to these innovative distribution technologies expanding, existing overbuilders continue to roll out new services. *See* Press Release, RCN Corp., *RCN Announces Mass Deployment of Digital Video Recorder Service* (July 20, 2004); Press Release, RCN Corp., *RCN Launches Voice over IP Deployment in Chicago Market* (Aug. 4, 2004).

15 Comcast Comments at 14-16.

content available online.[16] As a result, advertisers are looking at new media "as a viable spending option."[17] At the same time, video streaming platforms are evolving further. Akimbo, self-described as "the first fully functional marriage of TV and the Internet, combining easy access to new and fresh shows with the comfort of watching them on your TV,"[18] is reportedly "no more than six weeks away from launching a [DVR] that gets TV shows through a high-speed Internet connection rather than a cable, satellite dish or roof antenna."[19] TiVo also plans to add Internet delivery next year.[20] SBC and EchoStar are entering the streaming marketplace by jointly developing a set-top box that will "enable subscribers with high-speed Internet connections to download movies and watch them on their TVs," as well as to use their boxes to receive DBS programming, record shows on a hard drive, and view personal photos and download music via their television.[21]

Other innovative video programming distributors continue to flourish. Blockbuster has unveiled a DVD-by-mail service that costs less than competitor Netflix,

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16 *See* Gary Arlen, *Many Forks in the Video-Streaming River*, Multichannel News, July 19, 2004, at 53, *available at* http://www.multichannel.com/article/CA437059?display ("As MSOs increase their cable-modem offerings, and create price tiers for 3 Megabits per second, 6 Mbps or faster access, cable networks are calibrating their offerings to enhance the on-line experiences."); *id.* ("More than 2 million viewers tune into ESPN Motion monthly, generating millions of video streams daily. More than 45 minutes of new content is added daily, and ESPN expects that quantity will grow.").

17 Matt Stump, *Streaming Becomes a Revenue Stream,* Multichannel News, July 19, 2004, at 53 ("More broadband connections are causing content providers to place more broadband content on their sites which is driving viewership, and thus ad dollars.").

18 Akimbo, *What Is Akimbo?*, *at* http://www.akimbo.com/whatis.html (last visited Aug. 17, 2004).

19 Mike Langberg, *Forget A La Carte Cable Idea; the Future Is in Internet TV*, Mercury News, July 23, 2004, *available at* http://www.siliconvalley.com/mld/siliconvalley/9224062.htm.

20 *See id.*

21 Latour, et al., *supra* 9, at B1.

and slightly more than Wal-Mart's similar service.[22] And Netflix, which pioneered the online DVD-rental market, plans to add a new service in 2005 which would "allow customers to download movies off the Internet for a monthly subscription fee that will cover both download and mail rentals."[23] In fact, with new players continually entering the market, the movie subscription rental business was described recently as "rapidly expanding."[24]

MovieBeam, a video-on-demand ("VOD") service delivered via broadcast frequencies, provides yet another option for consumers, with subscribers lauding its convenience: "My favorite thing about MovieBeam is the many options of movies that you have, the variety; and I get to watch more movies than before because it's more convenient. It saves me in gas, time, and money and it's so easy to use."[25] Within a year, experts predict that approximately one-third of all TV households nationwide will

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[22] *See* Press Release, Blockbuster Inc., *Blockbuster Launches New Online DVD Rental Service* (Aug. 11, 2004); Timothy J. Mullaney, *Netflix: Moving Into Slo-Mo?*, Business Week Online, Aug. 2, 2004, *available* at http://www.businessweek.com/magazine/content/04_31/b3894126_mz063.htm. DVD-by-mail services allow consumers to choose DVDs they want to rent from an online library of thousands of titles, and the DVDs are then mailed to them. For a set monthly price, consumers can rent unlimited DVDs, from two up to eight DVDs at a time depending on their service plan, with no late fees. Blockbuster's service offers customers the ability to rent three movies at a time for $19.99; Netflix offers the same service for $21.99, and offers a 5-at-a-time service for $33.99 and an 8-at-a-time service for $49.99; Wal-Mart offers a 2-at-a-time service for $15.54, a 3-at-a-time service for $18.76, and a 4-at-a-time service for $21.94.

[23] Mark Boslet, *Netflix To Try New Online Sales Avenue*, Wall St. J., Aug. 25, 2004, at B2.

[24] Regina Marie Glick, *Hooray for HollyWeb*, NewsDay.com, Aug. 17, 2004 ("Now, competition is heating up with big players such as Blockbuster and Walmart.com rolling out their own competing programs to grab a slice of the movie subscription rental pie. Also joining the fray are small start-ups, many of which hope to carve a niche in this rapidly expanding market."). The convenience of having DVDs mailed directly to one's home and available to watch at any time places additional competitive pressures on all other video distributors, including broadcasters, DBS providers, cable operators, video rental stores, and DVD sales outlets.

[25] *WireSizzles: MovieBeam Study Reveals Movie Viewing Habits*, Cable Retailer E-News, Aug. 9, 2004, *available at* http://www.cableretailer.com/viewcableretailer.cfm?ReleaseID=36&SearchCriteria=moviebeam#Story5.

regularly use some form of DVR and/or VOD, ultimately revolutionizing the television industry.[26]

In short, it is clear that competition in the video marketplace is vibrant and evolving at a pace previously unmatched. With all of this competition, no competitor can sit idly. As explained below, Comcast and other cable operators have responded and continue to respond to competition by providing more programming, deploying innovative services to more consumers, improving customer satisfaction, and otherwise seeking to attract and retain customers. The beneficiaries of all this competition, of course, are American consumers.

III. COMCAST DELIVERS A GROWING ARRAY OF SERVICES THAT CONSUMERS VALUE.

As we discussed in our first-round comments, Comcast's response to growing competition and increasing consumer choice is to compete even harder to deliver the services that customers value. As Comcast Chairman and CEO Brian Roberts explained: "Every new initiative in this company is to make the Comcast version of television better than anywhere else you could go."[27] We are proud that, even with the wide (and still growing) array of choices that are available to consumers, a majority of households within areas served by Comcast choose to buy one or more of the services that we offer.

[26] David Zurawik, *With New Services, Viewers Make Prime Time Anytime*, Baltimore Sun, Aug. 12, 2004, at 1A ("With cutting-edge technology and services such as digital video recorders and DVD subscriptions, Americans have sophisticated new options for TV viewing . . . .").

[27] Grant, *supra* note 9.

In the past quarter, Comcast has continued to increase both the availability of new services and the number of customers that subscribe to those services.[28] Key statistics for the past quarter included the following:

- Homes passed: 40,300,000
- Cable customers (and penetration of homes passed): 21,477,000 (53.3%)
- Percent of systems upgraded: 97%
- Digital subscribers (and penetration of cable homes): 8,064,000 (37.5%)
- High-speed Internet customers (and penetration of homes that can receive Comcast's high-speed Internet service): 6,005,000 (16.1%)
- Telephone customers (and penetration of homes that can receive Comcast's telephone service): 1,225,000 (12.5%)[29]

Of particular note, Comcast continues to invest heavily in services that have proven to be valuable for retaining and attracting customers: HDTV, VOD, and DVRs.[30]

With respect to HDTV, Comcast now has nearly 600,000 HDTV set-top boxes in consumers' homes,[31] and by year end expects to have ten to fourteen HDTV channels available to 95% of its customers.[32] Helping to drive consumer interest is the growing availability of regional sports networks and other local programming in HD. Comcast also remains on track to make VOD available throughout 85% of its footprint by the end

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[28] The *Notice* requested company-specific data as of June 30, 2004. Comcast released such data on July 28, 2004, and a copy of the company's earnings release is attached as Appendix A. A copy of a related quarterly report filed with the Securities and Exchange Commission will be transmitted separately.

[29] Press Release, Comcast Corp., *Comcast Reports Second Quarter 2004 Results* 10 (July 28, 2004) (attached as Appendix A).

[30] *See id.* at 2 ("Video revenue growth reflects increasing consumer demand for new digital features, including Comcast ON DEMAND, high-definition television (HDTV) programming and digital video recorders (DVRs).").

[31] *See id.* at 2.

[32] Comcast Corp., *2004 Media Day* 13 (June 30, 2004).

of the year and is testing HDTV video-on-demand, which we view as a potential "tremendous offensive" weapon against DBS competition.[33] In Philadelphia, Comcast's flagship market for VOD, 70% of the customers that have VOD use it, and the average user retrieves VOD content more than 20 times per month.[34] Finally, as Comcast explained in its initial comments, we are well on our way to meeting our goal of offering DVR service to 100% of our customers by the end of 2004,[35] which will also help to retain and attract customers to Comcast's service.[36]

Comcast also recently announced a joint venture with Time Warner to "hasten the development of the OpenCable Applications Platform (OCAP), cable's key initiative to promote ITV [(interactive TV)] applications."[37] By incorporating the two companies' existing OCAP development work and soliciting third-party developers to build OCAP

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33 *Comcast: HDTV VOD Is "Tremendous" Weapon*, Multichannel News, July 19, 2004, *available at* http://www.multichannel.com/article/CA437506?display. "[I]n cable's war of attrition with satellite service, customer retention is no small matter. Video on demand offers an important edge that satellite, for technical reasons, cannot deliver." Mike Rogoway, *Video on Demand (by some)*, Oregonian, July 18, 2004, at E01.

34 Comcast also continues to sign carriage agreements to bring high-quality video programming to its VOD service from programmers such as C-SPAN and the NFL Network. R. Thomas Umstead, *NFL, MLB Ramping Up Network Plans*, Multichannel News, Aug. 16, 2004 ("Comcast customers in video-on-demand-enabled markets will be able to select from a customized VOD offering that includes access to NFL Network Highlights on Demand -- extended highlights of each NFL regular-season game -- as well as fare from the NFL Films library."); Press Release, Comcast Corp., *Comcast and C-SPAN Partner To Provide Key National Convention Speeches On Demand* (July 29, 2004), *available at* http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&t=Regular&id=599033&.

35 *See* Comcast Comments at 33-34. On August 23, 2004, Comcast announced its launch of DVR service throughout its systems serving southeast and central Pennsylvania, New Jersey, and northern Delaware. Press Release, Comcast Corp., *Comcast Launches Digital Video Recorder Service* (Aug. 23, 2004), *available at* http://biz.yahoo.com/prnews/040823/phm024_1.html. The service allows recording of up to 50 hours of programming, is HD-capable, and includes a new and improved electronic program guide. *See id.*

36 *See* Steve Donohue, *DVRs Give Cable a Lift*, Multichannel News, July 19, 2004, at 18 (reporting that a recent study showed that "[o]nce cable subscribers get a digital video recorder, they are less likely to drop cable for satellite").

