

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

In the Matter of
Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming
MB Docket No. 06-189

NOTICE OF INQUIRY

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By the Commission: Commissioners Copps, Adelstein, and McDowell issuing separate statements.

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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.¹ Pursuant to that directive, this *Notice of Inquiry (Notice)* solicits data and information for our thirteenth annual report (2006 Report).² We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the marketplace since the *2005 Report*, prospects for new entrants, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.³

2. We ask commenters to provide data on video programming distributors, including cable systems; direct broadcast satellite (DBS) services; large home satellite dish (C-Band) providers; broadband service providers (BSPs); private cable operators (PCO), also called satellite master antenna television systems; open video systems (OVS); wireless cable systems using frequencies in the broadband radio and educational broadband services; local exchange carrier (LEC) systems; utility-operated systems; commercial mobile radio services (CMRS) and other wireless providers; and over-the-air broadcast television stations. We seek information on video programming distributed over the Internet and via Internet Protocol (IP) networks and through home video sales and rentals. We also seek information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services. We continue to seek comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets and provide insight into factors affecting video competition. Where possible and relevant, we request data as of June 30, 2006.

3. The accuracy and usefulness of the *Report* and its findings are related directly to the quality of the data and information we receive from commenters in response to this *Notice*. We encourage thorough and substantive submissions from industry participants and state and local regulators with the best knowledge of the questions and issues raised. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants, and we will do so again to the extent necessary. Nevertheless, we are concerned that such publicly available data may not be adequate to gain a full understanding of the state of competition in the video marketplace, especially when various sources provide inconsistent data. Thus, it is important for us to receive complete and accurate information directly from industry sources, as well as from non-industry sources.

¹ Communications Act of 1934, as amended (Communications Act), § 628(g), 47 U.S.C. § 548(g).

² This Notice is not intended to express any Commission views, or to prejudice the outcome of any Commission proceeding, but only to elicit information and data for purpose of this Report to Congress.

³ *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)*, 21 FCC Rcd 2503 (2006) (*2005 Report*). See also *Reports*, 1994-2004: 9 FCC Rcd 7442 (1994) (*1994 Report*); 11 FCC Rcd 2060 (1996) (*1995 Report*); 12 FCC Rcd 4358 (1997) (*1996 Report*); 13 FCC Rcd 1034 (1998) (*1997 Report*); 13 FCC Rcd 24284 (1998) (*1998 Report*); 15 FCC Rcd 978 (2000) (*1999 Report*); 16 FCC Rcd 6005 (2001) (*2000 Report*); 17 FCC Rcd 1244 (2002) (*2001 Report*); 17 FCC Rcd 26901 (2002) (*2002 Report*); 19 FCC Rcd 1606 (2004) (*2003 Report*); 20 FCC Rcd 2755 (2005) (*2004 Report*).

II. MATTERS ON WHICH COMMENT IS REQUESTED

A. Competition in the Market for the Delivery of Video Programming

4. *General Statistical Data:* We seek information and statistical data for each type of multichannel video programming distributor (MVPD), including:

- the number of homes passed by each wired technology;
- the number of homes capable of receiving service via each wireless technology;⁴
- the number of subscribers and penetration rates for cable services, including basic cable service tier (BST), cable programming service tier (CPST), themed tiers (*e.g.*, family tiers, foreign-language tiers), digital cable service, digital tiers, a la carte services, pay-per-view, and video-on-demand (VOD);
- for non-cable MVPDs, the number of subscribers and penetration rates for each available programming tier, a la carte services, pay-per-view, and VOD;
- available channel capacity of the system; the number, type, and identity of video programming channels offered, the channel capacity required for such offerings and the tier or tiers on which such programming is offered; and the channel capacity of the system used for non-video services;
- prices charged for various programming packages and the equipment required to receive them;
- industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures;
- information on how video programming distributors compare in terms of relative size and financial resources;
- data that measure the audience reach of video programming networks as well as relative control over the video distribution market; and
- information on video distributor expansion into new markets, such as local telephony, high-speed Internet access, wireless telephone service, the percentage of subscribers taking these services, and the competitive advantages of offering these services, as well as information on new technologies being considered, tested, or deployed by MVPDs for video, voice, and data offerings.

5. *Head-to-Head Competition:* In previous reports, we have found that many consumers have a choice between over-the-air broadcast television, a cable service, and at least two DBS providers.⁵ In some areas, consumers also may have access to video programming service from a second cable system operated by a company traditionally considered a LEC or BSP. Further, emerging technologies, such as digital broadcast spectrum and video over the Internet, provide some consumers with additional options for multichannel video programming service. We are interested in data and information on the

⁴ This includes the number of line-of-sight homes for distribution technologies that require line of sight for reception.

⁵ See, *e.g.*, 2005 Report, 21 FCC Rcd at 2506 ¶ 5; 2004 Report, 20 FCC Rcd at 2757 ¶ 4.

number of homes that have a choice of MVPD services. How many households can receive service from one or more providers (e.g., DBS, wireless cable, PCO) as well as an incumbent cable provider? We are aware that the number of consumers with access to a wireline overbuilder (e.g., a LEC, BSP, OVS provider) is relatively low. We seek comments and data on the number of consumers with access to wireline overbuilders, such as the number of homes passed by more than one wireline MVPD, and why the availability is low relative to wireless alternatives. As part of this request, we want to identify markets where wireline competition exists, where entry is likely in the near future, and where wireline competition once existed but failed. What market characteristics affect competition between MVPDs?

6. Consumers are the direct beneficiaries of head-to-head competition in the market for video programming.⁶ We seek comments on the consequences for consumers of competition in the market for video programming. What effect has competition between MVPDs had on prices, programming choices, quality of service, and the introduction of more advanced services (both video and non-video)? Is there evidence of price competition, given that the average monthly cable rate has risen faster than the general inflation rate? FCC data indicate that the average monthly rate cable subscribers are charged for the combined basic and CPST service tiers rose approximately 84 percent between 1995 and 2004. Indeed, the cost of the CPST rose more than 5 percent or almost five times the rate of inflation between 2003 and 2004. FCC data indicate that the average number of channels offered on the combined basic and CPST service tiers rose from 43.6 to 70.3 between 1995 and 2004.⁷ Is there evidence that cable subscribers demand and benefit from these additional channels, even at the cost of higher monthly bills? How many channels on average do consumers actually watch? Would the availability of greater consumer choice spur competition by giving consumers a greater selection of price points and more control over the programming they receive?

7. We also ask whether the effect of competition varies depending upon the nature of the competitors.⁸ To evaluate substitution between MVPD technologies we seek data on the relative prices of similar services offered by different types of competitors. Many cable operators offer or plan to offer bundled service packages, such as video, voice, and high-speed data, as do other MVPDs. What effect does bundling have on head-to-head competition, and what effect does it have on MVPDs that do not offer bundled services due to technical or other limitations?⁹ We are interested in investigating methods for measuring and comparing bundled service packages, such as video, voice, and high-speed data, among MVPDs.

8. We seek comment on marketing of MVPD services, especially the nature and extent of promotional discounts or other incentives offered to win or retain customers, the prevalence of bundled service offerings, and how these figures compare to markets in which the only competition is between

⁶ 2005 Report, 21 FCC Rcd at 2506 ¶ 5.

⁷ See *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*, 20 FCC Rcd 2718 (2005). See also *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*, 12 FCC Rcd 3239 (1997).

⁸ See Testimony of Tom Tauke, Executive Vice President, Verizon, before the Senate Commerce Committee, May 25, 2006 (stating that a Bank of America analysis reports that “where FiOS TV competes with cable, consumers’ cable bills go down, sometimes as much as 40 percent. . .”).

