

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 03-172
Competition in the Market for the	)	
Delivery of Video Programming	)	

**NOTICE OF INQUIRY**

**Adopted: July 22, 2003**

**Released: July 30, 2003**

**Comment Date: September 11, 2003**

**Reply Comment Date: September 26, 2003**

By the Commission: Commissioner Copps issuing a statement.

**I. INTRODUCTION**

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming.<sup>1</sup> This Notice of Inquiry (“Notice”) solicits data and information on the status of competition in the market for the delivery of video programming for our tenth annual report (“2003 Report”). As in the past, we request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and the effect of competition on the industry groups involved and on consumers.

2. In previous years, we have focused only on the current state of competition and changes in the competitive environment since the prior year’s *Report*.<sup>2</sup> This year, however, represents a landmark, since we are now preparing the tenth report. Thus, in the *2003 Report*, we have decided to take a broader view of the video marketplace, and to examine changes in the industry over the year since the last report, and in the period since the first report in 1994. For each of the categories and requests below, therefore, we invite comments and submissions of data on the current state of competition in the video

<sup>1</sup> Communications Act of 1934, as amended (“Communications Act”), § 628(g), 47 U.S.C. § 548(g).

<sup>2</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 26901 (2002) (“2002 Report”). See also *Reports, 1994-2001: Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*, 9 FCC Rcd 7442 (1994) (“1994 Report”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 11 FCC Rcd 2060 (1996) (“1995 Report”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 12 FCC Rcd 4358 (1997) (“1996 Report”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13 FCC Rcd 1034 (1998) (“1997 Report”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13 FCC Rcd 24284 (1998) (“1998 Report”); and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 15 FCC Rcd 978 (2000) (“1999 Report”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 16 FCC Rcd 6005 (2001) (“2000 Report”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 1244 (2002) (“2001 Report”).

programming industry, prospects for future competition, and changes in the market since the *2002 Report*, over the last five years (*i.e.*, since 1998), and in the decade since 1994. We also seek comment, data and analyses on trends in the market, and comments on the factors that have facilitated or impeded changes in the competitive environment over these time periods.

3. The accuracy and usefulness of the *2003 Report* is directly related to the data and information we receive from commenters that respond to this *Notice*. In order to facilitate our analysis of competitive trends over time, we request data as of June 30, 2003, and ask parties, to the extent feasible, to submit data and information that is current as of that date. For our historical review, we also request that, whenever possible, commenters submit data as of June 30 of the appropriate year. Comments submitted in this proceeding will be augmented with information from publicly available sources and submissions in other Commission proceedings.

## II. MATTERS ON WHICH COMMENT IS REQUESTED

### A. Competition in the Market For the Delivery of Video Programming

4. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors currently include cable systems, direct broadcast satellite ("DBS") providers, home satellite dish ("HSD") providers, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution services ("MMDS"), broadband service providers ("BSPs"), and over-the-air broadcast television stations. In the past decade, video program distributors also have included local exchange carrier ("LEC") systems such as video dialtone ("VDT").<sup>3</sup> Video programming is also distributed on videocassettes and DVD through retail distribution outlets. Other technologies, such as interactive video and data services ("IVDS")<sup>4</sup> and local multipoint distribution service ("LMDS"),<sup>5</sup> once thought of as promising for video delivery, are now used for other services. We ask commenters to address one or more of the following questions relative to video programming distribution technologies.

5. *General Statistical Data:* We seek information and statistical data about each type of video programming distributor. We seek the number of homes passed by each wired technology; the number of homes capable of receiving service via wireless technology;<sup>6</sup> the number of subscribers and penetration rates;<sup>7</sup> channel capacities and the number, type, and identity of video programming channels offered; prices charged for various programming packages; industry and firm financial information, such as revenues, in the aggregate and by source, cash flow, and expenditures; information on how video programming distributors compare in terms of relative size and resources; data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution

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<sup>3</sup> See *1996 Report*, 12 FCC Rcd 4396-7.

<sup>4</sup> IVDS is a point-to-multipoint, multipoint-to-point, short distance communication service. See *1996 Report*, 12 FCC Rcd 6416-7; *1997 Report*, 13 FCC Rcd 1098-9.

<sup>5</sup> LMDS is a technology that uses microwave channels in the 28 GHz band to deliver multichannel video programming as well as two-way voice and data service. See *1997 Report*, 13 FCC Rcd 1084-5; *1998 Report*, 13 FCC Rcd 24339.

<sup>6</sup> This includes the number of line-of-sight homes for distribution technologies that require line-of-sight for reception.

<sup>7</sup> To the extent available, we also seek information on the numbers of subscribers to different levels of service (*e.g.*, basic cable service, cable programming service tier or "CPST," premium, pay-per-view, and video-on-demand).

market; and information on the ability of, and the competitive advantages to, video distributors, to expand into new markets such as local telephony, and high-speed Internet access.<sup>8</sup>

6. *Head-to-Head Competition:* We seek comments and data on consumer access to more than one video programming distributor, such as homes passed, on the number of households subscribing to one or more MVPD, and on the number of households relying on over-the-air broadcast television for one or more of their television sets. As part of this request, we want the location of present and past head-to-head competition, as well as where entry is likely in the near future. For our annual survey of cable prices,<sup>9</sup> we are required to define “effective competition” based on actual adjudicated cases pursuant to the definition of this term in the Communications Act.<sup>10</sup> In this context, we seek comment on other mechanisms for ascertaining or estimating the extent of “effective competition” beyond the narrow confines of the adjudication process. We also seek information on demographic factors that affect these choices, such as differences between urban and rural areas, or between different regions of the U.S. We request any information on customers switching from one provider or technology to another and the factors responsible for the switch. In particular, we are interested as to whether there are any areas of the country where DBS has not yet attained 15% household penetration. We seek data on relative prices to help us investigate the substitution between MVPD technologies, and information on how competition has affected prices, service offerings, and quality of service.