37 Matt Stump, *Comcast, Time Warner Aid OCAP*, Multichannel News, Aug. 16, 2004, *available at* http://www.multichannel.com/article/CA445128?display.

applications, Comcast and Time Warner will be able to deploy ITV services to better compete with DBS.[38] As Steve Heeb, Comcast's Vice President of Product and Business Development, explained: "The creation of this joint venture will benefit consumers by enhancing the cable industry's ability to bring innovative new technologies to market even faster."[39]

In addition to these new services and initiatives, Comcast has invested in the production of high-quality video programming. Comcast provided specific details about its investments in programming in its initial comments,[40] which we update here. Last year, Comcast divested its 56.5% ownership interest in QVC Inc. to Liberty Media Corp. in exchange for approximately 217.7 million shares of Liberty's common stock (approximately 4.2% of the voting stock). This year, in a transaction that closed after initial comments were filed in this proceeding, Comcast sold 120.3 million of those shares back to Liberty in exchange for $545 million in cash, a 10% interest in E! Networks (bringing Comcast's ownership interest in E! to 60%), and ownership of International Channel Networks.[41]

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38 *See id.*

39 *Id.*

40 *See* Comcast Comments at 24-29.

41 International Channel Networks is a single, satellite-delivered national programming service that also acts as a distribution agent for, but does not own, various foreign language programming networks including ART Cable (Arabic Cultural and Islamic general entertainment programs), RAI (Italian programming), and TV JAPAN. Comcast also continues to own interests in four other national networks, The Golf Channel, Outdoor Life Channel, iN DEMAND, and G4techTV, as well as various regional networks (CN8, which recently garnered twenty-three Mid-Atlantic Emmy nominations, Comcast SportsNet (Philadelphia), Comcast SportsNet (Mid-Atlantic), Comcast Sports Southeast, New England Cable News, and soon to be launched Comcast SportsNet Chicago). Recently, Comcast announced the launch of a new regional sports network in Detroit, MI. *See* Jewel Gopwani,, *New Comcast Channel To Air Regional Sports*, Detroit Free Press, Aug. 18, 2004, *available at* http://www.freep.com/money/business/comcast18e_20040818.htm.

In short, "'competition has made cable a better product.'"[42] In contrast to the limited service cable operators offered a decade ago, consumers can turn to Comcast for a large variety of services and an incredibly diverse array of programming. Plainly, Comcast continues to invest and innovate because the video marketplace demands it. This only reinforces the importance of removing rules that constrain cable operators' ability to compete.[43]

IV. THE COMMISSION'S REPORT SHOULD GIVE NO CREDENCE TO UNSUPPORTED ALLEGATIONS OF GRIEVANCES OR UNFOUNDED REQUESTS FOR GOVERNMENTAL INTERVENTION IN THE MARKETPLACE.

As in prior years, some of the commenting parties decline to provide the kind of information requested by the Commission, but instead use this proceeding to rehash annual complaints. This year, most such comments are so perfunctory, and so devoid of meaningful evidence, that they can readily be dismissed. We provide a brief response to a handful of such allegations that should not stand unrebutted.

A. The Effects of DBS Competition Are Real, and Marketplace Evidence Cannot Be Ignored.

In a transparent effort to try to persuade the Commission to skew the marketplace, some overbuilders and others persist in claiming that DBS competition is not meaningful and that only competition from overbuilders really counts.[44] These claims ignore a decade of history that convincingly proves otherwise.

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[42] Ken Belson, *The Poker Player*, N.Y. Times, Aug. 8, 2004, § 3 (Business), at 1 (quoting Brian Roberts, Comcast's Chairman and CEO).

[43] *See* Comcast Comments at 39-44.

[44] BSPA Comments at 7-12; NATOA Comments at 1-2; RCN Comments at 7-8.

The DBS companies themselves completely refute the overbuilders' argument. As DIRECTV explains:

> In the decade since DIRECTV first began operations, cable operators have found themselves offering more digital programming, improving the quality of their cable plant, revamping their customer service offerings, and otherwise improving their product. As DIRECTV continues to implement [its] latest round of advances, cable operators will have to either try to match DIRECTV's innovations or lose customers in the marketplace. All this is patently to the benefit of the American viewer.[45]

EchoStar's CEO, Charlie Ergen, has also acknowledged cable operators' various customer retention efforts, including dish buyback programs.[46]

SBCA confirms the point that DBS provides enormous competitive pressure on cable operators: "DBS offers subscribers high quality, competitive pricing, superior customer service, and a growing product line of advanced digital services and an expanding channel line-up (including local broadcast signals to more consumers and high-definition programming)."[47] More significantly with respect to claims that DBS providers do not provide effective price competition, SBCA notes that 22% of the DBS subscribers polled in a Taylor Group study said they "chose DBS based on price,"[48] and recent press articles confirm that both DBS providers and cable operators are competing

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45 DIRECTV Comments at 3-4.

46 *See* Farrell, *supra* note 6. EchoStar's CEO also stated that the "consumer is voting with their [sic] pocketbook and saying they prefer satellite," *id.*, thereby suggesting that he does not believe the assertions made in EchoStar's initial comments that, "[d]espite the continued growth of DBS subscribership, truly effective competition in the MVPD market has yet to be achieved," EchoStar Comments at 1.

47 SBCA Comments at 8.

48 *Id.* at 9.

on price.[49] In fact, BSPA's own exhibits show that cable operators react to competition from both DBS providers and overbuilders, and price their services accordingly.[50]

The contrary argument rests entirely on a report by the General Accounting Office (now Government Accountability Office), which purported to evaluate the effect of wireline overbuilders on the prices for cable services.[51] The frequency with which this argument has been repeated by overbuilders, however, does nothing to cure the deficiencies underlying the analysis. The authors of the report themselves properly acknowledge that their "results are *not generalizable* to the universe of cable systems."[52] The report is based on an extremely small sample; it examined only six "matched pairs" of markets that were hypothesized to be comparable in every way except for the presence of an overbuilder in one of every two paired cities. In addition, the report overweights small markets, which tend to have larger estimated competitive differentials.[53] The report may also overweight markets with low DBS penetration since four of the six markets with an overbuilder had DBS penetration well below the national average.[54] The report fails to calculate quality-adjusted prices but merely compares the nominal prices for

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49 *See* Peter Grant, *Turned Off: Satellite Signals Trouble for Cable*, Tribune-Review, Aug. 5, 2004, at 1, 4 ("Satellite's success partly reflects the appeal of its offerings, especially to price conscious households."); Reinhardt Krause, *Murdoch's Channeled His DirecTV Efforts into Taking Subscribers from Cable Firms*, Investor's Bus. Daily, Aug. 6, 2004, at A1 (noting that "[s]ome cable operators are fighting back aggressively" with price promotions).

50 BSPA Comments Attachment A ("Attention Astound *and Satellite customers*[:] call today and see how you can lower your Cable, High Speed Internet and Telephone rates[.]" (emphasis added)).

51 Gen. Accounting Office, *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets* (Feb. 2004) ("*GAO Report*").

52 *Id.* at 29 (emphasis added).

53 *See id.*

54 *See id.* at 26 n.17.

packages of services, ignoring potentially significant differences in the number or nature of channels in the package. In addition, it is not evident that the service prices observed in overbuilt markets are sustainable. Finally, commenters citing the GAO report conveniently ignore GAO's findings that, in one of the market pairs, cable prices were actually *higher* where the overbuilder was present than in the paired market that had "only" three competitors.[55]

The plain fact is that every cable company faces intense pressure from DBS competition. It is not just the 23 million households who already subscribe to DBS; it is also the potential for millions of additional customers to switch, on a moment's notice, in response to attractive incentives and with virtually no up-front cost. Winning back lost customers is difficult and expensive, so every cable company understands the importance of keeping customers satisfied and loyal. This requires investment, innovation, customer service, community involvement, and a host of other factors, the results of which are manifested in many ways in addition to retail prices.

This year NATOA claims that consumers and localities benefit most from competition provided by municipally owned communications companies and points to the experiences in the cities of Cedar Falls and Waterloo, Iowa.[56] This is a bewildering claim. First, the report NATOA attaches to support its claim expressly notes that: "It would be extremely difficult to verify that these developments are the direct result of the

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[55] *Id.* at 4.

[56] NATOA Comments at 4 (asserting that "economic development has surged in Cedar Falls, which operates its own advanced municipal communications system, and it has sagged in Waterloo, which does not operate its own municipal communications system" (citing Doris J. Kelley, Telecomm. Coordinator, Iowa Ass'n of Mun. Utils., *A Study of the Economic and Community Benefits of Cedar Falls, Iowa's Municipal Telecommunications Network* (July 6, 2004 update) (attached as Attachment B to NATOA's comments)).

City's broadband delivery system."[57] Second, although it is indisputable that a community with access to the latest technological innovations has a significant advantage in attracting economic investment over a comparable community without such access, NATOA provides no evidence to support its argument that it is more efficient or preferable to have a municipally owned company provide such access as opposed to the private sector.[58] A recent study from the Progress and Freedom Foundation actually shows otherwise: "The municipal governments that are using their taxpayers' money to enter the telecom business are not investing that money wisely. Their taxpayers would be better [off] with any of the available alternative uses of the resources that have been invested in telecom -- lower electricity rates, lower taxes or even investing in income-earning assets at prevailing market rates."[59]

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57 *Id.* Attachment B at 12.

58 Such an argument is in notable tension with NATOA's emphasis, later in the same pleading, concerning the alleged need for active governmental oversight of the use by all providers of the public rights-of-way. *See id.* at 28 ("Local government is rightfully at the nexus of their citizens' needs and the industry's desires, and must balance these interests accordingly. Regulations and careful consideration of permitting requests help to protect the existing users of rights-of-way and the services that citizens rely on every day."). NATOA nowhere addresses the inherent conflict of interest that arises when the very entity exercising immense power over the construction, maintenance, and other activities of market participants also competes directly against them.

59 Thomas M. Lenard, Progress & Freedom Found., *Government Entry into the Telecom Business: Are the Benefits Commensurate with the Costs?* 30 (Feb. 2004). NATOA's claim conflicts directly with the central policy goal of the Telecommunications Act of 1996: "to accelerate rapidly *private sector deployment* of advanced telecommunications and information technologies and services to all Americans," S. Conf. Rep. No. 104-230, at 1 (1996) (emphasis added) (accompanying the enactment of Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56), and is also in tension with the advocacy by the Commission and other representatives of the U.S. Government in international fora, where U.S. representatives have strongly encouraged other nations to divorce regulatory functions from operational functions and privatize the latter. *See, e.g.*, David A. Gross, Deputy Assistant Secretary, U.S. Coordinator for International Communication and Information Policy, Remarks at the United Nations General Assembly, New York, N.Y. (June 17, 2002) (advocating creation of an environment "conducive to *private sector* investment").

B. Differentiating Program Offerings Is a Legitimate Competitive Response and Enhances Competition Among Producers and Distributors.