⁹ For example, Cox Cable has reported that 11 percent of its new subscribers are former DBS customers, as compared to 6 percent of new subscribers in 2004. Cox attributes this increase to its bundling of video, broadband, and voice services. See Cox Communications, *Cox Wins Satellite Customers with Enhanced Video Service and Compelling Bundle, Satellite Defectors Buying Bigger Bundles* (press release), Aug. 15, 2006.

cable and DBS. We also request information on the number of customers switching from one technology to another and the factors responsible for consumers' decision to switch among MVPDs as well as the percentage of those customers that drop MVPD service altogether. Head-to-head competition can introduce technology choices to consumers. We request information on the effect that a requirement to purchase or lease set-top box equipment has on consumers' willingness to switch providers. What effect does the offering of discounted equipment or services with a service contract have on customers' choice of MVPD provider?¹⁰ What effect does the availability or unavailability of cable navigation devices at retail have on these decisions by consumers?

9. *Impact of Regulatory Environment and Barriers to Entry:* Barriers to entry can be regulatory, technological, or financial in origin. We seek to understand what these barriers are and how they impede competition in the MVPD marketplace.

10. Are there any existing Commission regulations or statutory provisions that prevent new entrants from promptly deploying their networks and offering consumers new video service options? To what extent, if any, does the current regulatory regime discourage investment in broadband networks over which video services may be delivered? Are there steps that Congress and the Commission may take to encourage investment in new broadband networks? Are there specific actions that Congress and the Commission may take to reduce barriers to competition in the video market and increase consumer choice? What types of changes may be made to particular regulations or statutes to foster competition in the deployment of broadband networks and the provision of video services? What developments have occurred in the past year that affect or will affect the ability of MVPDs to gain access to programming networks, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers? What effects do existing Commission regulations and other provisions of law specific to video competition have on the market? What regulatory changes, if any, 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?

11. We note that, in November 2005, the Commission opened a proceeding to investigate whether the current local franchising process inhibits competitive entry in the retail market for the distribution of video programming.¹¹ In the *Franchising NPRM*, we seek comment on how the Commission should implement Section 621(a)(1) of the Communications Act to ensure that local franchising authorities (LFAs) do not unreasonably refuse to award cable franchises to competitive entrants. We tentatively concluded that the mandate of Section 621(a)(1) should be interpreted to prohibit not just the ultimate refusal to award a franchise, but also a broader range of behaviors, including the establishment of procedures and other requirements that unreasonably interfere with the ability of would-be new entrants to introduce their competitive offerings quickly.

12. We also note that Congress is considering legislation that would provide an opportunity for MVPDs to obtain a national franchise.¹² In addition to the matters already under review in the Section 621 proceeding, we seek comment on franchising and other local and state regulations and their effect on

¹⁰ DBS providers have introduced, or are planning to introduce, equipment lease programs. See, e.g., Linda Moss, *DIRECTV Opts for a Leasing Model*, MULTICHANNEL NEWS, Jan. 23, 2006.

¹¹ See *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, 20 FCC Rcd 18581 (2005) (*Franchising NPRM*).

¹² On June 8, 2006, the House of Representatives passed H.R. 5252, the "Communications Opportunity, Promotion, and Enhancement Act of 2006," and on September 29, 2006, the Senate Committee on Commerce, Science and Transportation favorably reported out its own version of the legislation.

competition in the video marketplace. What is the impact of the local franchise process on new providers' entry into local markets? We note that there have been a number of developments at the state level to facilitate entry by competitive video providers and seek comment on how these developments have affected competition in the video marketplace.¹³

13. *Programming Networks:* We request detailed information about programming networks, including ownership, the type of programming networks (e.g., national, regional, local) and the genre of programming networks (e.g., sports, news, children's, general entertainment, foreign language). We seek information on existing, planned, and terminated or merged programming networks to assess the changes over the past year in the amount and type of video programming that is available to consumers. In addition, we note that programming networks are being offered in a variety of forms (e.g., multiplexed networks, VOD, shared channels), and we seek comment on whether and how to count such programming networks for assessing trends in vertical integration.¹⁴ We also request information on the transmission format or formats of each network (i.e., analog, standard definition (SD), and/or high definition (HD)). Furthermore, we ask commenters to provide information regarding the delivery mode (i.e., satellite delivery, terrestrial delivery) of each national and regional network. We are unaware of any comprehensive source of this information and rely on industry sources to submit these data.

14. In the *2005 Report*, we revised our information on nationally distributed programming networks using improved data sources.¹⁵ We ask for information on the number and ownership of national non-broadcast networks to update our report. Despite the substantial revisions to our list in the *2005 Report*, we found that the proportion of national non-broadcast networks that are vertically integrated with a cable operator remained relatively stable between 2004 and 2005. We seek information on whether this trend continues. We also seek to identify programming networks affiliated with broadcast

¹³ In September 2005, Texas enacted legislation enabling new entrants in the video programming distribution marketplace to provide service pursuant to state-issued certificates of franchising authority. See TEX. UTIL. CODE ANN. § 66.003 (West 2005). Upon the submission of a completed affidavit by an applicant, Texas regulators now are required to issue a certificate of franchising authority within seventeen business days. *Id.* at § 66.003(b). Similarly, in 2006, California, Indiana, Kansas, New Jersey, North Carolina and South Carolina adopted statewide video franchising procedures, which require the states' respective regulatory commissions to grant franchises within specified time periods after applicants file completed applications as defined within the statutes. See A.B. 2987, 2006 Leg., Reg. Sess. (Cal. 2006) (grant must occur within 44 days); Ind. Code Sec. 8-1-34-17 (2006) (grant must occur within 15 days); 2006 Kan. Sess. Laws 93 (codified at KAN. STAT. ANN. § 17-1902) (grant must occur within 30 days); Assemb. No. 804, 212th Leg. (N.J. 2006) (codified at N.J. STAT. ANN. §§ 48:5A-1 – 48:5A-30 (West 2006)) (grant must occur within 45 days); 2006 N.C. Sess. Laws page no. 151 (codified at N.C. GEN. STAT. §§ 66-351, 66-352 (2006)) (grant is awarded once applicant files a completed notice of franchise); 2006 South Carolina Laws Act 288 (West 2006) (codified at S.C. CODE ANN. § 58-12-310 (2006)) (grant must occur within 80 days). In March 2006, Virginia passed legislation that maintains local involvement in franchising but streamlines the process and establishes time limits for approval. The Virginia statute allows telecommunications providers with existing authority to use public rights-of-way to begin providing video service within 75 days of filing a request to negotiate with a local franchising authority, and establishes a separate timeline for local governments within the state to approve video franchise applications. 2006 Va. Legis. Serv. page no. 73 (West) (codified at Va. Code Ann. § 15.2-2108). Other states also are considering legislation to streamline their franchising processes. See, e.g., H.B. 2647, 2006 Sess. (Iowa 2006).

¹⁴ We previously counted each unique programming network of a multiplexed programming package separately. We have not counted networks in a multiplexed package that are not unique, such as those that are merely time shifted. In addition, for the *2005 Report*, we did not count "on-demand" multiplexes because MVPDs often aggregate these versions of on-demand networks into a single on-demand channel for subscriber selection and playback. *2005 Report*, 21 FCC Rcd at 2575 ¶ 157 n.568.

¹⁵ *Id.* at 2575-79 ¶¶ 157-164.

television station licensees not also owned by a cable operator; and programming networks that are owned by MVPDs other than cable operators (*e.g.*, DBS). We further seek information on regional networks and their ownership, in particular whether they are vertically integrated with cable operators, DBS operators, or other video distributors, including broadcasters. How many regional networks are satellite delivered and how many are delivered terrestrially?