7. In addition to levels of prices, we are interested in comments and data on how, for purposes of comparison, to measure prices per defined unit of service or as adjusted for changes in quality over time. Over the past decade, prices for MVPD services have risen rapidly, but so too has the quantity of service sold to consumers. We seek methods for measuring prices that are adjusted for the additional services available, e.g., how higher prices for a package of channels now allow consumers access to 50 channels instead of 30. One method of doing this is a per-channel price, but such a price does not reflect the fact that not all consumers watch all channels. Other possible methods might reflect increasing cable network audience shares or Emmys or other awards cable networks have received. Data that allow systematic examination of quality-adjusted prices would be most helpful for this evaluation.

8. *Multiple Dwelling Units:* We seek comment on any factors that are unique to competition in the multiple dwelling units (“MDUs”) submarket. How common is it for consumers to have choices among video programming services within MDUs, and how has this changed? We ask for comment on how access to buildings by providers, or lack of access, affects the number and types of competitive alternatives. Is the use of exclusive and so-called “perpetual” video service contracts in MDUs increasing or decreasing? What effects do the inside wiring,<sup>11</sup> over-the-air reception device (“OTARD”),<sup>12</sup> and cable bulk rate<sup>13</sup> rules have on MDU competition? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those of non-MDU customers in the surrounding area? Are video distributors providing non-video services to MDU customers?

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<sup>8</sup> While we generally seek information regarding all video programming distribution technologies, we recognize that some questions (such as those about price or subscribership) are applicable only to multichannel video programming distributors (“MVPDs”).

<sup>9</sup> See, e.g., *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices, FCC 03-136 (rel. July 8, 2003).

<sup>10</sup> See 47 U.S.C. § 543(l).

<sup>11</sup> See 47 C.F.R. § 76.802 et seq.

<sup>12</sup> 47 C.F.R. § 1.4000.

<sup>13</sup> 47 U.S.C. § 543(d).

9. *Barriers to Entry and the Impact of the Regulatory Environment:* What are, and what have been the barriers to entry in the market for the delivery of video programming? Specifically, we seek comment regarding the ability of video programming distributors to gain access to programming, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers.<sup>14</sup> What effect do existing Commission regulations and other provisions of law specific to video competition have on the market? What regulatory changes over the last ten years have facilitated or hindered head-to-head competition in local markets between or among video programming distributors? Are there regulatory or statutory factors influencing the ability of providers to include new services along with more traditional television programming? Are there any remaining, or impending, statutory or regulatory barriers to new entrants in the video market?

10. *Programming Services:* We seek information on existing and planned programming services to assess the extent of vertical affiliation, and changes in the video programming market over the past year and decade. We also request information about programming networks that have been launched, but have ended service or have merged with other programmers over the last decade. We also ask video programming distributors to supply us with detailed information regarding the programming services offered to consumers, including the type of programming service (e.g., national, regional, sports, news), launch date (or scheduled launch date), identification of ownership, including the percentage owned by a video programming distributor, and number of subscribers. Further, we request information on high definition ("HD") programming services. To what extent do they differ from analog services offered by the same programmer?

11. In addition, we seek to assess the extent to which video programming distributors are and have been able to acquire or license non-vertically integrated programming. To what extent are non-cable MVPDs producing their own programming or securing exclusive rights to certain programming services? What are the costs of producing or securing such programming, and have non-incumbent video distributors encountered any difficulty in doing so? Is there specific programming, national or regional/local, that is unavailable to either cable or non-cable operators and, if so, why? How has this changed over the past decade?

12. We also seek comment as to whether non-vertically integrated programming channels and independently produced programming are able to gain distribution to consumers through one or more of the video distribution technologies described above.<sup>15</sup> Is access to distribution, or lack of it, a significant impediment to entry into the video programming business as a non-vertically integrated programmer? Are non-vertically integrated programmers willing and/or able to enter the programming market relying on distribution from non-incumbent MVPDs alone?

13. We further seek comment on the availability of particular types of programming. We request comment on whether there are certain programming services (*i.e.*, "marquee" program services) or types of services (*e.g.*, movie, sports, or news channels) without which competitive video service providers may find themselves unable to compete effectively. If so, which services or classes of services are involved and to what extent are there substitute services? We ask commenters to indicate whether such programming is available to competitors and, if possible, to indicate the reason such programming is, or has been previously unavailable. A systematic analysis or comprehensive data on exclusive contracts for programming that would allow investigation of the trends and competitive effects of exclusive contracts for national and regional programming would be particularly helpful.

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<sup>14</sup> See *Gulf Power v. FCC*, 208 F.3d 1263 (11<sup>th</sup> Cir. 2000).

<sup>15</sup> See para. 4 *supra*.

14. Furthermore, we seek comment on the extent to which locally-originated programming is delivered to consumers, and the factors affecting production of and availability of locally-originated programming. Additionally, to what extent do video programming distributors provide children's programming, and local news and community affairs programming. Finally, we seek comment on the extent to which programming is offered in languages other than English, both at the national and local levels, on all video distribution platforms, and the extent to which such programming was produced originally in a language other than English.