The argument that access to programming is a competitive obstacle for competing MVPDs is made again this year by the usual organizations but with less passion and even less specificity than in prior years. In large part this may be due to the fact that competition throughout the country has thrived despite these competitors' assertions that they are denied access to programming. In fact, the emergence of this robust competition makes it timely to review the existing exclusivity prohibition.

Outside the anomalous context of the 1992 Cable Act, exclusive arrangements for content are commonplace: ABC affiliates cannot carry the 2004 Olympics, which belongs to NBC; *Time* cannot carry George Will's column, which is available exclusively in *Newsweek*; and studios other than Time Warner cannot make *Harry Potter* movies. Exclusive arrangements promote efficiency and diversity of choices for consumers.[60] Congress's decision to give the exclusivity prohibition a limited life reflects its recognition that the ban on exclusive contracts is a departure from mainstream public policy and law.[61] Moreover, Congress's decision to permit the Commission to exempt

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60 *See* Christopher S. Yoo, *The Economics of Net Neutrality: Why the Physical Layer of the Internet Should Not Be Regulated*, Progress on Point Release 11.11, July 2004, at 25 (noting that "permitting exclusivity arrangements with respect to programming such as NFL Sunday Ticket is serving as a major driver of encouraging the deployment of alternative retail delivery networks in the television industry"), *available at* http://www.pff.org/issues-pubs/pops/pop11.11yoonetneutrality.pdf. DIRECTV's exclusive contract for the NFL Sunday Ticket has allowed it to distinguish its service from its competitors' services. *See id.* As noted in Comcast's initial comments, EchoStar and Voom also have exclusive rights to video programming. *See* Comcast Comments at 8, 10-11. EchoStar is even branching out to obtain exclusive rights to broadcast certain video programming via broadband connections. *See* Press Release, EchoStar Communications Corp., *DISH Network Secures Exclusive Rights To Broadcast Holland Cup, ICC Championship Trophy Cricket Matches Via Broadband Connection* (Aug. 20, 2004).

61 *See In re Sunset of Exclusive Contract Prohibition*, Report & Order, 17 FCC Rcd. 12,124 ¶ 8 (2002) ("*Program Exclusivity Order*") ("Congress recognized that exclusivity can be a legitimate business practice where there is competition. Accordingly, Congress provided that the prohibition would terminate at the end of 10 years unless the Commission . . . found that the prohibition on exclusive contracting

certain exclusive contracts from the prohibition is an express recognition that exclusivity has substantial consumer benefits.[62] The Commission similarly has recognized in the programming context that exclusivity can benefit consumers and that differentiating programming is a natural response to competition.[63]

In light of these benefits of exclusivity, it is time for the Commission to acknowledge -- and to advise Congress -- that competition in the MVPD marketplace would be enhanced further by allowing the marketplace to operate freely without the constraints of the exclusivity prohibition. The circumstances of the video marketplace have changed considerably since 1992 when the exclusivity prohibition was adopted; even in the two years since the Commission extended the prohibition, the circumstances have changed dramatically.[64] The competition that permeates the video marketplace

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'continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'" (footnote omitted)).

[62] *See* 47 U.S.C. § 548(c)(2) & (4) (exempting exclusive contracts that the Commission determines are in the public interest).

[63] *See In re Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, First Report & Order, 8 FCC Rcd. 3359 ¶ 63 (1993) ("We note that exclusivity under this provision is not prohibited. As a general matter, the public interest in exclusivity in the sale of entertainment programming is widely recognized. Indeed, elsewhere in the 1992 Cable Act, in the context of the broadcast station-cable system relationship, specific steps have been taken to protect exclusive rights."); *Program Exclusivity Order*, 12 FCC Rcd. ¶ 25 ("[I]f a vertically integrated programmer contemplates the introduction of innovative services with limited or niche audiences and believes that these services will not be economically viable without a period during which they are offered on an exclusive basis, we encourage such programmer to petition the Commission to approve a period of exclusivity."); *In re Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, 3 FCC Rcd. 5299 ¶ 66 (1988) (observing that "exclusivity is a normal, competitive tool, useful and appropriate for all sectors of the industry, including cable as well as broadcasting").

[64] Since June 2002, among other developments, DBS providers have added five million new subscribers, entered into joint marketing agreements with the RBOCs, expanded their programming menus, and in the case of DIRECTV, merged with one of the largest media companies in the world; cable operators have continued to upgrade their systems and have made deploying new services such as digital cable, HDTV, DVR service, and VOD a priority; USDTV has emerged as a new multichannel alternative in certain markets; the promise of video streaming has started to be realized as broadband access has made video streaming a true alternative to the TV; and other innovative distributors of video programming, such as Netflix and MovieBeam, have continued to launch new services. These changes further accentuate the

obviates the need for the prohibition, and the Commission should initiate its review to eliminate the prohibition.

With respect to competitors' arguments that cable operators have denied them access to programming, the Commission should note that, over the 12 years since the rules were adopted, program access complaints filed at the Commission have been few and far between. In fact, Comcast is aware of only one program access complaint in the past four years, and the Commission found that complaint to be without merit.[65] This suggests that few parties believe they have meritorious complaints about program access violations.

DBS providers continue to complain, as in past years, about their inability to license Comcast SportsNet ("CSN").[66] These commenters conveniently overlook that this example does not represent a violation of the law; after all, this service is not covered by the program access law enacted by Congress, the Commission rejected DIRECTV's and EchoStar's complaints regarding this service, and the D.C. Circuit upheld the Commission. Nor do they provide any evidence that the so-called "terrestrial loophole" - which, in fact, reflects a conscious policy choice by Congress -- has prevented them from

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already enormous changes that occurred in the prior decade, as DBS grew from serving zero customers to 18 million. *See* Comcast Comments filed in MB Dkt. No. 03-172, at 5-12 (Sept. 11, 2003).

[65] *See In re Complaint by Everest Midwest Licensee, L.L.C. v. Kansas City Cable Partners*, Memorandum Opinion & Order, DA 03-4077 (Media Bureau Dec. 24, 2003).

[66] DIRECTV Comments at 4-5, 18-23; EchoStar Comments at 11-13; *see also* SBCA at 18. Program access concerns are also raised by others, *see* NATOA Comments at 19-22; NTCA at 3-4, but they too fail to identify any situations in which they or their members have been denied access to any programming service. Interestingly, in refuting claims that rights-of-way problems represent a barrier to entry, NATOA argues that "rights-of-way problems between industry and local government are few and far between . . . and the evidence of this is best demonstrated by the limited number of filings at the FCC regarding right-of-way management issues." NATOA Comments at 28. NATOA's logic applies with even greater force to program access issues.

competing successfully; indeed, the subscribership and growth statistics they recently reported clearly demonstrate otherwise.[67]

C. Cable Operators' Competitive Pricing Practices Are Entirely Appropriate and Permissible.

This year, as in the past, certain parties claim cable operators engage in "predatory and discriminatory pricing."[68] As an initial matter, these parties fundamentally misapprehend the nature of the competitive and unregulated marketplace and improperly apply inflammatory terms to conduct that is lawful, healthy, and proconsumer. Moreover, these parties would have Congress and the Commission step in to interfere in a competitive free-market in order to raise consumer prices.

The word "predatory" has been hurled around by parties who presumably know better. If they truly believe that a given cable operator is engaging in predatory pricing, they are free to seek remedial relief under the antitrust statutes or inform the Antitrust Division of the Justice Department. Insofar as Comcast is aware, despite repeated assertions by various overbuilders in the context of the Commission's annual competition reports, the Antitrust Division has filed no complaints alleging a violation of the Sherman Act by a cable operator.

There is no basis for policymaker concern with respect to cable operators' pricing practices. First, all of the allegations are vague, most are hearsay, and none is supported

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67 The best they can do is to quote a past Commission statement to the effect that DBS penetration in Philadelphia was less than the national average. EchoStar Comments at 11. But this provides no evidence that DBS's lack of access to CSN has materially affected its ability to compete. As the Commission is surely aware, and as EchoStar knows full well, DBS penetration varies from market to market based on a variety of factors (including the intensity of the marketing efforts by the DBS companies, the range, quality, and pricing of services offered by the local cable company, the extent of SMATV and overbuilder presence in the market, the extent to which residents of the area live in high-rise buildings, and so on). It is simply absurd to imagine that DBS penetration in every U.S. city, like all the children in Lake Wobegone, will be "above average."

68 BSPA Comments at 14; RCN Comments at 10.

by any meaningful evidence. Second, no one has even claimed, much less proved, any violation of the Communications Act. Specifically, no party has alleged that any of the discounted prices involve cable services that remain subject to rate regulation. All of the services cited by overbuilders and for which discounts are claimed to have been offered are services as to which Congress specifically ended rate regulation in favor of unregulated competition. Third, offering promotional discounts to recruit new customers, retain existing customers, and win back lost customers is entirely normal behavior in a competitive marketplace.

Each of these deficiencies applies to BSPA's complaint that Comcast offers "deeply discounted rates on *expanded basic cable and cable modem service*" and its citation of two particular offers by Comcast which it characterizes as a "concrete example of pricing conduct targeted toward eliminating BSP competition."[69] Both offers cited involve expanded basic cable and high-speed cable Internet,[70] and one includes a premium service as well. The prices for expanded basic cable service have been deregulated since 1999, and the prices for premium services and high-speed cable Internet have never been subject to regulation. Moreover, the advertisement that BSPA submits as an example of offensive "target[ing of] BSP competition" is -- on its face -- *expressly* directed to other MVPD customers, specifically satellite customers as well as overbuilder customers.[71] BSPA provides no support for its claim that "rather than

69 BSPA Comments at 16, 18 (emphasis added).

70 *See id.* at 18.

71 BSPA Comments Attachment A. NATOA also complains about "predatory pricing" but admits it has not attempted to gather evidence of that in the past year. NATOA Comments at 7. Even were the offer limited solely to overbuilder customers, it would be notably inconsistent for BSPA to trumpet the claim that overbuilders provide the only effective competition to cable (i.e., competition that results in price

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," or for its implicit suggestion that overbuilders but not other cable rivals should be free to market "door-to-door."[72]

No overbuilders offer specific allegations of "targeted" pricing; yet, their trade association cites such "schemes" as a "significant barrier" that the "Commission should address."[73] In point of fact, cable operators like Comcast must and do compete based upon the circumstances of each market. When overbuilders choose to "target" certain neighborhoods with their offerings, it is not unreasonable for competitors to focus marketing attention on those neighborhoods in return;[74] of course, the ubiquitous availability of DBS ensures that cable operators compete throughout their communities.

Finally, it is important to underscore that promotional discounts, save offers, winbacks, etc. are all commonplace behavior in a "'free market, the benefits of which are

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reductions), BSPA Comments at 10, while then complaining when the presence of overbuilders forces cable companies to offer better prices.