15. Furthermore, we seek information on several specific types of programming. We request information on the extent to which locally originated programming is delivered to consumers by broadcasters and MVPDs, and the factors affecting the production 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? To what extent is programming offered in languages other than English, both at the national and local levels, on all video distribution platforms, and to what extent is such programming produced originally in a language other than English? Is such programming generally available to all distributors? To what extent is foreign language programming offered as part of the CPST? To what extent is foreign language programming offered as a separate tier? Where it is offered as a separate tier, are subscribers required to purchase the CPST in order to obtain foreign language programming? We also seek comment regarding public, educational, and governmental (PEG) access, including the number of channels currently being used by cable operators for this purpose. What programming services are DBS operators providing to meet their public interest obligations?¹⁶ We also request information on the use of leased access channels and the types of programming distributed on them, and seek comment on whether these channels provide an opportunity for independent programmers to distribute their programming.

16. We seek comment on programmers' access to MVPDs and their ability to gain carriage. We request information on the number of independent networks that launched in the past year, including total subscribers; the distributors that carry them; the manner of carriage (*e.g.*, expanded basic, digital tier, themed digital tier, VOD) and their ongoing efforts to obtain further distribution by cable, DBS, and other service providers. We also request information and comment on program carriage issues and their impact on various types of independent programming networks, including minority programming networks.¹⁷ Specifically, we request comment regarding any difficulties programming networks encounter when launching a new service and information on the kinds of carriage arrangements that are required to secure MVPD carriage. Is carriage by one or more of the largest MVPDs necessary for the successful launch of a new programming network? To what extent do start-up programming networks find it necessary to forgo license fees or offer launch fees, equity stakes, or exclusive carriage arrangements in order to secure MVPD carriage? Are new networks facing difficulty gaining carriage in either analog or digital format? Is the success of a new programming service dependent on the tier of service on which it is placed? With the accelerating rollout of video-on-demand platforms, are new networks finding they must demonstrate demand for their service through VOD before they can negotiate for placement on analog or digital programming tiers? To what extent do new programming services that provide a genre of programming already offered by a competing and established network have difficulty obtaining carriage? With the increase in MVPDs' channel capacities and the creation of digital tiers on cable, is channel capacity still a

¹⁶ DBS operators' public interest obligation requires them to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature." 47 C.F.R. § 25.701. *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). Recently, there has been some dispute about whether certain programming carried on set-aside capacity meets the requirements set forth in the Commission rules. *See Petition for Declaratory Ruling Regarding RFD Communications, Inc. and Its Eligibility to be Carried as a DBS Public Interest Noncommercial Programmer*, MB 06-92 (Apr. 20, 2006).

¹⁷ *See 2005 Report*, 21 FCC Rcd at 2582 n.615.

barrier to obtaining distribution? How much channel capacity is available on the analog tier, and how does this affect the economics of new programming services? Are programming services being developed strictly for digital tiers?

17. *Program Packaging:* We seek information on how video programming distributors package and market their programming. We seek information on which program networks are included in MVPDs' various programming tiers and packages. To what extent are MVPDs offering programming on an a la carte basis or in mixed bundles, themed tiers, and subscriber-selected tiers?¹⁸ In the *2005 Report*, we noted that a number of cable multiple system operators (MSOs), and DBS operators DIRECTV and EchoStar, had announced plans to offer family-friendly programming packages in 2006.¹⁹ To what extent have these packages been deployed? We seek information on the cost and content of these programming packages. Are family tiers offered on a stand-alone basis or must consumers subscribe to other tiers (e.g., basic service tier, digital tier) to receive them? Do subscribers need additional equipment to receive the family tier? Are cable and DBS operators advertising these packages, and are operators making them available across their entire service territory? What is the subscribership to these packages? What factors inhibit the creation of such tiers? Do MVPDs offer or plan to offer consumers more choice in channel selection, specifically a la carte or themed tiers, rather than traditional tiering of programming services? In February 2006, the Media Bureau released its *Further Report on the Packaging and Sale of Video Programming Services to the Public*, finding that greater choice could benefit consumers.²⁰

18. *MVPD Access to Programming:* We seek information on specific programming services, whether they are national or regional/local, that are unavailable to cable or non-cable operators. We seek to assess the extent to which MVPDs have been able to acquire or license programming owned by other video distributors (e.g., cable operators, broadcasters). What effect does vertical integration have on competing distributors' abilities to obtain programming? To what extent are non-cable MVPDs producing their own programming, and, if so, is such programming available to competing MVPDs? Do non-cable MVPDs secure exclusive rights to certain programming services? What are the costs of producing or securing such programming, and have new wireline entrants 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 year? How many and what type of programming networks are delivered terrestrially? Are such networks available to competing MVPDs? How do these various factors affect an MVPD's ability to compete?

¹⁸ Mixed bundling refers to the practice of allowing consumers the choice of purchasing channels either on an a la carte basis or as part of the bundles an MVPD chooses to provide. Under a themed tier model, MVPDs offer one or more tiers of programming with a particular theme, which would allow a consumer to pay a subscription fee only for that genre of programming. Under a subscriber-selected tier model, consumers could choose the content of the tier to be purchased; for example, if a subscriber desired a mix of program network types, such as sports, movies, and children's programming, he would be able to select a prescribed number of channels for a set price from among the MVPD's offerings.

¹⁹ See *2005 Report*, 21 FCC Rcd at 2591 ¶ 196. EchoStar began offering its family tier on February 1, 2006. EchoStar Communications Corp., *DISH Network Offers "DishFAMILY" Programming Tier, Providing Parents with Worry-Free TV; Low Cost Package Furthers DISH Network's Standing as Lowest-Priced All Digital TV Provider in Nation* (press release), Feb. 1, 2006. DIRECTV planned to begin offering a Family Package in April 2006. See The DIRECTV Group, Inc., *DIRECTV to Offer Family Programming Package* (press release), Jan. 18, 2006. Comcast, Time Warner, Cox, Bresnan, and Bright House appear to be offering family tiers in some of their markets. See Jonathan Make, *Family Tier Marketing Limited at Comcast, Other Cable Firms*, COMM DAILY, June 5, 2006.

²⁰ See *Further Report on the Packaging and Sale of Video Programming Services to the Public*, Media Bureau, Feb. 9, 2006, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-263740A1.pdf.

19. We seek comment on video programming distributor access to particular genres of programming. Are there certain “must-have” programming services,²¹ or genres of services (e.g., regional sports) without which competitive video service providers may find themselves unable to compete effectively? If so, which services or categories of services are involved and to what extent are there substitute services? In previous years, MVPDs that compete with incumbent cable operators have asserted that they have difficulty obtaining access to what they consider “must-have” programming (e.g., regional sports networks (RSNs)), which are often owned by, or affiliated with, cable operators. As the Commission noted, in the context of its review of Comcast’s and Time Warner’s acquisition of Adelphia’s assets, RSNs are among the types of programming that are often considered “must-have” programming; hence, an MVPD’s ability to gain access to RSNs and the price and other terms or conditions of access can be important factors in its ability to compete with rivals.²² Has the situation changed, or is gaining access to such programming still difficult? We seek information on exclusive contracts for all types of programming, which would allow an analysis of the trends and competitive effects of exclusive contracts for national, regional, and local programming. Do any of these agreements provide an MVPD exclusivity that extends beyond its service area?