15. *Program Packaging and Marketing Issues:* We seek information on how video programming distributors package and market their programming. To what extent have distributors offered, currently offer, or plan to offer consumers discrete programming choices (i.e., service on an "a la carte" or individual channel, or "mini-tier" basis) rather than programming service packages (i.e., tiers of programming services)? Have some services been moved from premium to expanded basic, or vice versa, and have services been moved from expanded basic to digital tiers? What factors drive these movements? What are the economic, legal, or other factors that affect a video programming distributor's ability to offer a more customized service? What has been the cable television industry's experience with the "tier buy-through" option mandated by Section 623(b)(8) of the Communications Act?<sup>16</sup> This provision, which permits subscribers to purchase programming offered on a per-channel or per-program charge without first subscribing to other tiers, other than the basic service tier, became fully effective on October 5, 2002, ten years after adoption of the 1992 Act. What portion of subscribers is taking advantage of this option? What, in any, problems does it create? Is the availability of this option known by the public?

16. In addition, we seek information on the past and present ability of programmers to sell programming.<sup>17</sup> We request comment regarding any difficulties programmers encounter when launching a new service. To what extent does the success of a new programming service depend on the tier of service on which it is placed? To what extent does the success of a new programming service depend on its being associated with one of the largest cable system operators? To what extent does the success of a new programming service depend on its being associated with the brand name programmer of an existing channel? To what extent does existing channel capacity limit carriage of new programming services? Have such difficulties been eased by increases in MVPDs' channel capacities over the last decade? What effect has increased channel capacity and the creation of digital tiers on cable had on the ability of programmers to attain carriage and to survive? Are new programming services being developed solely for carriage on digital tiers, or are they still being added to analog tiers? Is available channel capacity almost exclusively available on digital tiers, and how does this affect the economics of new programming services? If new services are added to analog tiers, does this result in another service being moved to a digital tier? How often are cable or satellite operators compelled to carry programming they would not otherwise carry or on a tier they would not otherwise choose but for a retransmission consent tie-in requirement with an essential broadcast station?

17. Further, we seek comment regarding public, educational, and governmental ("PEG") access and leased access channels. We specifically request data on the number of channels currently being used for each of these purposes and the types of programming offered on such channels. What

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<sup>16</sup> 47 U.S.C. § 543(b)(8). See also 47 C.F.R. § 76.921.

<sup>17</sup> See *Time Warner Entertainment Co., L.P. v. FCC*, 249 F.3d 1126 (D.C. Cir. 2001); *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992, Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, the Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, 16 FCC Rcd 17312 (2001) ("Horizontal FNPRM").

percent of cable systems allocate channels for PEG access and leased access? How many channels are set aside for these purposes and how has this changed over the past decade? Commenters also are asked to provide information regarding the programming provided by DBS operators in compliance with public interest programming obligations requiring DBS licensees to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature."<sup>18</sup> We also seek information on the use of leased access channels, either on a part time or full time basis. Do these channels provide any competition to the programming channels under the control of the cable operator?

18. *Program Access Issues:* We request comment on the effectiveness of our program access,<sup>19</sup> program carriage,<sup>20</sup> and channel occupancy rules.<sup>21</sup> To what extent has video programming once delivered by satellite migrated to terrestrial delivery? To what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? How do exclusive programming arrangements between incumbent cable operators and non-vertically integrated programmers affect other MVPDs (*e.g.*, overbuilders, DBS)? How do exclusive programming arrangements between incumbent cable operators and programmers that deliver programming terrestrially affect non-cable video programming distributors? To what extent are competitors to cable television, including in particular DBS carriers, obtaining exclusive rights to programming? What are the underlying economics that permit them to do so? As new types of service, such as VOD develop, are there issues relating to the coverage of the program access rules that need to be addressed? Again, systematic data or analyses that allow comprehensive examination of the effects of these arrangements will be most helpful to our inquiry.

19. *Closed Captioning and Video Description:* Under Commission rules, video programming distributors are required to ensure that the video programming they provide includes captioning in accordance with specified phase-in schedules.<sup>22</sup> For "new" programming, 2003, marks a midpoint between the first closed captioning benchmark in 2000 and the requirement to make such video programming fully accessible to persons with hearing disabilities by January 1, 2006.<sup>23</sup> On January 1, 2003, the first benchmark for "pre-rule" programming became effective.<sup>24</sup> We seek information on video programming providers' experiences offering closed captioning. Are the existing rules being complied with? As the amount of captioned programming increases, are the costs to caption programming decreasing? What are the current costs of real-time captioning used for live programs and off-line captioning used for pre-recorded programs on a per hour or per program basis? What is the experience with the accuracy of captioning? Are there voice recognition or other technologies available that are likely to change the methods by which programming is captioned? What has been the experience with the equipment and technologies associated with the captioning of multiplexed and high definition digital

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<sup>18</sup> See *Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23254 (1998).

<sup>19</sup> 47 C.F.R. §§ 76.1004, 76.1507.

<sup>20</sup> 47 C.F.R. § 76.1301(c)

<sup>21</sup> 47 C.F.R. § 76.504(a).