72 BSPA Comments at 17. In the past, similar claims have been made in the Washington, D.C. area. Yet then and now, it remains the case that the most attractive discounts are those offered to new subscribers (whether they currently patronize a DBS provider or an overbuilder or subscribe to no multichannel video service provider at all). For an example of Comcast's Washington D.C. promotions see Attachment B (Comcast Corp., *Now Is the Time for Comcast*, Wash. Post, Aug. 3, 2004, at E10 (full page ad offering Comcast's basic and digital cable for $19.99 per month until the end of 2004).

73 BSPA Comments at 15.

74 Comcast abides by all the build-out requirements in all of its franchise agreements. Overbuilders competing with Comcast generally have the same build-out requirements in their franchise agreements, but compliance is the exception, not the rule. In one recent case, an overbuilder sought relief from the requirement to provide service throughout the community on the ground that it "can never benefit from a true 'level playing field' because [it] did not have the opportunity to serve these homes exclusively for 10 to 15 years or more as the incumbent cable operator." Sarah MacDonald, *RCN Pleads Its Case to Selectmen,* MetroWest Daily News, July 13, 2004. Of course, among other flaws in its reasoning, RCN knew the market it was entering, the market already had at least three competitors (an incumbent cable operator, DIRECTV, and DISH Network), and the incumbent cable operator's franchise was non-exclusive.

well-established.'"[75] As the D.C. Circuit recognized in dismissing challenges to the legitimacy of winback and retention discounts (most of them characterized as "oral" and "secret") offered in a market that is subject to greater residual regulation than are non-basic cable services, "Haggling is a normal feature of many competitive markets. It allows consumers to get the full benefit of competition by playing competitors against each other. . . . Consumers . . . can only benefit."[76]

D. The Commission's Report to Congress Should Not Neutrally Recount Parties' Grievances About Prior Commission Decisions or Their Assertions Regarding Issues Pending in Other Proceedings.

Some parties misconstrue the Commission's annual inquiry as an opportunity to vent their grievances concerning a host of issues that are often irrelevant to the status of competition in the video marketplace, that are the subject of other Commission proceedings, or both. We believe the Commission should acknowledge these grievances for what they are -- attempts by various parties to have the Commission perpetuate regulations that will inure to the parties' benefit -- and not simply recount them to Congress without evaluation.

For example, NATOA alleges that cable operators "have engaged, and are engaging, in a variety of anticompetitive tactics to thwart competition."[77] However, NATOA admits that its allegations come from a hodge-podge of third-party sources and that it can "not vouch for the accuracy" of the assertions it has chosen to catalogue and

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75 *Orloff v. FCC*, 352 F.3d 415, 421 (D.C. Cir. 2003) (quoting *MCI Worldcom v. FCC*, 209 F.3d 760, 766 (D.C. Cir. 2000)). The commercial mobile wireline services at issue in *Orloff* were subject to the statutory prohibitions again unjust, unreasonable, and unjustly and unreasonably discriminatory pricing in 47 U.S.C. §§ 201-202. Nonetheless, neither the Commission nor the court found anything untoward in offering discounts to attract, retain, or regain customers.

76 *Orloff*, 352 F.3d at 421.

77 NATOA Comments at 6.

republish.[78] NATOA urges the Commission to "use its own investigatory tools to determine whose version of the facts is correct."[79] There is a process for Commission review of credible allegations, and this is not it.

"Complaints must be signed by the complainant," and "[e]ach submission must contain a written verification that the signatory has read the submission and to the best of his or her information, information and belief formed after a reasonable inquiry; it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not imposed for any improper purpose."[80] "Pleadings must contain facts which, if true, are sufficient to warrant a grant of the relief requested."[81] "Facts must be supported by relevant documentation or affidavit."[82] Importantly, "[i]f any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or its own initiative impose appropriate sanctions."[83]

NATOA does nothing for its credibility by using this proceeding as a forum to rehash random allegations for whose accuracy, by its own admission, it is unable to "vouch." At a minimum, NATOA should make some effort to ascertain the facts underlying allegations before simply repeating every piece of hearsay it comes across. The Commission would do this industry, and its own procedures, a grave disservice by

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78 *Id.* at 7 n.13.

79 *Id.*

80 47 C.F.R. § 76.6(a)(4).

81 *Id.* § 76.6(a)(2).

82 *Id.* § 76.6(a)(3).

83 *Id.* § 76.6(a)(4).

repeating these allegations let alone expecting the parties cited by NATOA to respond. The Commission should make clear that this is not the purpose of its annual competition inquiry.[84]

In particular, the following allegations made by NATOA and others should be dismissed.

- **Rate Disputes:** NATOA asserts that cable operators have an "increasing tendency" to impose additional outlet charges for digital service that it says are prohibited by the Communications Act and the Commission's rules. Moreover, it asserts that the Commission should be conducting rulemaking proceedings to address policy issues regarding rate regulation rather than issuing decisions in the context of rate appeals and points to Comcast's request that the Commission address digital CPE cost methodologies in an appeal of a local franchise authority rate order.[85] The Commission, however, has found neither of NATOA's assertions persuasive. Specifically, with respect to the additional outlet charge for digital service, the Commission found that such a charge does not violate the Communications Act or the Commission's rules.[86] With respect to whether an appeal of a rate order is the appropriate procedure to address policy issues, NATOA neglects to mention certain key facts, in particular that (1) the Media Bureau issued a decision regarding this matter on June 14, 2004, *over a month before NATOA's comments were filed*, and (2) it rejected NATOA's procedural objection.[87] Consistent with procedural rules, those determinations can be challenged via applications for review of action taken pursuant to delegated authority; they have no place in *this* proceeding.

- **Tier Buy-Through:** NATOA alleges that some cable operators have moved premium services from analog to digital over the past several years and are now assessing new charges on customers in order to keep what the customer already

[84] *See generally* Comcast Comments at 21 n.71 (pointing out that past video competition reports have "neutrally reported all the wild and irresponsible charges that overbuilders and DBS operators file every year," even where they lack supporting evidence or have in fact been disproven). NATOA's filing is the same in substance (or lack thereof) as what it submitted on February 11, 2004, to the Senate Subcommittee on Antitrust, Competition and Business and Consumer Rights. We note that on March 11, 2004, NCTA submitted an extensive rebuttal to the Subcommittee.

[85] NATOA Comments at 24-25 & nn.46-47.

[86] *See In re Comcast Cable of IN/MI/TX, Inc., Order Setting Basic Service, Equipment and Installation Rates Irving, TX*, Order, DA 04-2615 (Media Bureau Aug. 24, 2004).

[87] *See In re Comcast Cablevision of Dallas, Inc. Order Setting Basic Equipment and Installation Rates, Farmers Branch, TX*, Order, DA 04-1703 ¶ 5 (June 14, 2004) ("We see no compelling need to await a rulemaking, especially because the issues in question have been briefed in several separate cases.").

had, "routinely ignoring" tier buy-through rules.[88] Once again, NATOA provides no evidence, only hearsay, to back up this claim. In the three situations cited by NATOA (Montgomery County, MD, Northbrook, IL, and Mentor, OH), as well as elsewhere, Comcast's policies and practices are consistent with the law.[89] Some services are indeed moved from analog carriage to digital carriage and this does indeed require that customers obtain digital converters,[90] but any charges for such converters are lawful. Comcast *does not* require the purchase of any tier of video programming service other than the basic tier as a precondition of subscribing to programming sold on a per-channel or per-program basis. The rules require nothing more.[91]

- **Regulation of Programming Carriage Decisions:** America Channel, a nascent programming network, proposes that the Commission establish a new regulatory regime to oversee the criteria by which cable operators make programming carriage decisions and to require periodic reports from cable operators regarding the status or dispensation of new carriage proposals from independent networks.[92] There is no need for, and the Commission has no authority to establish, such a regime.

  America Channel has developed ideas for a new programming network that it believes will be attractive to consumers, but it reports that it has not yet obtained any concrete carriage agreements.[93] While one can respect the energy and initiative that has gone into this effort, it does not support government supervision of the editorial and commercial decisions of cable, DBS, and other video

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88 *See* NATOA Comments at 2, 25-27.

89 For example, in Montgomery County, MD, Comcast did not require customers to buy the digital tier in order to receive Cinemax or the Movie Channel. After these services were migrated from the analog to the digital platform, analog customers were only required to trade their analog converters for digital ones in order to receive these two program services. When the County pointed out to the system that a piece of promotional material, which had been distributed to customers, suggested that they needed to purchase the digital tier in order to receive the services, Comcast ensured that its customer account executives were aware that Cinemax and the Movie Channel were available on a stand-alone basis without subscribing to the digital tier.

90 Comcast's practices vary from market to market. In some markets, customers already lease an analog converter to receive premium services, and it is simply a matter of exchanging one converter for another. In other markets, customers may need to lease a digital converter after a promotional period.

91 As a matter of video competition policy, the far more interesting issue is why cable operators are subject to this rule while DBS providers -- each of whom accounts for more than 10% of the MVPD marketplace -- are not.

92 America Channel Comments at 1.

93 According to America Channel, one DBS provider has expressed interest in carrying the network but is awaiting greater evidence of adequate financing, additional cable carriage, and successful launch. America Channel Comments at 2.

programming distributors. There is no statutory basis for the reporting requirements that America Channel proposes and no reason to create one. Indeed, the best guarantee that a cable operator will make reasonable decisions about what programming to carry is the competition from other MVPDs who will offer the programming that is most attractive to consumers.[94] Contrary to the implication of America Channel's letter, it is not the case that cable operators routinely discriminate in favor of affiliated networks and against independent networks. Comcast, in particular, is affiliated with only a small percentage of the program networks carried on its cable systems.[95]

- **A La Carte:** Certain of the issues raised by America Channel relate to, and certain of the arguments filed by other parties recite here the arguments they have presented in, the Commission's on going inquiry into a la carte or themed tiers.[96] Comcast has presented abundant facts, analysis, and economic testimony on these issues in MB Docket No. 04-207 and incorporates those submissions by reference here. The only conceivable relevance of those issues to this proceeding is that the proposals to interject the government further into the operations of a competitive marketplace directly threaten the superabundance of programming options, service packages, and price points that today's marketplace delivers.

- **Cable Consumer Electronics Compatibility:** The Consumer Electronics Association ("CEA") repeats here the arguments it has presented in the cable-consumer electronics compatibility proceeding as to why cable operators should be prevented from deploying integrated set-top boxes after July 1, 2006.[97] That issue has been fully briefed in CS Docket No. 97-80, and there is no need to burden the record here with a recitation of the cable industry's arguments for eliminating the integrated set-top box prohibition. Suffice it to say that it is passing strange to see this argument raised in *this* docket, where the focus is on the myriad means by which video programming is transmitted to consumers; this puts in sharp relief just how questionable it is to perpetuate a rule that applies *only*

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94 *See Time Warner Entm't Co. v. FCC*, 240 F.3d 1126, 1134 (D.C. Cir. 2001) ("If an MVPD refuses to offer new programming, customers with access to an alternative MVPD may switch."). Cable operators' competitors are well aware of this fact as was evident by their attempts "to cash in on the spat between Time Warner Cable and Cablevision" over carriage of the MSG network, which distributes the N.Y. Mets games. Tim Arango, *Satellite Ad Push Targets Mets' Fans*, N.Y. Post, Aug. 6, 2004 (noting that DIRECTV began advertising in ten newspapers the availability of MSG on its service and that other competitors were following suit).