20. *Program Access Issues:* We request comment on the effectiveness of our program access,²³ program carriage,²⁴ and channel occupancy rules.²⁵ We ask commenters to provide information on the delivery technology used (i.e., terrestrial or satellite) to distribute specific programming networks to MVPDs. What, if any, video programming services that were once delivered to MVPDs by satellite have been migrated to terrestrial delivery? Of newly launched networks, how many are terrestrially delivered? Which terrestrially delivered networks are unavailable to some MVPDs under the so-called terrestrial exemption to the Commission’s program access rules?²⁶ To what extent are terrestrially delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? What exclusive programming arrangements exist between programmers and MVPDs? Do any of these arrangements provide an MVPD exclusivity that extends beyond its service area? What incentives exist for programmers to grant exclusive distribution rights? With the advent of VOD, what are the competitive implications of video programming distributors securing exclusive rights to programming for inclusion in their VOD offerings?

21. *Rural and Smaller Markets:* We request comment on competition issues specific to video programming distribution in rural and smaller markets. We seek information on the number of MVPDs serving small and rural markets, their subscribership, the services and video programming options they offer, and the cost for video services. We are particularly interested in information on the experiences of independent cable system operators (i.e., cable systems not affiliated with the largest

²¹ Some MVPDs indicate that there are certain programming services that they “must-have” to attract subscribers and be able to compete. Such services include, but are not limited to, regional sports and news networks, and local broadcast stations. See, e.g., *2005 Report*, 21 FCC Rcd at 2581 ¶ 170. See also *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Consolidated Application For Authority to Transfer Control*, 19 FCC Rcd 473 (2004).

²² See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., et al.*, 21 FCC Rcd 8203, 8258-9, 8262-79 (2006) ¶¶ 124-125, 130-169.

²³ 47 C.F.R. §§ 76.1000-1004, 76.1507.

²⁴ 47 C.F.R. § 76.1300-1302.

²⁵ 47 C.F.R. § 76.504.

²⁶ 47 U.S.C. § 548(i). The program access rules only apply to satellite cable programming and satellite broadcast programming. See also 47 U.S.C. § 605(d).

MSOs). How does competition differ between rural and smaller markets and larger, urban areas? In the *2005 Report*, we found that a number of small cable operators and rural LECs were upgrading their facilities to offer a wider range of video and advanced services.²⁷ We seek information on alternative technologies, such as digital subscriber line (DSL) and fiber-based Internet Protocol television (IPTV) that small and rural operators are adopting. We also seek information on the extent to which cable systems in rural and smaller markets have been upgraded. What percentage of systems have upgraded to 750 MHz or greater capacity? What percentage of small cable systems elect to provide digital tiers and services without upgrading? How does converting to a digital tier and not upgrading to a 750 MHz or greater capacity cable plant affect the system's competitiveness? We further request information on the effect, if any, that changes in local franchising requirements (*e.g.*, a local versus a statewide franchising regime) are having or will have on small and rural operators.

22. With respect to programming, in last year's *Report*, commenters provided information detailing the differences in cost of programming and the terms of carriage of programming between larger urban systems and those in small or rural areas.²⁸ We seek updated information, including information on whether video programming buying cooperatives, such as the National Cable Telecommunications Cooperative (NCTC), help small or rural operators obtain programming at discounted rates. We also seek information on any differences, if any, between the types of programming packages and services in demand in small and rural markets as compared to larger, urban areas. What percentage of total expenses goes to acquiring programming? What advanced services are available in rural and smaller markets, including the availability of digital cable service, cable modem service, VOD, and telephony, and are they offered in bundled packages with video programming?

23. *MVPD Service in Alaska and Hawaii*: We also seek specific information regarding MVPD service available in Alaska and Hawaii. We are interested in whether, and how, cable, DBS, and other MVPD services offered in these states differ from that provided in other states. What competitive alternatives are available to consumers in Alaska and Hawaii? We seek information on the number of subscribers to each type of MVPD (*e.g.*, cable, DBS) and the share of the market served by each. Are MVPD subscribers offered the same number of channels and choice of video programming services (broadcast and non-broadcast) as are available to subscribers in other states? How do prices for the various packages of service (*e.g.*, BST, CPST, themed tiers, digital cable service, digital tiers, pay-per-view, VOD) compare to the average national price for such MVPD services? We also seek information on any differences in the equipment needed by consumers to receive video programming service. In particular, do DBS subscribers in Alaska and/or Hawaii require larger dish antennas than are needed to obtain service in the rest of the country? To what extent are MVPDs offering telephony and high-speed Internet service along with video programming service? If so, we seek information on how these services are packaged and priced. Commenters are asked to provide information regarding these issues and any others addressed in this *Notice* as they pertain to MVPD service and competition in Alaska and Hawaii.

24. *Multiple Dwelling Units*: Multiple dwelling units (MDUs) comprise a separate segment of the MVPD marketplace because alternative video providers may have difficulty offering service in MDUs in competition with an incumbent provider.²⁹ We seek comment on any factors that are unique to competition in MDUs. How many, or what percentage of, U.S. households are in MDUs? How common is it for consumers to have choices among video programming services within MDUs? We seek information on firms serving or attempting to serve the MDU market. Have there been any recent

²⁷ *2005 Report*, 21 FCC Rcd at 2595-6 ¶ 204.

²⁸ *Id.* at 2596 ¶ 205.

²⁹ MDUs may include rental apartments, as well as condominiums and co-operatives.

technological developments that will facilitate increased competition in MDUs?³⁰ We ask for comment on how access to buildings by providers, or lack thereof, 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,³¹ over-the-air reception device (OTARD),³² and cable bulk rate³³ rules have on MDU competition? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those available to non-MDU customers in the surrounding area? Are video distributors providing advanced services, such as high-speed Internet access and telephony, to MDU customers?

25. *Access to Programming by Persons with Disabilities:* The Commission recently commenced a rulemaking proceeding addressing the current status of closed captioning and whether revisions should be made to the closed captioning rules.³⁴ We also invite commenters to provide information regarding the accessibility of closed captioning and video description to persons with disabilities for the 2006 Report.

26. Under the Commission’s rules, video programming distributors are required to caption 100 percent of the “new” English-language programming on each channel.³⁵ In addition, a video programming distributor must include captioning in 30 percent of its “pre-rule” English-language programming on each channel during each calendar quarter.³⁶ The phase-in schedule for “new” Spanish language programming currently requires distributors to caption at least 900 hours of Spanish-language programming or all of its new non-exempt Spanish language programming per channel per quarter, whichever is less.³⁷ The rules also currently require each video programming distributor to caption 30 percent of its pre-rule non-exempt Spanish-language programming on each channel during each calendar quarter.³⁸

27. We seek comment on what, if any, concerns industry and the public have with meeting the upcoming increased captioning requirements for new Spanish language and “pre-rule” English

³⁰ For example, last year, we reported that DIRECTV had developed a distribution system simplifying service to MDUs. *2005 Report*, 21 FCC Rcd at 2597 ¶ 207.

³¹ See 47 C.F.R. § 76.800-806 *et seq.*

³² 47 C.F.R. § 1.4000.

³³ 47 C.F.R. § 76.984(c)(3).

³⁴ See *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc. Petition for Rulemaking*, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005) (*Closed Captioning NPRM*).

³⁵ 47 C.F.R. § 79.1(b)(1) (phase-in schedule for captioning “new” English language programming, which is defined as 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, 16808-09 ¶ 60 (2000) (*Digital Captioning Order*).

³⁶ 47 C.F.R. § 79.1(b)(2) (phase-in schedule for “pre-rule” English language programming which is defined as programming first published or exhibited before January 1, 1998).

³⁷ 47 C.F.R. § 79.1(b)(3)(ii).