<sup>22</sup> See *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272 (1998), Order on Reconsideration, 13 FCC Rcd 19973 (1998);

<sup>23</sup> 47 C.F.R. § 79.1(b)(1) (phase-in schedule for programming first published or exhibited on or after January 1, 1998). Video programming first published or exhibited for display on television receivers equipped for display of digital transmissions or formatted for such transmission is defined as "new" as of July 1, 2002. 47 C.F.R. § 79.1(a)(6)(ii). See *Closed Captioning Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, 15 FCC Rcd 16788, 16808-9 (2000).

<sup>24</sup> 47 C.F.R. § 79.1(b)(2) (phase-in schedule for programming first published or exhibited before January 1, 1998).

programming distributed both over-the-air, on cable, and through other distribution systems? Are receivers functioning properly to display advanced digital (EIA-708B) captions? In August 2000, the Commission adopted rules requiring certain larger broadcasters and video programming distributors to include “video descriptions” with a small amount of their programming to increase their accessibility to persons with visual disabilities.<sup>25</sup> On November 8, 2002, the U.S. Court of Appeals for the D.C. Circuit vacated the Commission’s video description rules finding that they exceeded the Commission’s authority.<sup>26</sup> In light of this decision, video description currently is provided by programmers on a voluntary basis. We request information regarding the amount and types of video programming that include video description.

20. *Advanced Services*: What advanced service offerings (e.g., high-speed Internet access services, telephony, video-on-demand, high definition television, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) are being deployed by video programming distributors? We seek updated statistics on the current and historical availability of all such services, the cost of such services, the marketing of such services, the number of homes to which each type of service is available, and the number of subscribers to these services. We seek information on whether these statistics are actual numbers or derived through sampling. Furthermore, we request information regarding the amount and type of programming being offered in HDTV format, both broadcast and non-broadcast programming. How many broadcasters are using their DTV channels to offer multicast DTV and how many cable operators are carrying multicast DTV or would be willing to do so if and when broadcasters transmit multiple streams? In addition, we seek information on what impact these new services and technologies will likely have on traditional video programming distribution and viewing.

21. In addition, to what extent do MVPDs offer video and non-video services together? How are the combined services offered and priced? Are the services offered separately? How do prices differ for combined versus separate services? How do rates for non-video services differ for those subscribing to video service and those who do not? How does this practice affect customer retention? For each entity providing services bundled with a video service, we seek information on whether the multiple services are provided using, in whole or in part, the same equipment or facilities. What are the advantages or disadvantages of providing advanced services within each delivery technology? We also request information on whether firms are entering into marketing agreements whereby one entity provides multiple services to consumers in a “seamless” manner, although the products originate from several firms.

22. Further, we seek information on the impact that the availability of non-video services offered by video programming providers has had and continues to have on the nature of competition in the video marketplace. We seek information regarding the development and evolution of business models designed to bring these services to consumers. Are there economic, technical, or regulatory issues related to the offering of such ancillary service that should be addressed? To what extent will these new services be supported by advertising, per-service subscription fees, or per-use fees? To what the extent do MVPDs have restrictions on the ability of other entities to advertise a competing non-video service such as high-speed Internet access service on their video services? What is the appropriate role of the Commission in regulating decisions by television stations and MVPDs in carrying commercial advertisements? Do broadcast outlets typically carry advertisements for competing stations? What effect, if any, have recent economic developments and stock market fluctuations had on the availability of

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<sup>25</sup> Video descriptions are aural descriptions of key visual elements in a television program, inserted into the natural pauses in the program’s audio and distributed in the program’s second audio channel. *See Implementation of Video Description of Video Programming*, 15 FCC Rcd 15230 (2000), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1251 (2001).

<sup>26</sup> *Motion Picture Association of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

investment capital for the expansion or upgrading of existing distribution systems and the development of new providers and offerings?

23. We specifically seek comment on the development and deployment of interactive television (“ITV”) services and the technologies used to provide them to consumers. What are the differences between the ITV services offered by cable operators, DBS operators, and others? What effect does the availability of ITV services have on competition in the video marketplace? What is the relationship between electronic programming guides (“EPGs”)<sup>27</sup> and ITV? We request information on the number and types of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute EPGs. To what extent do video programming subscribers have access to EPGs that are unaffiliated with their video provider but are still able to function properly with the video programming service or the OpenCable standard?<sup>28</sup> To what extent are EPGs that are affiliated with a video programming distributor available to competitors? In addition, to what extent are EPGs supported by advertising, subscriber fees, or a combination of both? We also seek comment on the development and deployment of video-on-demand (“VOD”), near video-on-demand (“NVOD”), and subscription video-on-demand (“SVOD”) services and the technologies used to provide them to consumers. What are the differences between the VOD, NVOD, and SVOD services offered by cable operators, DBS operators, and others? What effect does the availability of VOD, NVOD, and SVOD service have on competition in the video marketplace?

24. *Consumer Equipment:* We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households have one or more devices (*i.e.*, analog and digital set-top boxes, cable modems, integrated receiver/decoders, navigation devices, or receivers that facilitate or differentiate video distributors’ service offerings)? How many of these devices contain digital capability? Further, we seek information on the retail availability of navigation devices to consumers.<sup>29</sup> What are the obstacles to equipment manufacturers and others obtaining approval to attach devices to MVPD systems? To what extent, if any, do subscriber agreements attempt to limit the uses that may be made of subscriber premises equipment? What types of devices are available at retail and at what cost?<sup>30</sup> How do changes in consumer premises equipment design, function, and availability affect consumer choice and competition between firms in the video programming market? To what extent are MVPDs offering consumer equipment personal video

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<sup>27</sup> An EPG is a software-based service or device offered by cable operators and other video programming distributors to consumers to navigate, organize, and differentiate video program offerings. *2002 Report*, 17 FCC Rcd 26967.