95 As discussed in comments recently filed in connection with the Commission's inquiry on a la carte programming and themed tiers, for example, Comcast has ownership in only seven, or 3.9%, of the over 180 programming networks it carries in Arlington, VA. Comcast Reply Comments filed in MB Dkt. No. 04-207, at 10 (Aug. 13, 2004).

96 *See* America Channel Comments at 7-8*;* EchoStar Comments at 5-9.

97 CEA Comments at 8-9.

to incumbent cable operators and *not* to DIRECTV, EchoStar, VOOM, USDTV, or numerous other MVPDs.

- **Digital Must-Carry:** Paxson offers no information in response to the questions posed by the Commission, but seeks to interject into this inquiry the long-standing dispute over digital must-carry rules. Comcast and other cable industry commenters have built a comprehensive record on those issues in CS Docket No. 98-120, and we incorporate Comcast's comments by reference here. For present purposes we respond to Paxson's suggestion that Comcast's decision to carry four channels of WETA's digital programming somehow proves that Comcast has infinite channel capacity and should be compelled by the government to carry as many channels of Paxson's digital programming over Comcast's private cable systems as Paxson can broadcast over its assigned 6 MHz of the public airwaves.[98] In fact, cable capacity remains strained, and Comcast's decision to carry WETA's digital programming proves only that Comcast is capable of deciding, without government "assistance" or coercion, which programming will best serve its customers' needs. Unlike Paxson, WETA has demonstrated that it can provide multiple channels of quality, informative programming, and Comcast is pleased to make this programming available to its customers.[99]

- **Regulatory Concessions for New Bell Company Entrants:** We are struck by Verizon's ability to argue -- on the very same page -- *both* that the FCC must eliminate "asymmetrical rules" that govern the broadband services provided by incumbent telephone companies but not those provided by cable companies *and* that the FCC should oppose "level playing field" statutes that ensure that telephone companies competing in the multichannel video marketplace must play by the same rules as the cable companies against which they wish to compete.[100] If "asymmetrical rules" are bad and "level playing fields" are also bad, one can only wonder what kind of rules Verizon thinks are "good."

  More specifically, half of Verizon's pleading calls for more relief from the unbundling rules to which the Bell companies agreed in connection with the passage of the Telecommunications Act of 1996; those arguments are properly addressed in the wireline broadband proceeding, the Triennial Review

[98] Paxson Comments at 10-11.

[99] DIRECTV, EchoStar, and SBCA all resist any expansion of their mandatory carriage obligations, claiming that they face greater capacity constraints than cable does. *See* DIRECTV Comments at 10-11; EchoStar Comments at 2-3; SBCA Comments at 15-16. Technical comparisons between cable and DBS are complicated by differences in the technology used (DBS has the distinct advantage of being able to reach the entire continental United States with a single transmission), and in the applicable legal regime (cable operators "must carry" local broadcast signals, while DBS operators face only a "carry one, carry-all" requirement). The key point points upon which the Commission should focus are that *both* industries face bandwidth limitations and that *any* expansion of broadcasters' mandatory carriage rights is contrary to the statute and to the Constitution.

[100] Verizon Comments at 2.

proceeding, and elsewhere.[101] Switching gears, Verizon then argues against imposing on telephone companies that choose to compete in the multichannel video programming distribution business the same franchising and customer service requirements that cable operators live under today.[102] To make this argument, of course, it must contradict its long-standing and oft-expressed views regarding regulatory parity. Nor is it credible for Verizon, with the largest market capitalization of any company in the communications industry,[103] to claim that it is incapable of complying with rules which govern not only Comcast, Time Warner, Cox, and other major MSOs but also the 1000 small cable operators that comprise the American Cable Association.

- **Other Regulatory and Legislative Proposals:** The Commission sought suggestions on ways in which the legislative and regulatory framework might be adapted to the vastly more competitive and dynamic marketplace circumstances of 2004, as compared to 1992,[104] presumably recognizing that increased levels of competition warrant corresponding reductions of regulatory intrusion into the marketplace. Yet some parties propose new regulations that are even more burdensome and regulatory than those Congress enacted at the height of regulatory zeal in 1992.[105] Now that cable faces at least two formidable multichannel competitors in every community in the United States, and DBS has captured more than 23 million customers, there is no basis for introducing new regulation of cable operators. Comcast offered the Commission several ideas for rules that should be revised to account for the growth of MVPD competition, and here repeats the request that the Commission initiate reform on these proposals.[106]

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101 As NCTA has noted previously, Verizon's characterization of the regulatory situation governing high-speed cable Internet is inaccurate. *See generally* NCTA Reply Comments filed in WC Dkt. No. 04-242 (Aug. 2, 2004).

102 Verizon Comments at 13-16; *see also* SBC Comments at 6 (arguing that requiring ILEC compliance "with the full panoply of federal and local requirements designed for incumbent cable providers could turn an already risky economic proposition into an untenable one").

103 As of August 16, 2004, Verizon's market capitalization was over $108 billion. Yahoo, *Quotes & Info*, *at* http://finance.yahoo.com/q?d=t&s=VZ (last visited Aug. 17, 2004). SBC's was nearly $85 billion. Yahoo, *Quotes & Info*, *at* http://finance.yahoo.com/q?d=t&s=SBC (last visited Aug. 17, 2004).

104 *Notice* ¶ 10.

105 *See* RCN Comments at 10 (urging the expansion of program access rules beyond traditional video programming); NATOA Comments at 12-18 (urging that the effective competition standard for elimination of regulation on basic cable service be narrowed); America Channel Comments at 7 (proposing that cable operators be required to carry a tier of networks that do not charge any fees).

106 *See* Comcast Comments at 40-44 (proposing that the Commission modify its effective competition test, reform certain rate regulations, revoke its ban on integrated set-top boxes, initiate a review of its program exclusivity rule, and recommend to Congress that it require a periodic review of cable regulations, impose deadlines for decisions on cable-related matters, and consider legislation to accelerate the DTV transition).

V. Conclusion

Last year's annual report highlighted the fact that due in part to legislative and regulatory initiatives "over the past decade, technological advances, and investment in new platforms for delivering video programming, *the vast majority of Americans enjoy more choice, more programming, and more services that any time in history*."[107] That statement was amply justified when made, and is only more true today. The Commission should forcefully state its findings, and should dismiss demands to preserve (or, worse, expand) monopoly-era regulations in a competitive environment.

Respectfully submitted,

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August 25, 2004

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107 *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 19 FCC Rcd. 1606 ¶ 2 (2004).

APPENDIX A

PRESS RELEASE

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COMCAST REPORTS SECOND QUARTER 2004 RESULTS

Cable Revenue Increased 10.4% to $4.839 Billion

Cable Operating Cash Flow Increased 20.1% to $1.920 Billion

2004 Guidance for Cable Operating Cash Flow Increased to Approximately $7.5 Billion or 18% Growth

Consolidated Operating Income Doubled to $852 Million

$750 Million of Stock Repurchased
Stock Repurchase Program Increased by $1 Billion

Philadelphia, PA – July 28, 2004…Comcast Corporation (Nasdaq: CMCSA, CMCSK) today reported results for the quarter ended June 30, 2004. Comcast will discuss second quarter results on a conference call and webcast today at 8:30 AM Eastern Time. A live broadcast of the conference call will be available on the investor relations website at www.cmcsa.com and www.cmcsk.com.

Brian L. Roberts, Chairman and CEO of Comcast Corporation said, "We are again reporting outstanding results. Our cable division generated double-digit revenue growth of over 10% and Operating Cash Flow growth of 20% this quarter. As a result, we expect to report approximately $7.5 billion of Operating Cash Flow in 2004, a growth rate of 18%."

"Cable's strong second quarter results and improved outlook for the remainder of the year reflect robust growth in new video and high-speed Internet services as we deliver compelling video services like Comcast ON DEMAND and HDTV and as we continue to expand the features offered to our high-speed Internet customers. We are also generating significant operating improvements and scale efficiencies that are driving Operating Cash Flow growth and improving operating margins. We are reporting cable operating margins of nearly 40% for the second quarter — well ahead of our expectations. This strong performance demonstrates our continued operational success in the acquired cable systems and the ability to leverage our scale."

"The content division also posted strong results this quarter with revenue growth of 25% and almost 38% growth in Operating Cash Flow."

"With the upgrade of our networks now essentially complete, we generated $500 million of Free Cash Flow this quarter as cable capital expenditures declined 15% and Operating Cash Flow grew by more than 20%. We remain on track to reach our goal of $2 billion of Free Cash Flow this year. We will continue to make investments that support the Company's growth while returning capital to shareholders. Since the initiation of our $1 billion stock repurchase program in December 2003, we have repurchased $750 million of our stock, and I am pleased to announce that our Board of Directors has authorized a $1 billion increase to our repurchase program."

"We are confident in our ability to continue to provide outstanding operational and financial performance that leverages our newly-rebuilt networks, to deliver unmatched products to our customers and value to our shareholders."

Comcast Cable Results

Cable results for the second quarter and the six months ended June 30, 2004 are presented on a pro forma basis. Pro forma cable results adjust only for acquisitions and dispositions and are presented as if the acquisitions and dispositions were effective on January 1, 2003. Please refer to Table 6-A for a reconciliation of pro forma data.

Comcast Cable reported revenue of $4.839 billion for the quarter ended June 30, 2004, representing a 10.4% increase from the second quarter of 2003. Video revenue for the quarter increased 6.9%, driven by a 5.7% increase in average monthly revenue per basic subscriber and a 20.5% increase in digital revenue primarily reflecting a 1.1 million increase in the number of digital cable subscribers. Basic subscribers of 21.5 million are essentially unchanged from a year ago but down 96,000 or 0.4%, from the prior quarter due to seasonality and modestly lower gross additions. During the second quarter of 2004, Comcast Cable added more than 206,000 digital cable subscribers to finish the quarter with nearly 8.1 million subscribers, or 37.5% of basic subscribers.

Video revenue growth reflects increasing consumer demand for new digital features, including Comcast ON DEMAND, high-definition television (HDTV) programming and digital video recorders (DVRs). During the second quarter, pay-per-view revenues increased 26.0%, driven by more movie and event purchases through the Comcast ON DEMAND service. Increasing demand for HDTV is also contributing to digital growth — at the end of the second quarter, Comcast had almost 600,000 HDTV set-top boxes in customers' homes.