³⁸ 47 C.F. R. § 79.1(b)(4)(i).

language programming.³⁹ We seek information on captioning quality, accuracy, placement, technology, and any instances of missing or delayed captions. We also seek comment on the amount of digital programming that contains closed captions translated from analog closed captions.⁴⁰ The Commission has received several complaints that some digital programming lacks captioning. This may be due to digital programming not being captioned because it falls within an exemption to the closed captioning rules or because of technical problems in the delivery of the captions to the viewer. We seek comment on these issues. What experiences have viewers had with captioning that falls behind the spoken words, or captioning that is cut off when scenes switch, when there are commercial breaks, or before a show has concluded? What issues arise with respect to the positioning of captioning on the television screen over the speaker's face, textual material being discussed, or the progress of a sporting event? Is captioning that is presented with the first showing of a program retained when the program is repeated? We especially seek information regarding real-time captioning of local newscasts, weather reports, and emergency information. We seek information on the level and quality of captioning for non-English language programming. Given that the *Closed Captioning NPRM* sought comment on many of the questions raised herein, we encourage commenters to this NOI to supplement their comments in the *Closed Captioning NPRM* to the extent they feel necessary.

28. We also request comment on the availability of video description, currently provided by programmers on a voluntary basis.⁴¹ We request information regarding the amount and types of video programming that includes video description and whether MVPDs generally carry video descriptions inserted by programmers.

B. Cable Television Service

29. We request data and comments on the current state of competition in the cable industry and any changes that have occurred since the *2005 Report*, including system upgrades, ownership transactions, and program packaging.

30. *System Upgrades and Channel Capacity*: In the *2005 Report*, we observed that cable operators were nearing completion of the rebuilding and upgrading of their plant and that they were increasing capital expenditures on customer premises equipment.⁴² We request information regarding cable operators' continuing investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. We also request information on the methods by which cable operators are increasing their system capacity, such as switched digital video

³⁹ Specifically, effective January 1, 2007, at least 1350 hours or all new non-exempt Spanish language programming, whichever is less, must be captioned per channel per quarter. 47 C.F.R. § 79.1(b)(3)(iii). Effective January 1, 2008, 75 percent of all non-exempt English language pre-rule programming must be captioned. 47 C.F.R. § 79.1(b)(2)(ii).

⁴⁰ Translation uses the original NTSC line 21 608 format captions (*i.e.*, analog captions) and generates 708 format captions. See Electronics Industries Association, *Digital Television Closed Captioning*, EIA-708-B, 1999.

⁴¹ 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. See *Implementation of Video Description of Video Programming*, 15 FCC Rcd 15230 (2000), on recon., 16 FCC Rcd 1251 (2001). 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. See *Motion Picture Association of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

⁴² *2005 Report*, 21 FCC Rcd at 2525 ¶ 49 Table 7.

technology.⁴³ What other technologies are cable operators using to increase digital channel capacity? How is bandwidth allocated between analog and digital tiers, and between video and non-video services, and what factors influence that decision?

31. For individual MSOs, we request information on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades (including the digital to analog compression ratio used), 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. We also request information regarding cable systems that have not upgraded their plant or increased channel capacity in recent years. We seek information on the number of systems, the number of homes passed by such systems, and the number of subscribers to systems that have not upgraded their facilities. We specifically seek information on the number of homes, if any, that are passed by systems having less than 36 activated channels.

32. We seek information on the extent to which cable operators use capacity devoted to digital video programming to provide digital duplicates of existing analog channels, to carry high definition signals of over-the-air broadcasts or to carry multiple streams of programming of over-the-air broadcasters. To what extent is new capacity used for non-video services? What types of non-video services are being offered? How much of the capacity and bandwidth are dedicated to these services?

33. We also seek information on cable operators who have launched or plan to launch digital simulcasts of their analog channel lineups on one or more of their systems.⁴⁴ What effect do simulcasts have on channel capacity? 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? Have cable operators indicated when they anticipate going all-digital? We seek comment on the benefits to consumers of an all-digital system. How have the structure and price of service tiers changed when systems become all-digital? How would they change in the future as more systems become all-digital? What are the implications for customer premises equipment?

34. *Ownership Transactions and Clustering:* We seek information on mergers and other cable system transactions during the past year, including the names of the buyer and seller, date of the transaction, type of transaction (*i.e.*, sale or swap), name and location of the system, homes passed and number of subscribers, and the price. Have such transactions and consolidations been more likely to occur in certain types of markets, or between certain size systems? We continue to monitor the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data and comment on its effect on competition in the video programming distribution market.⁴⁵ How many transactions resulted in an MSO establishing a presence in a new area versus adding to an existing cluster? As cable operators eliminate headends and more closely integrate their systems, what regulatory and technical issues arise that can affect competition? What effect does clustering have on economies of

⁴³ Switched digital video is a method of delivering selected digital broadcast programming only to system nodes where and when subscribers are actively requesting that programming, as opposed to delivering all programming feeds at the same time to all nodes. See Craig Kuhl, *The Big Squeeze*, CED MAGAZINE, Apr. 1, 2006; Kenneth Li, *Cable Takes Aim at Phone Companies*, Reuters, Apr. 11, 2006.

⁴⁴ Generally, cable operators deliver a combination of analog and digital signals. A digital simulcast involves the digitization of the analog tier of programming at the operator's headend. The all-digital signal is then delivered alongside the analog signal.

⁴⁵ At the end of 2004, there were 118 clusters with approximately 51.5 million subscribers, compared to 108 clusters and approximately 53.6 million subscribers at the end of 2003. *2005 Report*, 21 FCC Rcd at 2574 ¶ 155, Appendix B Table B-2.

scale and scope? We seek comment on the acquisition of PCO systems by major MSOs, and the effect on competition in the market.

35. *Program Packaging:* We seek comment on whether and how cable operators are changing the way they package programming and the role actual or potential competition played in any such changes.⁴⁶ Are cable operators restructuring their tiers by shifting programming from the BST to the 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 do they offer themed tiers, such as a family tier? Where cable operators provide digital tiers, do they offer, or plan to offer, digital programming genre packages or themed tiers (e.g., family, sports, lifestyle themed tiers) or programming on an a la carte basis? We request information on the programming included on these tiers and their cost, including information on whether subscribers must purchase other tiers in order to subscribe to themed tiers or to purchase channels on an a la carte basis. We 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 information on how many cable subscribers subscribe only to basic tiers (i.e., “lifeline” tiers). We seek comment on relevant trends in pricing of basic tiers.

36. *Regulatory Issues:* A widely used industry measurement of cable availability is the percentage of homes with a television that are passed by a cable system. 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 are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources.⁴⁷ We found that data submitted in the record of the *2005 Report* raised questions as to whether the second prong of the so-called “70/70 test” had been satisfied.⁴⁸ As part of the *2005 Report*, we requested further public comment on the best methodologies and data for measuring the 70-percent thresholds.⁴⁹ We also asked commenters to suggest what new rules, if any, would be warranted should the test be met. That proceeding is pending.

37. We again 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 how many homes passed by systems with 36 or more channels actually subscribe to cable service. We ask that commenters providing estimates of these statistics based on sampling procedures explain their methodology in detail. 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. Further, if it is determined that the criteria have been met, we seek

⁴⁶ See U.S. General Accountability Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Oct. 2003) (*2003 GAO Report*) (finding that, in markets with a wire-based competitor, cable operators rates are up to 15 percent lower than in markets without a wire-based competitor; finding that in markets where DBS companies offer local broadcast services, cable operators improve the quality of their service); U.S. General Accountability Office, *Wire-Based Competition Benefited Consumers in Selected Markets*, GAO-04-241 (Feb. 2004) (*2004 GAO Report*) (in a case of six market pairs, in which one market was served by a broadband service provider (BSP) and the other one was not, GAO found that BSP entry benefited consumers in the form of lower prices for subscription television, high-speed Internet access, and local telephone services).