<sup>28</sup> The OpenCable standard is the result of an initiative being managed through Cable Television Laboratories, Inc. (“CableLabs”), a research and development consortium of cable operators. The standard is made up of technical specifications intended to facilitate interoperability among digital navigation devices manufactured by multiple vendors. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998) (“*Navigation Devices Order*”).

<sup>29</sup> Under the Commission’s navigation rules, video programming distributors (except DBS) were required to separate security functions from non-security functions by July 1, 2000, and make modular security components available by that date. *See Navigation Devices Order*, 13 FCC Rcd 14775. By July 1, 2006, MVPDs will no longer be allowed to offer conditional access and other functions in a single integrated device. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Order and Further Notice of Proposed Rulemaking, FCC 03-89 (rel. Apr. 25, 2003). *See also* 47 C.F.R. § 76.1204 (a)(1).

<sup>30</sup> We asked for comment on the Memorandum of Understanding and the proposed Commission rules contained therein which was reached between consumer electronics and cable industries regarding compatibility of cable systems and DTV receivers and related consumer electronics equipment. *See Implementation of Section 304 of the Telecommunications Act of 1996*, 18 FCC Rcd 518 (2003).

recorder (“PVR”) capabilities? How is access to PVRs priced, and how does the availability of PVRs affect competition?

## B. Cable Television Service

25. We seek to update and refine our *Report* on the performance of the cable television industry specifically, and request data and comments on the current and historical state of competition in this segment of the video programming distribution market. In addition to the information requested above, we ask commenters to address the following questions:

26. *System Upgrades and Channel Capacity:* We request information regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. Are these investments continuing at the same pace as in previous years? We request information on the deployment of various technical methods to increase capacity. Specifically, we ask commenters to provide information regarding the use of improved digital compression techniques. What are the prospects for and what are the obstacles to the development of cable facilities that rely exclusively on digital transmission techniques for the distribution of video programming? Are cable operators planning to convert their systems to digital transmission only? If so, what is the timeframe for this conversion, and what effect will it have on channel capacity, and the economics of programming networks? For individual multiple system operators (“MSOs”), we request current and historical data on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades, the number of systems with digital tiers, the number of households where digital cable services are available, and the number of subscribers to these digital services. What characteristics affect whether upgrades are deployed? Is the increased channel capacity used for new programming, digital duplicates of existing analog services, digital hybrids modeled after an existing analog service with increased capabilities, high-definition or multicast standard definition digital television from over-the-air broadcasters, or other services, including non-video services?

27. *Ownership Transactions:* We seek current and historical information on mergers and other cable system transactions, including the names of the buyer and seller, the date of the transaction, type of transaction (*i.e.*, sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. We note the occurrence of large mergers such as AT&T-Comcast in the last several years,<sup>31</sup> and seek comment on the effect of such large mergers on competition and the likelihood of continued large-scale consolidation in the MVPD industry. Have such transactions and consolidations been more likely to occur in certain types of markets, or between specific size systems? For comparison purposes, we also seek similar information for non-cable video programming distributors.

28. *Clustering:* We request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. As headends are eliminated and systems become technically integrated, what regulatory and technical issues arise that affect competition? We request current and historical data regarding the effect of clustering by cable operators on competition in the video programming distribution market. Does clustering make it harder for overbuilders to remain viable, particularly in relation to programming availability and economies of scale and scope? How does clustering affect programmers’ ability to reach consumers? What evidence is there, in terms of the service received or the rates charged, that increased clustering improves the efficiency of local cable operations?

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<sup>31</sup> See *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 23246 (2002).

29. *Program Packaging:* We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from the basic service tier ("BST") to cable programming service tier ("CPST") or from these tiers to digital or premium tiers? To what extent do cable operators offer multiple CPSTs or digital tiers? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems? We also are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition. We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services. Further, we seek information on how many cable subscribers subscribe only to basic tiers (*i.e.*, "lifeline" tiers)?

30. *Advanced Services and Multi-Service Packaging:* In addition to the information sought above on advanced services, we seek the following information specific to advanced service offerings by cable operators. To what extent are cable operators offering traditional circuit-switched telephone service and what is the status of the development and deployment of Internet Protocol ("IP") telephony? What is the status of the cable industry certification process for the production of interoperable cable modems? To what extent are consumers now purchasing cable modem equipment certified by Cable Television Laboratories, Inc.'s ("CableLabs") under their Certified Cable Modem Project, rather than renting from video programming distributors?<sup>32</sup> We also seek the most recent information regarding the development of specifications for interoperable set-top boxes in CableLabs' OpenCable process. What percentage of existing equipment is compatible with the OpenCable standards? What developments have taken place in the last year relating to the POD-Host Interface, or PHI license that affect the deployment of navigation devices or their availability at retail stores? Finally, we solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant.<sup>33</sup>

31. Many cable operators are beginning to test and deploy video-on-demand. We seek information on cable operators that currently provide or plan to provide video-on-demand. What types of services are offered in this manner and how are they marketed? Does video-on-demand change the essential nature of video programming distributors? Does it matter whether the programming is intended for delivery to a television set or a home computer? What effect does video-on-demand have on a programmer's ability to launch a new service? What effect does video-on-demand have on traditional notions of channel capacity?