High-speed Internet service revenues increased 39.2% to $763 million in the second quarter of 2004, reflecting continuing strong growth in subscribers. Comcast Cable ended the second quarter of 2004 with more than 6.0 million subscribers, a 36.8% increase from the same quarter last year. During the second quarter of 2004, Comcast Cable added 327,000 high–speed Internet subscribers resulting in a penetration rate of 16.1% of available homes. Comcast Cable added more than 1.1 million homes to the high-speed Internet service footprint in the second quarter of 2004, and this service is now available to 37.3 million, or 92.6%, of homes passed. Average monthly revenue per high-speed Internet subscriber was $43.52 in the second quarter of 2004, in line with the second quarter of 2003 and a $1.07 increase from the $42.45 reported in the first quarter of 2004.

Advertising revenue for the second quarter of 2004 increased 15.3% to $330 million, reflecting growth of 6.0% in local advertising and strong growth of 25.4% in regional/national advertising as a result of the continuing success of our regional interconnect strategy.

As expected, cable phone revenue declined 13.8% from the second quarter of 2003 to $177 million in the second quarter of 2004, reflecting a 10.4% decrease in subscribers to 1.2 million and a 3.0% decline in average monthly revenue per subscriber to $47.71. Excluding telephone revenue, which is expected to decline throughout 2004, total revenue for Comcast Cable in the second quarter of 2004 increased 11.6%. Telephone results reflect the Company's focus on profitability, not unit growth, of the acquired circuit-switched telephone business as it begins to transition to VoIP phone service.

Cable operating income before depreciation and amortization (Operating Cash Flow) grew 20.1% to $1.920 billion for the quarter, an increase from the $1.598 billion reported for the second quarter of 2003. Operating Cash Flow increased due to solid revenue growth and lower customer service, phone and high-speed Internet service expenses. These declining expenses along with a reduction in the rate of growth in video programming costs contributed to Operating Cash Flow margins of 39.7% for the second quarter of 2004, an increase from the 36.5% in the second quarter of 2003.

Cable capital expenditures declined 14.8% to $893 million compared to the $1.047 billion in the second quarter of the prior year. The decline in cable capital expenditures reflects the near-completion of the Company's cable network upgrade. Comcast Cable finished the second quarter with 97% of its cable network upgraded to provide advanced services.

Content

Comcast's content segment consists of the national networks E! Entertainment Television and Style Network (E! Networks), The Golf Channel, Outdoor Life Network and G4techTV.

Comcast's content segment reported second quarter 2004 revenue of $199 million, a 25.3% increase above the second quarter of 2003 reflecting increases in distribution and advertising revenue for all the networks. The Content segment reported Operating Cash Flow of $77 million in the second quarter of 2004, a 37.6% increase above the second quarter of 2003.

In an agreement with Liberty Media announced on July 21, Comcast will exchange its 120.3 million shares of Liberty Media common stock for 100% ownership in a subsidiary of Liberty Media that primarily holds $545 million in cash, a 100% ownership interest in International Channel Networks and a 10% ownership interest in E! Entertainment Television. This transaction is expected to close this week and will result in Comcast owning 60% of E! Entertainment Television.

Corporate and Other

Corporate and Other includes Comcast-Spectacor, corporate overhead and other operations and eliminations between Comcast's businesses. In the second quarter of 2004, we reported Corporate and Other revenue of $29 million and an Operating Cash Flow loss of $45 million as compared to revenue of $56 million and an Operating Cash Flow loss of $41 million in the second quarter of 2003. The decline in revenue in the second quarter reflects fewer playoff games for teams owned by Comcast-Spectacor.

Consolidated Results

Comcast sold its 57% ownership interest in QVC in September 2003. QVC's results, prior to its sale, are presented as discontinued operations. Consolidated amounts primarily reflect the results of the cable division as discussed above.

For the three months ended June 30, 2004, the Company reported consolidated revenues of $5.066 billion, a 10.3% increase to the $4.594 billion reported in the same period of 2003. Consolidated Operating Cash Flow increased to $1.952 billion or 21.1%, in the second quarter of 2004, from the $1.612 billion reported in the same prior year period. Operating income doubled to $852 million in the second quarter of 2004 compared to operating income of $425 million in the second quarter of 2003.

For the three months ended June 30, 2004, the Company reported consolidated net income of $262 million or $0.12 per share compared to a consolidated net loss from continuing operations of $93 million or $0.04 per share in the second quarter of 2003. This includes the effects of non-recurring mark-to-market adjustments that are included in investment income. For the six months ended June 30, 2004, the Company reported consolidated net income of $327 million or $0.14 per share compared to a consolidated net loss from continuing operations of $448 million or $0.20 per share in the six months ended June 30, 2003. Please refer to the "Reconciliation of Net Income (Loss) to Free Cash Flow" in Table 6-B at the end of this release and the Company's Form 10-Q for further details on items affecting net income.

Share Repurchase Program

Comcast's Board of Directors has authorized an increase of $1 billion to the existing share repurchase program announced on December 18, 2003. The Company is now authorized to repurchase up to $2 billion of its outstanding common stock and has current availability to purchase $1.25 billion of its stock. Comcast expects such repurchases to continue to occur from time to time in the open market or in private transactions, subject to market conditions. Through July 2004, the Company has repurchased $750 million of its Class A Special common stock or 26.7 million shares.

During the second quarter, the Company elected to redeem, for $400 million in cash, two debt issues that were exchangeable into Comcast Class A Special common stock, eliminating the need to issue 14.9 million shares. Including the open market repurchases of $700 million made since the resumption of the repurchase program in early May, the Company has invested $1.1 billion in its common stock and related securities.

Financial Guidance 2004

Comcast Cable Reaffirms:

- Revenue growth of approximately 10%.

- High-speed Internet subscriber net additions of between 1.5 and 1.6 million and high-speed Internet service revenue growth of more than 30% while generating average monthly revenue per subscriber above $40.

- Digital Cable subscriber net additions between 700,000 and 1 million.

- Cable capital expenditures of between $3.3 and $3.4 billion.

Comcast Cable Updates:

- Raised OCF guidance to approximately $7.5 billion or a growth rate of 18%, an increase from original guidance of 15% to 17% growth reflecting increased revenues as well as a reduction in the rate of growth in video programming costs and lower customer service, phone and high-speed Internet service expenses.

- Expect to maintain basic subscribers of approximately 21.5 million, modestly below original guidance net additions of 0.5% or approximately 100,000 subscribers. The revised outlook for basic subscribers is not expected to have a meaningful impact on revenue, Operating Cash Flow or Operating Cash Flow margin.

- Guidance for Cable Phone subscribers is lowered to a net loss of up to 100,000 subscribers in 2004 from original guidance of up to 50,000 additions. The outlook for Cable Phone subscribers reflects the Company's focus on profitability, not unit growth, of the acquired circuit-switched telephone business as it begins to transition to VoIP.

Comcast Content Reaffirms:

- On a combined basis, Comcast expects its Content division, consisting of its national cable networks, to deliver revenue growth of at least 20% and OCF growth of at least 30% in 2004.

Other Financial Guidance Reaffirmed:

- Comcast expects to generate consolidated Free Cash Flow of $2 billion.

###

This press release contains forward-looking statements. Readers are cautioned that such forward-looking statements involve risks and uncertainties that could significantly affect actual results from those expressed in any such forward-looking statements. Readers are directed to Comcast's Quarterly Report on Form 10-Q for a description of such risks and uncertainties.

In this discussion we sometimes refer to financial measures that are not presented according to generally accepted accounting principles (GAAP). Certain of these measures are considered "non-GAAP financial measures" under the Securities and Exchange Commission (SEC) regulations; those rules require the supplemental explanation and reconciliation provided in table 6 of this release.

###

Comcast Corporation will host a conference call with the financial community today July 28, 2004 at 8:30 a.m. Eastern Time (ET). The conference call will be broadcast live on the Company's Investor Relations website at www.cmcsa.com or www.cmcsk.com. A recording of the call will be available on the Investor Relations website starting at 12:30 p.m. ET on July 28, 2004.

Those parties interested in participating via telephone should dial (847) 413-2408. A telephone replay will begin immediately following the call until July 29, 2004 at midnight ET. To access the rebroadcast, please dial (630) 652-3000 and enter passcode number 9196739#.

To automatically receive Comcast financial news by email, please visit www.cmcsa.com or www.cmcsk.com and subscribe to e-mail Alerts.

Comcast Corporation (www.comcast.com) is principally involved in the development, management and operation of broadband cable networks and in the provision of programming content. The Company is the largest cable company in the United States, serving more than 21 million cable subscribers and is the nation's largest broadband Internet provider with more than 6 million customers. The Company's content businesses include Comcast SportsNet, Comcast-Spectacor, E! Entertainment Television, Style Network, The Golf Channel, Outdoor Life Network and G4techTV. Comcast Class A common stock and Class A Special common stock trade on The NASDAQ Stock Market under the symbols CMCSA and CMCSK, respectively.

TABLE 1

Condensed Consolidated Statement of Operations (Unaudited)

(amounts in millions, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Revenues	**$5,066**	$4,594	**$9,974**	$9,060
Operating expenses	**1,794**	1,753	**3,663**	3,564
Selling, general and administrative expenses	**1,320**	1,229	**2,626**	2,456
Operating Cash Flow	**1,952**	1,612	**3,685**	3,040
Depreciation	**813**	816	**1,611**	1,596
Amortization	**287**	371	**563**	725
Operating Income	**852**	425	**1,511**	719
Interest expense	**(484)**	(490)	**(984)**	(1,014)
Investment income (loss), net	**151**	(6)	**142**	(229)
Equity in net income (losses) of affiliates	**(20)**	1	**(37)**	(16)
Other income	**12**	22	**19**	35
	(341)	(473)	**(860)**	(1,224)
Income (Loss) from Continuing Operations before Income Taxes and Minority Interest	**511**	(48)	**651**	(505)
Income tax (expense) benefit	**(234)**	(13)	**(310)**	128
Minority interest	**(15)**	(32)	**(14)**	(71)
Income (Loss) from Continuing Operations	**262**	(93)	**327**	(448)
Income from discontinued operations, net of tax (1)	**-**	71	**-**	129
Net Income (Loss)	**$262**	($22)	**$327**	($319)
Basic and Diluted earnings (loss) per common share				
Income (Loss) from continuing operations	**$0.12**	($0.04)	**$0.14**	($0.20)
Income from discontinued operations	**-**	0.03	**-**	0.06
Net Income (Loss) per common share	**$0.12**	($0.01)	**$0.14**	($0.14)
Basic weighted average number of common shares outstanding	**2,257**	2,255	**2,257**	2,255
Diluted weighted average number of common shares outstanding	**2,267**	2,255	**2,268**	2,255

(1) On September 17, 2003, the Company completed the sale of its approximate 57% interest in QVC, Inc. Accordingly, the results of QVC have been presented as discontinued operations.