⁴⁷ 47 U.S.C. § 532(g).

⁴⁸ *2005 Report*, 21 FCC Rcd at 2512-14 ¶¶ 29-34. The Commission found that cable systems with 36 or more channels are available to 86.3 percent of occupied households and no commenter in the proceeding provided any conflicting data relevant to the first prong of the test.

⁴⁹ *Id.* at 2515 ¶ 36.

comment on what, if any, additional rules the Commission should promulgate to promote diversity of information sources.

38. 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.⁵⁰ Commercial broadcast television stations may elect carriage on cable systems pursuant to either mandatory carriage (must carry) or retransmission consent.⁵¹ If a television station elects must carry, the cable operator is required to carry the signal without compensation. Alternatively, when a station elects retransmission consent, the cable operator and broadcaster negotiate the terms of carriage. Broadcast television stations carried pursuant to either retransmission consent or must carry count towards the required set-aside for the carriage of commercial broadcast stations.⁵² We request data on the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements and the percentage that are carried pursuant to the must carry provisions. We also seek information on the percentage of their required set-aside channels that cable operators currently are using to carry local broadcast signals. With respect to television stations carried pursuant to retransmission consent, to what extent do cable operators pay cash for broadcast station carriage rights, carry non-broadcast programming networks, provide advertising time, or otherwise compensate broadcasters? In the *2005 Report*, we noted that we would continue to monitor issues raised by commenters regarding the retransmission consent process, including the effect of retransmission consent compensation on cable rates, the ability of small cable operators to secure retransmission consent on fair and reasonable terms, and the impact of agreements that require the carriage of non-broadcast networks in exchange for the right to carry local broadcast stations on MVPDs and consumers.⁵³ We seek comment on these and any other issues relating to must carry and retransmission consent that affect competition in the market for the delivery of video programming.

39. We also request comment on the "tier buy-through" option mandated by Section 623(b)(8) of the Communications Act,⁵⁴ including the percentage of subscribers taking advantage of this option; the problems, if any, it creates; the manner in which cable operators make this option known to the public; and the extent to which the option is applicable (*i.e.*, the extent to which programming is offered or purchased on a per-program or per-channel basis).

C. Direct-to-Home Satellite Services⁵⁵

40. As of the end of June 2005, DTH (*i.e.*, DBS and C-Band) operators served approximately 26.3 million subscribers, led by DBS operators DIRECTV and EchoStar.⁵⁶ As discussed in our *2005*

⁵⁰ 47 U.S.C. §§ 614(b), 615(b); 47 C.F.R. § 76.56.

⁵¹ 47 C.F.R. § 76.64(f).

⁵² 47 C.F.R. § 76.56; *see also* 47 C.F.R. § 76.55(c) (definition of a qualified local commercial television station).

⁵³ *See 2005 Report*, 21 FCC Rcd at 2584-85 ¶¶ 177-182.

⁵⁴ 47 U.S.C. § 543(b)(8). *See also* 47 C.F.R. § 76.921. This provision permits subscribers to purchase programming offered on a per-channel or per-program basis without first subscribing to tiers, other than the basic service tier. It became fully effective on October 5, 2002, ten years after adoption of the Cable Television Consumer Protection and Competition Act of 1992. Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵⁵ DTH services use satellites to deliver video programming directly to subscribers. 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 2080-85 ¶¶ 49-53; *1998 Report*, 13 FCC Rcd at 24323 ¶ 61.

⁵⁶ *2005 Report*, 21 FCC Rcd at 2617 Table B1.

Report, DBS operators currently are the most significant competitors to incumbent cable operators, though cable operators continue to serve almost 70 percent of all MVPD subscribers. We seek information and data that explain the factors contributing to DBS' growth in the video programming market and that can help us assess whether those characteristics will continue to position DBS as cable's principal competitor. We request any consumer surveys identifying differences between consumers who choose to subscribe to DBS or C-Band, rather than choose cable or another video programming distributor. What percentage of new DBS subscribers are former cable subscribers? What percentage are former C-Band households? What factors influence cable subscribers' decisions to switch to DBS and vice versa?

41. The Commission and the U.S. Government Accountability Office (GAO) have found that the presence of a wire-based competitor has a measurable downward impact on the average monthly cable rate,⁵⁷ but is there evidence of meaningful price competition between DBS and cable? Do initial DBS equipment costs or other factors prevent cable subscribers from switching despite escalating monthly cable bills? Does the dynamic between the platforms change in markets where DBS offers local broadcast signals?

42. We seek information on the geographic characteristics of DTH subscribers. Are they more likely to reside in urban areas than rural areas, or vice versa? To what extent do DBS subscribers reside in areas not passed by cable systems? We note that a 2005 GAO report found that DBS penetration rates have been and remain highest in rural areas, but since 2001, DBS penetration has grown most rapidly in urban and suburban areas, where the penetration rates were originally low.⁵⁸ We seek updated information on the geographic characteristics of DBS subscribership and the factors that account for its relative strengths or weaknesses in different markets (*e.g.*, areas not served by a cable or other wireline provider vs. other areas). We continue to monitor technical limitations, such as line-of-sight, which impede the availability of DBS to some potential subscribers, in particular to MDU residents. How many, or what percentage of, households cannot receive DBS service because they are not within the line-of-site of the satellite signal?

43. Last year, we reported that DIRECTV and EchoStar have supplemented their satellite fleets to provide a wider range of programming, in particular high definition programming. We seek updated information on the deployment of these satellites as well as information regarding pending additions to DBS satellite fleets, which will result in increased channel capacity or the provision of advanced services. We request information on DBS operators' current channel capacity and how they allocate it. What technical methods are DBS providers using to increase capacity?

44. *Local-into-Local*: Last year we reported that at least one DBS operator provided local-into-local service in 167 of 210 television markets, which cover 96 percent of all U.S. television households.⁵⁹ We request updated information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to the Satellite Home Viewer Improvement Act of 1999 (SHVIA), including the number and affiliation of the stations carried.⁶⁰ What

⁵⁷ See, *e.g.*, *Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, 20 FCC Rcd 2718 (2005); *2003 GAO Report*; *2004 GAO Report*.

⁵⁸ See GAO, *Telecommunications: Direct Broadcast Satellite Subscribership Has Grown Rapidly, But Varies Across Different Types of Markets*, Apr. 2005.

⁵⁹ *2005 Report*, 21 FCC Rcd at 2541 ¶ 76.

⁶⁰ 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).

percentage of DBS subscribers are opting for local programming packages in markets where they are available? What is the cost to consumers of local-into-local broadcast service? What percentage of DBS subscribers subscribe to cable in order to receive local broadcast signals? Both DIRECTV and EchoStar have launched local broadcast stations in HD in a number of markets. How many markets receive local high definition programming? We seek information on the type of equipment necessary for DBS subscribers to receive local HD broadcasts and the cost of the service and equipment. What are the local broadcast stations being carried in HD and what are the affiliations of these stations? How many subscribers have the equipment necessary to receive high definition local broadcasts?

45. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted.⁶¹ SHVERA extended certain provisions of the SHVIA, primarily pertaining to the distant signal copyright license and retransmission consent negotiations for five years. It also added some new provisions to the Communications and Copyright Acts pertaining to the retransmission by DBS of distant or out-of-market broadcast signals, including the option to carry broadcast stations deemed “significantly viewed” by the Commission. Throughout 2005, the Commission implemented the provisions of the SHVERA.⁶² We request comment on the impact, if any, these provisions have had on the MVPD marketplace. With respect to the new authorization to market broadcast station signals deemed “significantly viewed,” to what extent are such signals being made available to subscribers? If such signals are not being marketed, is the situation due to technical or operational consideration, problems with obtaining retransmission consents, or other reasons?

