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

FOR IMMEDIATE RELEASE
November 27, 2007

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FCC ADOPTS 13th ANNUAL REPORT TO CONGRESS ON VIDEO COMPETITION AND NOTICE OF INQUIRY FOR THE 14TH ANNUAL REPORT

Washington, D.C. – The Federal Communications Commission (FCC) today adopted its 13th *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*. In its examination this year, the FCC reported changes that have occurred in the market in 2006 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.

The FCC finds that while competition in the delivery of video programming services has provided consumers with increased choice, better picture quality, and greater technological innovation, prices continue to outpace the general level of inflation. DBS competition has not checked cable prices to the same extent as competition from wireline providers.

The FCC reports that almost all consumers are able to obtain programming through over-the-air broadcast television, a cable system, and at least two DBS providers. Nevertheless, relatively few consumers have a second wireline alternative, such as an overbuild cable system. Local exchange carriers have expanded the areas where they provide facilities-based video services, and continue to partner with DBS providers to offer video service.

This year, we again report on the so-called 70/70 test. Specifically, 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.” Previously, we determined that the first prong of the test had been met and suggested that it was possible that the second prong of the 70/70 benchmark had been met. This year we find that based on data from Warren Communications News, the second prong benchmark has been met at 71.4 percent. However, other data sources do not demonstrate that the second prong has been met. As a result, we conclude that the only way to accurately measure the 70/70 test is to collect data directly from the cable industry. Therefore, the Commission requires each cable operator to submit the following information for 2006 within 60 days under penalty of perjury: 1) the total number of homes the cable operator currently passes; 2) the total number of homes the cable operator currently passes with 36 or more activated channels; 3) the total number of subscribers; and 4) the total number of subscribers with 36 or more activated channels.

Today, the FCC also adopts this year's Notice of Inquiry (NOI), which solicits comment and information for the 14th Annual Video Competition Report. The NOI seeks information that will permit the Commission to compare video distribution alternatives available to consumers and to evaluate competition in the video marketplace and the factors that have facilitated or impeded competition. The FCC also expects to examine the extent to which consumers have choices among video distributors and programming options. As in the past, the NOI again emphasizes the importance of receiving substantive information from industry participants, and non-industry commenters, to ensure that we gain a full understanding of the state of competition.

A list of key findings of the report is attached, and a full copy of the report will be available shortly at www.fcc.gov/mb.

Action by the Commission November 27, 2007, by Report to Congress (FCC 07-206). Chairman Martin, Commissioners Copps and Adelstein, with Commissioner Tate Concurring, and Commissioner McDowell approving in part and dissenting in part.

Action by the Commission November 27, 2007, by Notice of Inquiry (FCC 07-207). Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell.

Separate statements issued by Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell.

MB Docket No. 05-255

MB Docket No. 06-189

MB Docket Number 07-269

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Specific Finding of the FCC's 13th Annual Video Competition Report:

- The number of TV households and the number of MVPD subscribers increased since the FCC released its last report. As of June 2006, there were 110.2 million TV households, compared to 109.6 million in June 2005. Of that number, approximately 95.8 million TV households subscribe to an MVPD service, versus 94.2 million as of June 2005.
- Section 612(g) of the Act states that: (1) “at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States” and (2) “are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources.” According to Warren Communications News, a source on which we have traditionally relied, 71.4 percent of households passed by cable systems offering 36 or more channels subscribe to these systems. However, other data sources do not demonstrate that the second prong has been met. As a result, we conclude that the only way to accurately measure the 70/70 test is to collect data directly from the cable industry. Therefore, the Commission requires each cable operator to submit the following information for 2006 within 60 days under penalty of perjury: 1) the total number of homes the cable operator currently passes; 2) the total number of homes the cable operator currently passes with 36 or more activated channels; 3) the total number of subscribers; and 4) the total number of subscribers with 36 or more activated channels.
- Cable continues to serve the largest percentage of MVPD subscribers. The Report finds that as of June 2006, approximately 68.2 percent of MVPD subscribers received video programming from a franchised cable operator.
- DBS subscribers comprise the second largest group of MVPD households, representing 29 percent of total MVPD subscribers as of June 2006. DBS operators continue to add local-into-local broadcast television service. In approximately 175 of the 210 television markets, at least one DBS provider offers the signals of local broadcast stations.
- The number of MVPD subscribers choosing all other delivery technologies represented 2.6 percent of all subscribers in June 2006.
- The Nielsen Company estimated that, as of January 2007, 15.5 million households, or about 14 percent of all television households rely on over-the air television broadcasts for video programming. In addition, many households that subscribe to an MVPD also rely on over-the-air signals to receive broadcast programming on some of their television sets.
- From June 30, 2005 to June 30, 2006, the number of commercial and noncommercial television stations rose from 1,747 to 1,753. As of January 2007, approximately 1,600 stations nationwide were on the air with DTV operations, including all 119 stations affiliated with the top-four network affiliates in the top 30 television markets.
- Incumbent local exchange carriers also are providing video service. At the end of 2006, Verizon reported that it offered video programming via FiOS TV to more than 2.4 million households in 200 cities in 10 states and served 207,000 subscribers. At the end of 2006, AT&T served approximately 11 cities through U-verse TV. In addition, Qwest has taken steps to provide IPTV service in its service area.
- As of June 2006, Broadband Service Providers (“BSPs”) served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households.