32. *Regulatory Issues:* Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources.<sup>34</sup> To assess whether this benchmark has been met,<sup>35</sup> we must first determine the number of homes passed by cable (*i.e.*, homes to which cable is available). As noted in the 2002 Report, the calculation of homes passed by cable systems with any number of channels is the subject of controversy. The number of homes passed depends on the data source used, and the percentage of homes passed varies based on the universe used for the comparison,

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<sup>32</sup> CableLabs created the cable modem standard, DOCSIS (Data Over Cable Service Interface Specification) in an effort to ensure the interoperability and retail sale of cable modem technologies. *See 2002 Report*, 17 FCC Rcd 26968-9.

<sup>33</sup> *Id.* at 26969.

<sup>34</sup> 47 U.S.C. § 532(g).

<sup>35</sup> Previously, we reported that the benchmark had not yet been met. *See 2000 Report*, 15 FCC Rcd 1062.

with reported estimates ranging from 78% to 97.5%.<sup>36</sup> We request comment and supporting data that would be useful for determining an accurate homes passed statistic, including the number of homes passed by systems with 36 or more activated channels. We further seek information regarding the percent of homes passed by such systems that actually subscribe to cable service. In addition, we seek information regarding any developments in the last year that would suggest that the criteria specified under Section 612(g) have been met.

33. Under sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity. We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals.

### C. Direct-to-Home Satellite Services

34. We seek current and historical information about direct-to-home ("DTH") satellite services, which includes DBS and HSD services.<sup>37</sup> In addition to the general information sought above, we seek the following information specific to DTH services. Are there identifiable differences between consumers who choose to subscribe to DBS or HSD rather than cable or another video programming distributor? How many or what percentage of households cannot receive DBS service because they are not within the line-of-sight of the satellite signal? We seek comment on the current and historical geographic locations of DBS and HSD subscribers, by state and type of area (*i.e.*, urban, suburban, rural). Are DBS subscribers, in general, and new DBS subscribers, in particular, more likely to reside in urban areas than rural areas, or vice versa? How have these demographics changed since DBS began operation? To what extent do DBS subscribers reside in areas not passed by cable systems? What percentage of new DBS subscribers are former cable subscribers? What percentage are former HSD households? What percentage remain cable subscribers? What evidence is there of price competition between DBS and cable, particularly in markets where DBS offers local broadcast signals?

35. *Local-into-Local and the Satellite Home Viewer Improvement Act of 1999 ("SHVIA")*: We request current and historical information on the number of markets where local-into-local television service is and has been offered, or will be offered in the near future, pursuant to SHVIA, including the number and affiliation of the stations carried.<sup>38</sup> What percentage of DBS subscribers are opting for local programming packages where available? In cases in which additional equipment is needed to receive a full complement of local signals, what percentage of subscribers is obtaining this additional equipment?<sup>39</sup>

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<sup>36</sup> See 2002 Report, 17 FCC Rcd 26909-10. See also *Application of EchoStar-Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations), Transferors, and EchoStar Communications Corporation (a Delaware Corporation), Transferee*, 17 FCC Rcd 20559, 20611-2 (2002). Note that these figures refer to cable systems with any number of channels. The number of systems with 36 or more activated channels would be somewhat less.

<sup>37</sup> DTH services use satellites to deliver video programming directly to subscribers. HSD (also referred to as C-Band) users employ relatively large dishes (4-8 feet in diameter) to receive programming. DBS uses relatively small receiving dishes (18-24 inches in diameter). See, *e.g.*, 1995 Report, 11 FCC Rcd at 2080-84; 1998 Report, 13 FCC Rcd at 24323.

<sup>38</sup> SHVIA was enacted as Title I of the "Intellectual Property and Communications Omnibus Reform Act of 1999" ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.), Pub. L. No. 106-113, 113 Stat. 1501, Appendix I (1999). See also 2000 Report, 16 FCC Rcd 6039-40.

<sup>39</sup> *National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, CSR-5865-Z, Declaratory Ruling and Order, 17 FCC Rcd 6065 (Media Bureau 2002). Four Petitions for Reconsideration of that decision are pending. See Joint

(continued...)

We also request information on the historical impact of local broadcast signal carriage on DBS subscribership and penetration as well as its effect on the video programming market generally. What percentage of DBS subscribers subscribe to cable in order to receive local broadcast signals?

36. *Programming, Equipment and Prices:* We request current and historical data that will allow us to compare DBS and cable rates for programming packages and equipment. What is the typical cost of DBS equipment and installation? Has this changed over the past few years? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. How do DBS leasing prices for equipment compare to those for cable equipment? To what extent, and through what specific market mechanisms, do satellite operators contribute towards reducing equipment costs in order to attract subscribers? Do satellite operators recoup such costs through their programming rates? We also ask commenters to provide current and historical information on the number of channels and the monthly prices of various DBS programming packages. What is the cost of local-into-local broadcast channels? What equipment is necessary, and what is the cost of that equipment? Do DBS operators offer any programming they produce themselves? Do DBS operators offer regional programming? Is this programming their own, or is it produced by other sources, including cable operators? Are DBS operators able to access cable-operator-affiliated regional programming? To what extent do DBS operators sell local, regional, or national advertising, and, if so, what share of the market does DBS hold? Do DBS operators have the technical ability and copyrights to insert advertising locally or regionally into: (i) broadcast programming or (ii) non-broadcast programming?