46. *Prices, Equipment, and Programming:* We request data on prices for DBS programming packages and equipment. What is the typical cost of DBS equipment and installation? Do more customers lease equipment or buy it? Do DBS operators offer service contracts that provide discounted prices for programming and equipment? 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 discount or “subsidize” equipment costs in order to attract subscribers? We also ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages. Do DBS operators offer any programming on an a la carte basis, and if so, what are the prices and subscription requirements associated with such offerings? To what extent do DBS operators have access to, and carry, cable-operator-affiliated regional programming services? With respect to foreign language or foreign originated programming, how many subscribers choose foreign programming alone and how many purchase additional programming? Are

⁶¹ Pub. L. No. 108-447, 118 Stat 2809 (2004) (codified in scattered sections of 17 and 47 U.S.C.). SHVERA was enacted as Title IX of the Consolidated Appropriations Act, 2005.

⁶² See *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligation*, 20 FCC Rcd 10339 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, 20 FCC Rcd 14242 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, 20 FCC Rcd 17278 (2005). See also, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Sept. 8, 2005, available at <http://www.fcc.gov/mb/policy/shvera.html> (reporting to Congress on the impact on competition in the MVPD market of the current retransmission consent provisions and the network nonduplication, syndicated exclusivity, and sports blackout rules, including the effect of those rules on the ability of rural cable operators to compete with the DBS industry in the provision of digital broadcast television signals to consumers); *Report to Congress, The Satellite Home Viewer Extension and Reauthorization Act of 2004, Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504 (2005) (concerning the digital signal strength standard and the signal testing procedures used to identify whether a household is “unserved” for purposes of the satellite statutory copyright license for distant digital signals).

these subscribers required to pay for equipment in advance? What additional charges, if any, are required to obtain foreign programming?

47. *C-Band or Large Dish*: In the *2005 Report*, we found a 38.5 percent decrease in the number of C-Band subscribers, caused principally by a continued defection of C-Band subscribers to DBS because of its smaller, less expensive, and easier-to-use equipment.⁶³ We seek information about programming that remains available to C-Band subscribers. How many program packagers offer programming to C-Band households? How do C-Band providers package and price program services? How much C-Band programming is available on an a la carte basis, and to what extent are consumers purchasing programming in this way? How much free and unscrambled programming remains for C-Band users to access? We also seek information on the number of satellite delivered networks that are no longer distributed on C-Band satellites, and the number of satellite delivered networks that no longer provide an analog feed of their programming.

D. Other Wireline Service Providers

1. Local Exchange Carriers

48. We previously reported that LEC entry into the MVPD industry has been limited, but that developments demonstrated renewed LEC interest in providing video programming services.⁶⁴ Specifically, we noted that several major incumbent LECs (ILECs) – BellSouth, Qwest, AT&T (formerly SBC) and Verizon – had launched joint service with DBS service providers, and that several had reported plans to provide video via asymmetric digital subscriber line (ADSL), very high-speed digital subscriber line (VDSL), fiber-to-the-node (FTTN), or fiber-to-the-premises (FTTP).⁶⁵

49. We seek information generally regarding LECs that provide video programming services. To what extent are LECs operating as video distributors in competition with existing cable systems? Do LECs face special hurdles to providing video service? Are there any regulatory or statutory impediments to LEC entry in the video service market? To what extent are LECs operating cable systems? Do LECs that operate cable systems face special hurdles to providing video service? What is the current extent of deployment by LECs, including in particular fiber networks that have the capacity to provide residential video service but are not yet provisioned or franchised to provide that type of service? What are LECs' future deployments plans? Are there specific residential areas that LECs target for video entry? Do these deployments match the clustering of cable operators' systems or do they conform to some other operational or market-based considerations? To what extent does the existing telephone plant of these service providers determine the scope and coverage of their video distribution activities? What are the major determinants of where this type of market entry takes place? Is an entry decision based on the existing state of competition in the market, or lack thereof, such as inadequate existing service? Are LECs entering markets based on a desire to respond to competition with their core telephony business? To what extent do demographic considerations associated with potential subscribers inform LEC entry into a market? What role do technical considerations of existing LEC networks play? Are state or local regulatory issues the initial determinate in whether LECs choose to enter a market or not? To what extent

⁶³ *2005 Report*, 21 FCC Rcd at 2544 ¶ 80.

⁶⁴ *Id.* at 2561-63 ¶¶ 122-25.

⁶⁵ Fiber to the node (also known as fiber to the neighborhood) is a hybrid network architecture involving optical fiber from the carrier network, terminating in a neighborhood cabinet (or "node"), which converts the signal from optical to electrical. The connection from the cabinet to the user premises is provided over unshielded twisted pair (UTP) or coaxial cable. While fiber to the premises, sometimes called fiber to the home (FTTH), is preferable in terms of overall performance, it is more expensive to deploy than fiber to the node. See Harry Newton, NEWTON'S TELECOM DICTIONARY (CMP Books, 22nd ed., 2006), at 387, 410.

are investments in plant that is useful for multiple purposes influenced by state public service commission price cap decisions or other mandates and policies?

50. How do LEC video services compare to those available from incumbent cable or satellite operators? To what extent will they offer more bandwidth capacity than other MVPD architectures? Will such increased capacity permit greater provision of high definition television (HDTV) and advanced interactive services? Have incumbent MVPDs impeded LECs' efforts to provide consumers with video choices? Has there been any notable churn from cable or DBS to LECs' video services in the markets where it is available? Is there evidence of price competition between LECs, cable, and satellite operators? The major ILECs have marketing agreements with DBS providers under which they sell the DBS operator's video services along with their telephony and DSL-based high speed Internet access service in a single package.⁶⁶ What effect have these agreements had on LEC entry into the video industry, specifically on LECs' ability to compete with incumbent cable operators? As wireline facilities are built out, will these marketing agreements limit DBS-wireline service competition?

51. A number of smaller ILECs also are reportedly constructing their own all-fiber or mostly fiber networks to deliver video and advanced services to their existing voice and data customers. We seek comment on these deployments, including penetration rates and business models. Do technological, economic, or market entry issues facing smaller and rural ILECs differ from those facing the larger carriers? Are there any unique barriers to entry into smaller and rural video markets?

2. Broadband Service Providers

52. Beginning with the *2001 Report*, we addressed a new class of providers called broadband service providers (BSPs).⁶⁷ We include municipal entities, independent telephone companies, and competitive LECs (CLECs) as BSPs, to the extent they operate technologically advanced networks capable of providing bundles of services (*i.e.*, voice, advanced video, and data services).⁶⁸ We request information regarding the provision of video, voice, and data services by BSPs, including municipal authorities, independent entities and CLECs, as well as any entity that provides broadband services. Are video programming 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 percentage of, BSP subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? What effect do BSPs have on video competition? BSPs serve approximately 1.5 percent of MVPD subscribers nationwide, though they serve larger portions of specific local franchise areas.⁶⁹ We request comment on the reasons why this percentage is so low. We seek comment on the characteristics that facilitate BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, demographics, business models). Have BSPs become more competitive in recent years? Are there still significant barriers to entry? What are the technical and economic factors that determine whether overbuild systems are successful?

⁶⁶ *2005 Report*, 21 FCC Rcd at 2561 ¶ 122.