- Electric and gas utilities also provide MVPD and other services on a limited basis. The American Public Power Association, which represents more than 20,000 not-for-profit community and state-owned electric utilities, reports that the average subscriber penetration rate for its members offering video service was 50 percent of the homes passed by utility video services, and that 40 percent of these subscribers purchase a combination of video and high-speed Internet access service.
- The number of subscribers to private cable operator systems, also known as satellite master antenna systems, has declined to 900,000 subscribers as of 2006, a decrease of ten percent from last year's one million subscribers.
- The number of wireless cable subscribers has declined steadily from a peak of 1.2 million in 1996 to approximately 100,000 as of June 2006, unchanged from a year earlier.
- In recent years, major commercial mobile radio service and other wireless providers have begun offering services that allow subscribers to access video programming through handheld devices, such as mobile telephones.
- The amount of web-based video provided over the Internet continues to increase significantly each year. In July 2006, 107 million Americans, three out of every five Internet users, viewed video online. In July 2006, about 60 percent of U.S. Internet users downloaded videos. More than 7 billion videos were downloaded that month.
- Between July 2005 and June 2006, a total of 28 MVPD transactions were announced. Together these transactions were valued at approximately \$5.3 billion and affected approximately 1.8 million subscribers.
- In 2006 we identified 565 satellite-delivered national programming networks, an increase of 34 networks over the 2005 total of 531 networks. Of the 565 networks, 84 (14.9 percent) were vertically integrated, or affiliated, with at least one cable operator. Five of the top seven cable operators own, in whole or in part, all of the networks that are affiliated with any cable operator.
- In 2006, we identified 101 regional networks, an increase of six over those identified in 2005. These networks provide programming of local or regional interest and are distributed to subscribers of one or more MVPDs in an area. Of these, 57 networks, or 56.4 percent, were vertically integrated with at least one multi-system cable operator ("MSO"). There are 43 regional sports networks, representing 42.6 percent of all regional networks, as compared to the 37 we reported last year. Of the 43 regional sports networks, 19, or 44.2 percent, are vertically integrated with a cable MSO.
- The sale of DTV consumer electronics continues to accelerate. The Consumer Electronics Association ("CEA") estimates that, in 2006, digital televisions ("DTVs") will have outsold analog televisions by 66 percent.
- The development and deployment of CableCARDS continued in 2006. CableCARDS permit the reception of secured digital cable services without the addition of a set-top box. As of December 22, 2006, more than 216,000 CableCARDS had been deployed by cable operators, up from 90,000 the previous year.
- The Report also surveyed developments in foreign markets. MVPDs in a number of countries provide programming on an a la carte basis or in mixed bundles, themed tiers, and subscriber-selected tiers. For example, in Hong Kong, consumers receive a free basic package and also can subscribe to more programming for an additional charge per channel. In Canada, the largest cable

operators offer a la carte services. In the United Kingdom, consumers may select additional programming services they want, either on a subscription or pay-as-you-go basis, without first purchasing a monthly basic-tier package. In India, as of January 1, 2007, consumers in certain cities can subscribe to programming on a per channel basis.