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TABLE 2
Condensed Consolidated Balance Sheet (Unaudited)
(dollars in millions)

	June 30, 2004	December 31, 2003
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	**$594**	$1,550
Investments	**2,481**	2,493
Accounts receivable, net	**925**	907
Other current assets	**418**	453
Total current assets	**4,418**	5,403
INVESTMENTS	**14,204**	14,818
PROPERTY AND EQUIPMENT, net	**18,615**	18,473
FRANCHISE RIGHTS	**51,070**	51,050
GOODWILL	**14,816**	14,841
OTHER INTANGIBLE ASSETS, net	**4,322**	3,859
OTHER NONCURRENT ASSETS, net	**636**	715
	$108,081	$109,159
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	**$988**	$1,251
Accrued expenses and other current liabilities	**4,194**	4,563
Deferred income taxes	**657**	679
Current portion of long-term debt	**472**	734
Current portion of exchangeable debt	**2,320**	2,427
Total current liabilities	**8,631**	9,654
LONG-TERM DEBT, less current portion	**21,945**	21,944
LONG-TERM EXCHANGEABLE DEBT, less current portion	**1,040**	1,891
DEFERRED INCOME TAXES	**26,644**	25,900
OTHER NONCURRENT LIABILITIES	**7,922**	7,816
MINORITY INTEREST	**384**	292
STOCKHOLDERS' EQUITY	**41,515**	41,662
	$108,081	$109,159

TABLE 3

Condensed Consolidated Statement of Cash Flows (Unaudited)

(dollars in millions)

	Six Months Ended June 30, 2004	Six Months Ended June 30, 2003
OPERATING ACTIVITIES		
Net cash provided by operating activities from continuing operations	**$2,633**	$1,711
FINANCING ACTIVITIES		
Proceeds from borrowings	**1,058**	8,848
Retirements and repayments of debt	**(1,617)**	(11,543)
Repurchases of common stock	**(511)**	
Other, net	**46**	(3)
Net cash used in financing activities from continuing operations	**(1,024)**	(2,698)
INVESTING ACTIVITIES		
Capital expenditures	**(1,732)**	(2,012)
Proceeds from restructuring of TWE investment		2,100
Proceeds from sales of investments and assets held for sale	**51**	1,492
Acquisitions, net	**(336)**	(22)
Other, net	**(548)**	(260)
Net cash (used in) provided by investing activities from continuing operations	**(2,565)**	1,298
(DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	**(956)**	311
CASH AND CASH EQUIVALENTS, beginning of period	**1,550**	505
CASH AND CASH EQUIVALENTS, end of period	**$594**	$816

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TABLE 4
Pro Forma Financial Data by Business Segment (Unaudited) (1)
(dollars in millions)

	Cable (2)	Content (3)	Corporate and Other (4)	Total
Three Months Ended June 30, 2004				
Revenues	$4,839	$199	$29	$5,067
Operating Cash Flow	$1,920	$77	($45)	$1,952
Operating Income (Loss)	$877	$38	($63)	$852
Operating Cash Flow Margin	39.7%	38.7%	NM	38.5%
Capital Expenditures (5)	$893	$6	$5	$904
Three Months Ended June 30, 2003				
Revenues	$4,382	$159	$56	$4,597
Operating Cash Flow	$1,598	$56	($41)	$1,613
Operating Income (Loss)	$465	$24	($63)	$426
Operating Cash Flow Margin	36.5%	35.2%	NM	35.1%
Capital Expenditures (5)	$1,047	$4	$3	$1,054
Six Months Ended June 30, 2004				
Revenues	$9,490	$375	$114	$9,979
Operating Cash Flow	$3,641	$146	($100)	$3,687
Operating Income (Loss)	$1,581	$72	($140)	$1,513
Operating Cash Flow Margin	38.4%	38.8%	NM	37.0%
Capital Expenditures (5)	$1,707	$10	$15	$1,732
Six Months Ended June 30, 2003				
Revenues	$8,617	$304	$145	$9,066
Operating Cash Flow	$3,021	$97	($75)	$3,043
Operating Income (Loss)	$808	$33	($119)	$722
Operating Cash Flow Margin	35.1%	31.9%	NM	33.6%
Capital Expenditures (5)	$2,000	$7	$5	$2,012

(1) See Non-GAAP and Other Financial Measures in Table 6. Historical financial data by business segment, as required under generally accepted accounting principles, is available in the Company's quarterly report on Form 10-Q.

(2) Pro forma financial data excludes the results of the 314,000 cable subscribers sold to Bresnan Communications in March 2003 and excludes the results of the net reduction of 16,000 subscribers associated with the cable system exchange with Insight Communications in February 2003. Pro forma financial data includes the results of the 30,000 cable subscribers acquired from US Coastal Cable in April 2004.

(3) Content includes our national networks E! Entertainment Television and Style Network (E! Networks), The Golf Channel, Outdoor Life Network and G4techTV.

(4) Corporate and Other includes Comcast-Spectacor, the Company's domestic wireline telecommunications business, international wireless operations, Corporate and elimination entries. Prior to the first quarter of 2004, Comcast-Spectacor was included in Content, which now only consists of our national networks. For all periods presented, Comcast-Spectacor is included in Corporate and Other.

(5) Our Cable segment's capital expenditures are comprised of the following categories:

	2Q04	2Q03	YTD 6/30/04	YTD 6/30/03
Customer Premise Equipment (CPE)	$338	$381	$630	$767
Scalable Infrastructure	110	81	231	135
Line Extensions	81	57	141	111
Upgrades	288	417	540	759
Support Capital	76	111	165	228
Total	$893	$1,047	$1,707	$2,000

CPE includes costs incurred at the customer residence to secure new customers, revenue units and additional bandwidth revenues (e.g. digital converters). Scalable infrastructure includes costs, not CPE or network related, to secure growth of new customers, revenue units and additional bandwidth revenues or provide service enhancements (e.g. headend equipment). Line extensions include network costs associated with entering new service areas (e.g. fiber/coaxial cable). Upgrades include costs to enhance or replace existing fiber/coaxial cable networks, including recurring betterments. Support capital includes costs associated with the replacement or enhancement of non-network assets due to obsolescence and wear out (e.g. non-network equipment, land, buildings and vehicles).

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TABLE 5
Pro Forma Data - Cable Segment Components (Unaudited) (1) (2)
(dollars in millions, except average monthly revenue per subscriber data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2004	2003	2004	2003
Revenues:				
Video (3)	$3,249	$3,040	$6,433	$6,026
High-Speed Internet	763	548	1,461	1,040
Phone	177	206	355	430
Advertising	330	286	599	521
Other (4)	157	151	320	298
Franchise Fees	163	151	322	302
Total Revenues	$4,839	$4,382	$9,490	$8,617
Operating Cash Flow	$1,920	$1,598	$3,641	$3,021
Operating Income	$877	$465	$1,581	$808
Operating Cash Flow Margin	39.7%	36.5%	38.4%	35.1%
Capital Expenditures	$893	$1,047	$1,707	$2,000
Operating Cash Flow, Net of Capital Expenditures	$1,027	$551	$1,934	$1,021

	2Q04	1Q04	2Q03	Growth vs. 1Q04	Growth vs. 2Q03
Video					
Homes Passed (000's)	40,300	40,100	39,700	0.4%	1.5%
Basic Subscribers (000's)	21,477	21,572	21,467	(0.4%)	0.0%
Basic Penetration	53.3%	53.7%	54.0%		
Quarterly Net Basic Subscriber Additions (000's)	(96)	35	13	NM	NM
Digital Subscribers (000's)	8,064	7,857	6,962	2.6%	15.8%
Digital Penetration	37.5%	36.4%	32.4%		
Quarterly Net Digital Subscriber Additions (000's)	206	192	163	7.3%	26.6%
Monthly Average Video Revenue per Basic Subscriber	$50.31	$49.24	$47.22	2.2%	6.5%
Monthly Average Total Revenue per Basic Subscriber	$74.94	$71.92	$68.08	4.2%	10.1%
High-Speed Internet					
"Available" Homes (000's)	37,323	36,167	32,124	3.2%	16.2%
Subscribers (000's)	6,005	5,679	4,389	5.7%	36.8%
Penetration	16.1%	15.7%	13.7%		
Quarterly Net Subscriber Additions (000's)	327	394	351	(17.1%)	(7.0%)
Monthly Average Revenue per Subscriber	$43.52	$42.45	$43.33	2.5%	0.4%
Phone					
"Available" Homes (000's)	9,766	9,657	9,164	1.1%	6.6%
Subscribers (000's)	1,225	1,247	1,367	(1.8%)	(10.4%)
Penetration	12.5%	12.9%	14.9%		
Quarterly Net Subscriber Additions (000's)	(22)	(20)	(52)	(13.2%)	57.4%
Monthly Average Revenue per Subscriber	$47.71	$47.34	$49.17	0.8%	(3.0%)
Total Revenue Generating Units (000's) (5)	36,771	36,355	34,185	1.1%	7.6%

(1) See Non-GAAP and Other Financial Measures in Table 6.

(2) Pro forma financial and subscriber data excludes the results of the 314,000 cable subscribers sold to Bresnan Communications in March 2003 and excludes the results of the net reduction of 16,000 subscribers associated with the cable systems exchange with Insight Communications in February 2003. Pro forma financial and subscriber data includes the results of the 30,000 cable subscribers acquired from US Coastal Cable in April 2004. Pro forma subscriber data includes 79,000 additional subscribers acquired in various small acquisitions between June 2003 and June 2004. The impact of these various small acquisitions on our financial data was not material.

(3) Video revenues consist of our basic, expanded basic, premium, pay-per-view, equipment and digital services.

(4) Other revenues include installation revenues, guide revenues, commissions from electronic retailing, other product offerings, commercial data services and revenues of our digital media center and regional sports programming networks.

(5) The sum total of all primary analog video, digital video, high-speed Internet and phone customers, but excluding additional outlets.

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TABLE 6

Non-GAAP and Other Financial Measures

Operating Cash Flow is the primary basis used to measure the operational strength and performance of our businesses. Free Cash Flow is an additional performance measure used as an indicator of our ability to repay debt, make investments and return capital to investors, principally through stock repurchases. We use Debt Excluding Exchangeables as a measure of debt that will require cash from future operations or financings. We also adjust certain historical data on a pro forma basis following significant acquisitions or dispositions to enhance comparability.

