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See *MCI v. FCC*, 515 F.2d 385 (D.C. Circ 1974).

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FCC ISSUES 12th ANNUAL REPORT TO CONGRESS ON VIDEO COMPETITION

Washington, D.C. – The Federal Communications Commission (FCC) today adopted its 12th *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*. Section 628(g) of the Communications Act of 1934, as amended, requires the Commission to report annually to Congress on the status of competition among multichannel video programming distributors (“MVPDs”), including cable operators, direct broadcast satellite (“DBS”) providers, local exchange carriers (“LECs”) now entering the field, and others.

In its examination this year, the FCC scrutinized changes that have occurred in the market in 2005 and factors that have facilitated or impeded competition among rival providers. The report also examines market structure and conditions affecting competition, including programming issues and technical issues, and provides a survey of developments in foreign markets.

Americans are voracious consumers of media services. On average, we spend close to 30 percent of our day engaged in some activity involving media, with television viewing the dominant media activity. For the September 2004 – September 2005 television season, the average household tuned into TV for 8 hours, 11 minutes a day. This is almost 3 percent higher than the previous season, more than 12 percent higher than 10 years ago, and the highest level observed since television viewing was first measured by Nielsen Media Research in the 1950s. Within the same period, the average person watched 4 hours, 32 minutes each day, again a record high.

In this year’s Video Competition Report, the FCC finds that the competitive MVPD market continues to provide consumers with increased choice, better picture quality, and greater technological innovation. The report concludes that almost all consumers may opt to receive video services from over-the-air broadcast television, a cable service, and at least two DBS providers. In addition, a growing number of consumers can access video programming through digital broadcast spectrum, fiber to the node or to the premises, or video over the Internet. Moreover, once consumers have selected a provider, technology such as advanced set-top boxes, digital video recorders, and mobile video services give them even more control over what, when, and how they receive information. Furthermore, many MVPDs offer nonvideo services in tandem with their traditional video services.

The FCC reports that the MVPD market continues to grow. While the largest MVPD remains a cable operator, cable subscribership declined slightly in the past year. According to the FCC’s traditional measure, cable’s share of the MVPD market is now approximately 69.4 percent, down from almost 71.6 percent a year earlier. The second and third largest MVPDs now are DBS operators. They currently serve almost 27.7 percent of all MVPD subscribers, compared to

approximately 25.1 percent in 2004. Other delivery technologies serve small numbers of subscribers in limited areas, but at least one new type of provider—LECs such as SBC (now AT&T) and Verizon—hold promise to become a growing presence in the marketplace. LECs continue to partner with DBS providers to offer video service but also have expended significant effort in the past year preparing to offer video in their operating areas and building out their facilities to support those new offerings.

Cable operators generally have responded to the growth of DBS and other competitors by expanding service offerings rather than lowering prices charged to consumers. Cable efforts to address their rivals include expanding channel line-ups and bundling video service with other service offerings, such as cable modem service (i.e., Internet services) or voice service. DBS operators are matching cable operators' efforts by offering local broadcast channels, additional sports and international programming, and advanced set-top boxes with digital video recorder ("DVR") capabilities. Similarly, broadband service providers continue to offer a triple play of video, voice, and Internet access service and have proved to be price competitive with cable. LECs also are upgrading their traditional copper facilities to high-speed digital subscriber line ("DSL") and fiber-based platforms that allow them to offer a suite of video, telephone, and data services.

The FCC also finds that data submitted in the record this year raises questions as to whether the so-called "70/70 test" has been satisfied. Section 612(g) of the Communications Act provides that when cable systems with 36 or more activated channels are available to 70 percent of households within the United States and when 70 percent of those households subscribe to them, the Commission may promulgate any additional rules necessary to promote diversity of information sources. Accordingly, the Commission is seeking further public comment on the best methodologies and data for measuring the 70-percent thresholds and, if the thresholds have been met, what action might be warranted to achieve the statutory goals. Should the FCC's analysis of this input indicate that new regulatory action may be appropriate, the agency will issue a notice to open a proceeding.

A list of key findings of the report is below.

Action by the Commission February 10, 2006 by Report (FCC 06-11). Chairman Martin, Commissioners Copps, Adelstein, and Tate. Separate statements issued by Chairman Martin, and Commissioners Copps and Adelstein.

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Specific Finding of the FCC's 12th Annual Video Competition Report:

- The number of TV households and the number of MVPD subscribers increased in the past year. As of June 2005, there were 109.6 million TV households, compared to 108.4 million in June 2004. Of that number, approximately 94.2 million TV households subscribe to an MVPD service, as compared to 92.2 million as of June 2004.
- Cable serves the largest percentage of MVPD subscribers, but cable's share of the MVPD market continued to decline. As of June 2005, the FCC's traditional measure indicates that 69.4 percent of MVPD subscribers received video programming from a franchised cable operator, as compared to 71.6 percent as of June 2004.
- DBS subscribers comprise the second largest group of MVPD households, representing 27.7 percent of total MVPD subscribers as of June 2005, as compared to 25.1 percent in June 2004, an increase of over 10 percent. DBS operators continue to add local-into-local broadcast television service. In 167 of 210 television markets (i.e., designated market areas, or DMAs), covering 97 percent of all U.S. TV households, at least one DBS provider offers the signals of local broadcast stations (local-into-local service).
- The number of MVPD subscribers choosing all other delivery technologies decreased, representing 2.9 percent of all subscribers in June 2005, as compared to 3.3 percent in June 2004.
- There are 15.36 million U.S. TV households that do not subscribe to an MVPD service and thus rely solely on over-the-air broadcast television for their video programming, representing 14 percent of all U.S. TV households. The major broadcast networks now provide their most popular programming in high-definition. Hundreds of local stations are using their digital channels to provide multicast programming, including news, weather, sports, religious material, music videos and coverage of local musicians and concerts, as well as foreign language programming.
- BSPs served approximately 1.4 million subscribers, as of June 2005, representing 1.5 percent of all MVPD households.
- Incumbent local exchange carriers ("ILECs") have reported plans to provide video service. The larger LECs have accelerated their plans to roll out video services. Verizon has received franchises from numerous local communities and began offering multichannel video service, under the brand name "FiOS," in several of them. SBC is planning to deploy an IP-enabled broadband network called "Project Lightspeed," and Qwest and a number of smaller incumbent LECs are offering, or preparing to offer, MVPD service over existing telephone lines using VDSL or ADSL technologies.
- PCO subscribership has declined to one million subscribers this year, a decrease of 9.1 percent from last year's 1.1 million. More than one-hundred electric and gas utilities provide video service, 128 offered high-speed Internet access, 52 offered local telephone service, and 42 offered long distance telephone service. Of the 102 offering video services, 10 are offering video-on-demand (VOD). Wireless cable systems provide video competition to incumbent cable operators only on a limited basis. The number of wireless cable subscribers has declined steadily from a peak of 1.2 million in 1996 to approximately 100,000 as of March 2005, down from an estimated 200,000 subscribers in April 2004.
- Several major cellular telephone companies are offering video services through handheld devices such as mobile telephones. Verizon Wireless rolled out V-Cast, a service that offers

video programming to cellular telephone users, in February 2005.

- The amount of web-based video provided over the Internet continues to increase significantly each year. The sale and rental of home videos, including videocassettes and DVDs, offer consumers an alternative to the premium and pay-per-view offerings of MVPDs. Video-on-demand services provided by cable, DBS, and Internet providers have emerged, in turn, as competitive alternatives to home video.
- In 2005, we identified 531 satellite-delivered national programming networks, including ___ foreign-produced or foreign-language program channels. Of the 531 networks, 116 networks (21.8 percent) were vertically integrated with at least one cable operator. We also identified, 274, or 51.6 percent, that are not affiliated with any cable operator or other media entity. In addition, we identified 107 national, satellite-delivered nonbroadcast networks that are owned by a DBS operator or one or more national broadcast networks (i.e., Fox, ABC, CBS, NBC Universal, and Univision) and that are not also owned by a cable operator.
- In 2005, we identified 96 regional networks, the same number as last year. These networks provide programming of local or regional interest and are distributed to subscribers of one or more MVPDs in an area. Of the 96 regional networks we identified, 44 networks, or 45.8 percent, were vertically integrated with at least one MSO. There are 37 regional sports networks, representing 38.5 percent of all regional networks, devoted to sports programming, as compared to the 38 we reported last year. Of the 37 regional sports networks, 17, or 5.9 percent were vertically integrated with a cable multiple system operator (MSO).
- In 2005, the sale of DTV consumer electronics continued to accelerate. Industry estimates indicate that 8.2 million HD-ready monitors will be shipped to retailers. CEA reports that during the first six months of 2005, DTV products sold at a faster rate than during any previous comparable period of time, with 3.8 million DTV products sold, a 40 percent increase in unit sales from the same time period in 2004. In 2005, the average retail price of a DTV set is expected to drop to \$1,189 from \$1,489 in 2004, down from the average price of \$3,147 in 1998. CEA states that currently several DTV models are available for under \$700, and it expects that soon there will be DTV sets that sell for as low as \$400.
- The development and deployment of CableCARDS continued in 2005. CableCARDS permit the reception of secured digital cable services without the addition of a set-top box. As of November 30, 2005, there were 375 certified or verified models of CableCARD products collectively offered by 22 manufacturers, up from 60 models offered by 11 manufacturers the previous year. One-way CableCARDS have been deployed to more than 90,000 subscribers by the ten largest MSOs.
- The video industry continues to evaluate the use of advanced compression technologies, such as MPEG-4/H.264 and Microsoft's VC-1, to replace the MPEG-2 standard in order to decrease the amount of bandwidth required to transmit digital video. These advances are expected to allow existing video delivery services to provide more programming and to decrease barriers to entry for new entrants to the MVPD market.
- In foreign markets, a number of incumbent operators and new entrants are providing Internet protocol television (IPTV) over DSL. Services are offered generally through a "triple play" service package of video, telephone and broadband Internet access. Operators also offer a wide selection of a la carte and themed video programming packages.