37. *Advanced Services:* We seek information on the status of both satellite-delivered Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the DBS industry. How many consumers subscribe to each type of service and how much do they cost? We seek information regarding other advanced services co-marketed by DBS operators, such as DSL services co-marketed with Local Exchange Carriers ("LECs"). To what extent are DBS operators offering broadcast and non-broadcast programming in HDTV format?

38. *Marketing of DBS Services:* We seek comment on DBS distribution arrangements, such as direct sales or leases to subscribers; sales through consumer retail outlets; sales through antenna installers; installations by third party subcontractors or by their own employees; regional distributors; and any other form of marketing, distribution, installation, or service. We also request information on video distributors that market DBS service, including the delivery technology used and whether operators combine DBS programming with other services. What marketing arrangements have non-DBS video programming distributors entered into to provide DBS service to their customers?<sup>40</sup>

#### **D. Broadcast Television Service**

39. We seek current and historical information on the role of broadcast television in the market for the delivery of video programming. We request information regarding broadcast television

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Petition for Partial Reconsideration or Clarification filed by Hardy, Carey & Chautin, LLP, LeSea Broadcasting Corp., Christina Television, Inc., and Carolina Christian Broadcasting (Apr. 18, 2002), Petition for Partial Reconsideration filed by Brunson Communications Inc. (May 3, 2002), Petition for Clarification or Partial Reconsideration filed by Maranatha Broadcasting Company, Inc. (May 6, 2002), and Petition for Reconsideration, filed by EchoStar Satellite Communications (May 6, 2002). In addition, three Applications for Review of the Bureau's decision by the full Commission are pending. See Applications for Review filed by WLNY-TV Inc. and Golden Orange Broadcasting Co. (May 3, 2002), Association of Public Television Stations and the Public Broadcasting Service (May 6, 2002), and Paxson Communications Corporation (May 6, 2002).

<sup>40</sup> See 2002 Report, 17 FCC Rcd 26938-9 (SMATV operators offering DBS service).

both as a competitor for programming content and as a competitor for audiences and advertising revenues. In regard to advertising revenue, to what extent has cable gained local, regional, or national advertising market share? To what extent are cable television and DBS retransmission consent negotiations providing broadcasters with an additional revenue source? In general terms, what forms of consideration are exchanged in this process? We seek information on the number and percentage of MVPD subscribers who rely on off-air reception for local broadcast service on one or more television sets, by type of MVPD service and the percentage of households that use only over-the-air broadcast television reception on all television sets.

40. *Digital Television Service:* We request information regarding the amount and type of programming (e.g., network, local, syndicated) transmitted digitally, including the extent to which DTV channels are being used for HDTV, for multichannel program offerings, and for ancillary and supplementary services such as subscription services. What is the actual geographic scope of the existing over-the-air DTV service? We also seek information on DTV carriage agreements between broadcasters and cable operators or DBS providers and the status of any such negotiations. In addition, we request information on the sales of DTV consumer equipment and the factors affecting consumer adoption of DTV equipment. What amount and type of HDTV programming is being transmitted by MVPDs, and how does this affect the demand for HDTV equipment? We also seek information concerning cooperative advertising and promotional arrangements between cable and consumer electronics retailers or broadcast and consumer electronics manufacturers to promote the sale of digital equipment.

#### **E. Wireless Cable Systems**

41. We seek information regarding the previously identified trend towards declining availability of and subscribership to MMDS-provided video.<sup>41</sup> What factors have affected the health and viability of the MMDS industry? We seek information about the availability of advanced services, including two-way services, such as digital video, high-speed Internet access services, and telephony. Where are consumers able to access any or all of these services via MMDS, and how does the availability of these services affect competition in the areas in which they are available?

#### **F. Private Cable Operators**

42. In addition to the general information sought on private cable, or SMATV operators, we request information on the types of services currently and historically offered by private cable operators and the price charged for those services. How do the programming packages offered and the price of private cable service compare to those of incumbent cable operators? Are there services that private cable operators provide their subscribers that cable, DBS, and other technologies do not? Finally, what factors affect the health and viability of the private cable industry? What is the extent of alliances between DBS service providers and private cable operators in offering service to multiple dwelling units (“MDUs”) and other similar facilities?<sup>42</sup> How many private cable operators are working with the DBS operators to provide DBS service in MDUs via a central satellite antenna? Are there competitive or legal hurdles that prevent private cable operators from working with DBS operators in MDUs? We seek information from satellite operators and private cable operators on whether arrangements to provide DBS service to MDUs have increased over the past 12 months. If the number of such arrangements has not increased, what are the competitive or other impediments that are preventing growth in this market?

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<sup>41</sup> 2001 Report, 17 FCC Rcd 1278-9; 2002 Report, 17 FCC Rcd 26938.

<sup>42</sup> MDUs may include rental apartments, as well as condominiums and co-operatives.

**G. Local Exchange Carriers and Utilities**

43. We seek current and historical information regarding LECs and utility companies that provide video services. We request information on franchised cable systems operated by LECs, both within their telephone service areas and outside those regions. To what extent are these LEC cable systems competing as overbuilders of incumbent cable systems' service areas? To what extent are video programming services being bundled with telephone, Internet, or other utility services? How does the ability to offer bundled services affect the relative competitive position of these entities? Are the prices charged by LECs and utilities similar to cable's pricing of such services? If not, how do they differ?