Operating Cash Flow is defined as operating income before depreciation and amortization and impairment charges, if any, related to fixed and intangible assets and gains or losses from the sale of assets, if any. As such, it eliminates the significant level of non-cash depreciation and amortization expense that results from the capital intensive nature of our businesses and intangible assets recognized in business combinations, and is unaffected by our capital structure or investment activities. Our management and Board of Directors use this measure in evaluating our consolidated operating performance and the operating performance of all of our operating segments. This metric is used to allocate resources and capital to our operating segments and is a significant component of our annual incentive compensation programs. We believe that Operating Cash Flow is also useful to investors as it is one of the bases for comparing our operating performance with other companies in our industries, although our measure of Operating Cash Flow may not be directly comparable to similar measures used by other companies.

As Operating Cash Flow is the measure of our segment profit or loss, we reconcile it to operating income, the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP), in the business segment footnote of our quarterly and annual financial statements. Therefore, we believe our measure of Operating Cash Flow for our business segments is not a "non-GAAP financial measure" as contemplated by Regulation G adopted by the Securities and Exchange Commission. Consolidated Operating Cash Flow is a non-GAAP financial measure.

Free Cash Flow, which is a non-GAAP financial measure, is defined as Operating Cash Flow less net interest, cash paid for taxes, and capital expenditures. As such, it is unaffected by fluctuations in working capital levels from period to period. It can also be computed as cash provided by operating activities less capital expenditures adjusted for the change in operating assets and liabilities, net of acquisitions. We believe that Free Cash Flow is also useful to investors as it is one of the bases for comparing our operating performance with other companies in our industries, although our measure of Free Cash Flow is accrual-based and may not be comparable to similar measures used by other companies.

Debt Excluding Exchangeables, which is a non-GAAP financial measure, refers to the aggregate amount of our consolidated debt and capital lease obligations less the amount of notes that are collateralized by securities that we own.

Pro forma data is used by management to evaluate performance when significant acquisitions or dispositions occur. Historical data reflects results of acquired businesses only after the acquisition dates while pro forma data enhances comparability of financial information between periods by adjusting the data as if the acquisitions (or dispositions) occurred at the beginning of the prior year. Our pro forma data is only adjusted for the timing of acquisitions and does not include adjustments for costs related to integration activities, cost savings or synergies that have been or may be achieved by the combined businesses. We believe our pro forma data is not a non-GAAP financial measure as contemplated by Regulation G.

Operating Cash Flow and Free Cash Flow should not be considered as substitutes for operating income (loss), net income (loss), net cash provided by operating activities or other measures of performance or liquidity reported in accordance with GAAP. Debt Excluding Exchangeables should not be considered as a substitute for Total Debt. Additionally, in the opinion of management, our pro forma data is not necessarily indicative of future results or what results would have been had the acquired businesses been operated by us after the assumed earlier date.

Following are quantitative reconciliations of Free Cash Flow, Debt Excluding Exchangeables, Consolidated Operating Cash Flow, and, although not required by Regulation G, reconciliations of business segment Operating Cash Flow and pro forma data.

TABLE 6-A continued
Reconciliation of Historical and Pro Forma Data by Business Segment (Unaudited)
(dollars in millions)

Three Months Ended June 30, 2004	Historical (1) Cable	Content	Corporate and Other	Total	Adjustments (2) Cable	Corporate and Other	Pro forma
Revenues	$4,838	$199	$29	$5,066	$1	-	$5,067
Operating expenses (excluding depreciation & amortization)	2,918	122	74	3,114	1	-	3,115
Operating Cash Flow	$1,920	$77	($45)	$1,952	-	-	$1,952
Depreciation and amortization	1,043	39	18	1,100	-	-	1,100
Operating income (loss)	$877	$38	($63)	$852	-	-	$852
Capital expenditures	$893	$6	$5	$904	-	-	$904

Three Months Ended June 30, 2003	Cable	Content	Corporate and Other	Total	Adjustments (2) Cable	Corporate and Other	Pro forma
Revenues	$4,379	$159	$56	$4,594	$3	-	$4,597
Operating expenses (excluding depreciation & amortization)	2,782	103	97	2,982	2	-	2,984
Operating Cash Flow	$1,597	$56	($41)	$1,612	$1	-	$1,613
Depreciation and amortization	1,133	32	22	1,187	-	-	1,187
Operating income (loss)	$464	$24	($63)	$425	$1	-	$426
Capital expenditures	$1,047	$4	$3	$1,054	-	-	$1,054

Six Months Ended June 30, 2004	Cable	Content	Corporate and Other	Total	Adjustments (2) Cable	Corporate and Other	Pro forma
Revenues	$9,485	$375	$114	$9,974	$5	-	$9,979
Operating expenses (excluding depreciation & amortization)	5,846	229	214	6,289	3	-	6,292
Operating Cash Flow	$3,639	$146	($100)	$3,685	$2	-	$3,687
Depreciation and amortization	2,060	74	40	2,174	-	-	2,174
Operating income (loss)	$1,579	$72	($140)	$1,511	$2	-	$1,513
Capital expenditures	$1,707	$10	$15	$1,732	-	-	$1,732

Six Months Ended June 30, 2003	Cable	Content	Corporate and Other	Total	Adjustments (2) Cable	Corporate and Other	Pro forma
Revenues	$8,611	$304	$145	$9,060	$6	-	$9,066
Operating expenses (excluding depreciation & amortization)	5,593	207	220	6,020	3	-	6,023
Operating Cash Flow	$3,018	$97	($75)	$3,040	$3	-	$3,043
Depreciation and amortization	2,213	64	44	2,321	-	-	2,321
Operating income (loss)	$805	$33	($119)	$719	$3	-	$722
Capital expenditures	$2,000	$7	$5	$2,012	-	-	$2,012

Reconciliation of Total Debt to Debt Excluding Exchangeables (Unaudited)
(dollars in millions)

	June 30, 2004	December 31, 2003
Current portion of long-term debt	$2,792	$3,161
Long-term debt	22,985	23,835
Total Debt	$25,777	$26,996
Exchangeable debt	3,360	4,318
Debt excluding exchangeables	$22,417	$22,678

Calculation of 2004 Estimated Free Cash Flow
(dollars in billions)

2003 Operating Income	$2.0
Add: Depreciation & Amortization	4.4
2003 Operating Cash Flow	6.4
2004 Operating Cash Flow Growth	18%
Projected 2004 Operating Cash Flow	7.5
Less: Projected Capital Expenditures (3)	3.4
Projected 2004 Consolidated Interest, net (4)	1.85
Projected 2004 Consolidated Cash Paid for Income Taxes (5)	0.25
Free Cash Flow	**$2.0**

(1) Historical amounts have been adjusted to reflect QVC as discontinued operations.

(2) Pro forma data is only adjusted for timing of the acquisitions (or dispositions) and for acquisitions does not include adjustments for costs related to integration activities, cost savings or synergies that have been or may be achieved by the combined businesses.

(3) Mid point of 2004 Cable capital expenditures guidance plus projected 2004 Content and Other segment's capital expenditures.

(4) Mid point of 2004 estimated Consolidated interest expense of $1.8 to $1.9 billion.

(5) Mid point of 2004 estimated Consolidated cash paid for income taxes of $200 to $300 million.

TABLE 6-B continued
Reconciliation of Net Income (Loss) to Free Cash Flow (Unaudited)
(dollars in millions, except per share data)

	Three Months Ended June 30, 2004 $	2004 per share (3)	2003 $	2003 per share (3)	Six Months Ended June 30, 2004 $	2004 per share (3)	2003 $	2003 per share (3)
Net Income (Loss) as reported	$262	$0.12	($22)	($0.01)	$327	$0.14	($319)	($0.14)
Discontinued Operations, net of tax	-	-	(71)	(0.03)	-	-	(129)	(0.06)
Non-operating items, net of tax (1)	(83)	(0.04)	10	-	(72)	(0.03)	183	0.08
Net Income (Loss) as adjusted	$179	$0.08	($83)	($0.04)	$255	$0.11	($265)	($0.12)
Items to reconcile net income (loss) as adjusted to Operating Cash Flow:								
Depreciation and amortization	1,100	0.49	1,187	0.53	2,174	0.96	2,321	1.03
Interest expense	484	0.21	490	0.22	984	0.43	1,014	0.45
Income tax expense	189	0.08	18	-	272	0.12	(30)	(0.01)
Operating Cash Flow	$1,952	$0.86	$1,612	$0.71	$3,685	$1.62	$3,040	$1.35

	2004	2004	2003	2003	2004	2004	2003	2003
Operating Cash Flow	$1,952	$1,952	$1,612	$1,612	$3,685	$3,685	$3,040	$3,040
Less:								
Interest, net (2)	(459)	(459)	(527)	(527)	(906)	(906)	(1,068)	(1,068)
Cash Paid for Income Taxes	(89)	(89)	(38)	(38)	(150)	(150)	(53)	(53)
Change in Operating Assets and Liabilities, net of acquisitions (7)	442		(19)		3		(253)	
Other (6)	13		30		1		45	
Net Cash Provided by Operating Activities	$1,859		$1,058		$2,633		$1,711	
Less: Capital Expenditures		(904)		(1,054)		(1,732)		(2,012)
Free Cash Flow		$500		($7)		$897		($93)

(1) Detail of non-operating items:	Three Months Ended June 30, 2004 $	2004 per share (3)	2003 $	2003 per share (3)	Six Months Ended June 30, 2004 $	2004 per share (3)	2003 $	2003 per share (3)
Investment (income) expense - mark to market adjustments on trading securities, derivatives and hedged items, net	($129)	($0.06)	$41	$0.02	($101)	($0.04)	$265	$0.12
Investment (income) expense - gain (loss) on sales and exchanges of investments	1	-	(1)	-	(1)	-	(23)	(0.01)
Investment expense - investment impairment losses (4)	3	-	15	0.01	3	-	70	0.03
All other, net (5)	(3)	-	(40)	(0.02)	(11)	(0.01)	(31)	(0.02)
Total non-operating items	(128)	(0.06)	15	0.01	(110)	(0.05)	281	0.12
Tax Effect	45	0.02	(5)	(0.01)	38	0.02	(98)	(0.04)
Non-operating items, net of tax	($83)	($0.04)	$10	$-	($72)	($0.03)	$183	$0.08

(2) Includes interest expense net of interest income and excludes non-cash interest and subsidiary preferred dividends.

(3) Diluted weighted average shares outstanding for the three and six months ended June 30, 2004 were 2.267 billion and 2.268 billion, respectively. Diluted weighted average shares outstanding for the three and six months ended June 30, 2003 were 2.255 billion.

(4) We record losses on our investments for which we have determined that a decline in value of the investment is other than temporary.

(5) Includes investment, interest and dividend income, equity in net (income) losses of affiliates, other (income) expense and minority interest.

(6) Includes non-cash expenses included in Operating Cash Flow such as equity compensation, proceeds from sales of trading securities, cash related to other (income) expense, dividends and the net effect of changes in accrued income taxes.

(7) Includes $536 million of income tax refund received in the second quarter of 2004.

APPENDIX B