**H. Broadband Service Providers,<sup>43</sup> Open Video System Operators, and Overbuilders**

44. We seek current and historical information regarding the provision of video, voice, and data services by broadband service providers ("BSPs"), open video system ("OVS") operators, and overbuilders. Are video services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percent of BSP, OVS, or overbuilder subscribers subscribe to video service alone, video and telephony, video and high-speed Internet access services, or all three services? We further seek comment on the current and potential effect of BSPs, OVS, or overbuilders on the status of video competition. What are the technical and economic factors that determine whether systems of this type are successful? For those systems that have failed, why have they failed? For all these questions, how have municipal overbuilders fared, both currently and historically? Are municipal system rates subsidized, or can they profitably compete and provide service without support from tax or other municipal revenue sources?

45. To what extent are open video systems joint ventures between video service providers and other entities and what are the arrangements among the participants in such ventures? Are unaffiliated programmers seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis? What effect has the *City of Dallas, Texas v. FCC* decision had on the growth of OVS?<sup>44</sup> Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

**I. Home Video Sales and Rentals<sup>45</sup>**

46. We seek information regarding the home video sales and rental market, such as data on the number or percentage of households with videocassette recorders, laser disc players, DVD players, and PVRs. We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental, the cost of rentals, and how this compares to the cost of pay-per-view, video-on-demand, or near video-on-demand movies. We seek updated information on the development of the Internet as a means through which some video retailers are selling their videos. Further, we seek

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<sup>43</sup> Broadband service providers are facilities-based, hybrid providers of voice, video, and high-speed Internet access services. We note that "broadband service provider" is the term used by this class of new entrants to describe the range of services they offer; it is not intended to imply anything with respect to Commission policies that might involve broadband services. *2001 Report*, 17 FCC Rcd 1294-97; *2002 Report*, 17 FCC Rcd 26948.

<sup>44</sup> *City of Dallas, Texas v. FCC*, 165 F.3d 341 (5th Cir. 1999) (local governments may impose franchise requirements on OVS operators).

<sup>45</sup> The Commission considers home video sales and rentals as part of the video marketplace because they offer services similar to premium and pay-per-view programming services. The home video marketplace includes videocassettes, DVDs, laser discs and personal video recorders ("PVRs"), which use a hard drive instead of videotape to record programming and are capable of sophisticated time shifting. *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd 4962, 5019-20 (1990); *2001 Report*, 17 FCC Rcd 1318-20; *2002 Report*, 17 FCC Rcd 16944-5.

updated information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

#### **J. Internet Video**

47. We seek information on the types of video services currently being offered over the Internet and projections of whether or when Internet video will become a viable competitor in the market for the delivery of video programming. How does Internet video compare to traditional MVPD and broadcast programming? With current residential broadband Internet access bandwidth and compression techniques, what is the likely necessary download time for a broadcast quality feature film length program? What is the likely rate of improvement in this distribution capability and what are the factors determining the rate of change? We also solicit information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet.

#### **K. Foreign Markets**

48. Finally, we seek information regarding the status of competition in the market for the delivery of video programming in markets outside of the United States that would provide insights regarding the nature of competition in the U.S. market. We note, for example, that there are significant differences between countries in the relative success of cable as compared to direct-to-home satellite service, and that some countries have significantly higher rates of acceptance of high-speed Internet access service than in the U.S. Other countries lag or outpace U.S. domestic markets in terms of interactive video services. We seek information from these experiences that would be instructive as to the efficiency of market structures and regulations within the United States.

### **III. PROCEDURAL MATTERS**

49. *Authority.* This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended.

50. *Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

51. *Comment Information.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before September 11, 2003, and reply comments on or before September 26, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

52. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper

filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

53. Parties also must serve either one copy of each filing via e-mail or two paper copies to Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). In addition, parties should serve one copy of each filing via email or one paper copy to Andrew Wise, Media Bureau, 445 12<sup>th</sup> Street, S.W., 2-C410, Washington, D.C., 20554. Parties should serve one copy of each filing via email or five paper copies to Linda Senecal, 445 12<sup>th</sup> Street, S.W., 2-C438, Washington, D.C., 20554.

54. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554 and from the . Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or [bcline@fcc.gov](mailto:bcline@fcc.gov). These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room, CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

55. The Media Bureau contact for this proceeding is Andrew Wise at (202) 418-7026, or [Andrew.Wise@fcc.gov](mailto:Andrew.Wise@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*

Section 628(g) of the Communications Act requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. This Report serves as the factual foundation for many Commission decisions as well as providing Congress with statutorily-mandated information. It is therefore extremely important that we gather accurate and complete data for this Report.

I am pleased that this year the Notice expressly seeks comment on such important issues as independently-produced programming, children's programming, locally-produced programming, and non-English programming. We should harbor no illusion that we have asked every possible question, so I urge those who respond to provide information on aspects of these issues that we have overlooked. With the data sought by this Notice, we have the potential to increase our understanding of the market and gather the information we need to make better decisions.

The key to a successful Report, however, will be the submission of detailed comments from a wide range of sources. As in past years, the Commission states that it intends to rely on publicly available data, filings in various Commission proceedings, and information submitted by commenters in response to this Notice of Inquiry. If these sources do not provide adequate information to meet our statutory obligations, I urge the Commission to undertake a more pro-active and comprehensive information gathering effort to obtain independent, verified data. Such an effort may be necessary to fulfill Congress' directive.