⁶⁷ *2001 Report*, 17 FCC Rcd at 1294-96 ¶¶ 107-112. We defined broadband service providers in the *2004 Report*, 20 FCC Rcd at 2801 ¶ 70 n.362, as "newer firms that are building state-of-the-art facilities-based networks to provide video, voice and data services over a single network," and noted that, usually, the services of a BSP can be purchased separately as well as in a bundle. In this regard, use of the term "BSP" is not intended to imply anything with respect to Commission policy or proceedings that might involve broadband services. *Id.*; *2002 Report*, 17 FCC Rcd at 26948-52 ¶¶ 102-11.

⁶⁸ *2003 Report*, 19 FCC Rcd at 1658-59 ¶ 78. See also *2004 Report*, 20 FCC Rcd at 2801 ¶ 70.

⁶⁹ *2005 Report*, 21 FCC Rcd at 2617 Appendix B, Table B-1.

3. Open Video System Operators

53. In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by LECs.⁷⁰ To what extent are new wireline entrants operating under the OVS classification? How many subscribers receive video services from OVS operators? Are video programming 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 percentage of OVS subscribers, purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? What effect do OVS operators have on video competition? We seek information on why new entrants that have chosen the OVS classification have opted for this type of entry. We also seek information on MVPD entrants that initially chose OVS classification, but have since converted to another framework (e.g., Title VI cable service). What impact do state and local franchising requirements have on the OVS framework and on a new entrant's decision to choose the OVS classification? To what extent are service providers seeking to share OVS operators' capacity?

4. Electric and Gas Utilities

54. In the *2005 Report*, we observed that some utilities continue to move forward with ventures involving multichannel video programming distribution, though such services still are not widespread.⁷¹ We seek information regarding utility companies that provide video services, including broadband over powerlines. To what extent are video programming services being bundled with telephone, high-speed Internet access, or other services? How does the ability to offer bundled services affect the relative competitive position of these utilities? Are utilities' service prices similar to cable operators' pricing of such services? If not, how do they differ?

E. Broadcast Television Service

55. Broadcast television stations compete in the video marketplace for programming content, audiences, and advertising revenues and supply programming content to MVPDs. Broadcast networks and local stations supply video programming directly over the air to consumers. Consumers who do not subscribe to an MVPD service typically rely on over-the-air transmission of local broadcast television signals. Other households receive broadcast television programming over the air on those television receivers that they have chosen not to connect to an MVPD service. In addition, many consumers receive broadcast signals via their cable, DBS, or other MVPD service.

56. *General Performance:* We seek data and comment on the role of broadcast television in the market for the delivery of video programming. Broadcast television stations' ability to compete with MVPDs is dependent on their ability to attract audience and advertising dollars to their programming. As we reported last year, broadcast television stations' audience shares fell as the number of non-broadcast networks grew and their collective audience share increased.⁷² We seek data on broadcast network and station audience shares relative to those of non-broadcast programming services. We also request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? What forms of compensation are broadcasters receiving for retransmission consent? In terms of additional sources of revenue, to what extent are cable and DBS operators paying cash compensation for retransmission of broadcast stations?⁷³ If the compensation is not

⁷⁰ 47 U.S.C. § 571(a)(3)-(4); *1996 Report*, 12 FCC Rcd at 4395-98 ¶¶ 68-71.

⁷¹ *2005 Report*, 21 FCC Rcd at 2563 ¶¶ 126-27.

⁷² *Id.* at 2550 ¶ 93.

cash based, how is it accounted for? What market changes, if any, are taking place that might result in increases in retransmission consent compensation?

57. In the *2005 Report*, we found that there were 15.36 million U.S. TV households that do not subscribe to an MVPD service and thus rely on over-the-air broadcast television for their video programming, representing 14 percent of all U.S. TV households.⁷⁴ 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.⁷⁵ We request data on the number or percentage of households relying solely on over-the-air broadcast television for programming. We also seek information on the number of MVPD households, by type of MVPD service, that rely on over-the-air reception for local broadcast service on one or more of their television sets not connected to an MVPD. We ask commenters to provide demographic information that might assist us in classifying such households (*e.g.*, urban vs. rural, income, education levels, age).

58. *Digital Television Broadcasting (DTV)*: DTV allows broadcasters to use a single 6 MHz channel to transmit a high definition television (HDTV) signal, several standard definition television (SDTV) signals (*i.e.*, multicasting), or ancillary services in addition to video programming.⁷⁶ In early 2006, the Digital Television Transition and Public Safety Act of 2005 established a deadline of February 17, 2009, for the end of analog transmissions and the transition to digital television. The Act allocates approximately \$990 million of the estimated \$10 billion in proceeds from the auction of the vacated analog broadcast spectrum for a digital-to-analog converter box program.⁷⁷ For the 2006 Report, we request updated information on the transition to digital television service, including current and projected levels of consumer access to and use of DTV; consumer education efforts; the amount and types of digital television programming, both broadcast and non-broadcast offered; the other uses of digital broadcast spectrum; and developments regarding DTV equipment. We also seek comment on the effect of DTV deployment on competition in the video marketplace. Commenters should address whether the growth of DTV broadcasting is making broadcast television a substitute for, or competitor of, MVPDs.

59. *Consumer Access to Digital Television*: We request information on the number of households that are able to receive DTV/HDTV programming either over the air or from an MVPD. We seek current data and projections for the number of households that rely on over-the-air reception of broadcast television that have DTV sets, including the number that have built-in or separate DTV tuner capability. How many MVPD subscribers are DTV households, and how many of these households choose to receive broadcast DTV signals over the air?

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⁷³ We note that, in March 2006, Verizon announced that it would pay CBS to retransmit the network's owned and operated stations on its FiOS TV systems. Similarly, EchoStar is reported to have agreed to pay the Hearst-Argyle Co. \$0.50 per subscriber per month for retransmission of its group stations. John Higgins, *CBS Braces for Cable Showdown*, BROADCASTING & CABLE, Mar. 27, 2006; *Verizon Revises CBS Pact*, MULTICHANNEL NEWS, Mar. 27, 2006.

⁷⁴ *2005 Report*, 21 FCC Rcd at 2551 ¶ 96. See also *Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers (OTA Report)*, MB Docket 04-210, Feb. 28, 2005. At the time the *OTA Report* was released, the Commission estimated that about 14.86 percent of television households rely on over-the-air television broadcasts to receive video programming.

⁷⁵ See *OTA Report* at 4-5.

⁷⁶ *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 17 FCC Rcd 15978, 15995-96 ¶¶ 39-40 (2002).

⁷⁷ See Deficit Reduction Act of 2005, PL 109-171 (2006).

60. We seek information on the availability of over-the-air DTV service to viewers. What portion of the population has access to over-the-air DTV service? What is the difference in terms of population coverage between the full authorized coverage area and the coverage area based on the actual facilities of DTV stations that are now operating? What reception difficulties, if any, do viewers that are within the service areas of DTV stations experience, and have there been any advances to address reception performance? Are there unique reception issues that differentiate DTV service from analog service in terms of either better or worse over-the-air reception?

61. We request information regarding the carriage of DTV programming by MVPDs and plans to increase the amount of DTV programming carried. How many MVPD subscribers are served by systems that carry DTV programming, and how many households are subscribing to such services when offered as separate packages? How much broadcast DTV, either SDTV or HDTV formats, are cable and other MVPDs offering to consumers? How many MVPD systems are carrying all local broadcast stations that are offering DTV programming? How many subscribers have access to DTV programming? Of these systems, how many are carrying all of the free over-the-air programming offered by the stations? Currently, carriage of broadcast DTV signals by cable and satellite systems is generally voluntary.⁷⁸ We also request comment on carriage agreements between MVPDs and broadcasters. We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms. To the extent that MVPDs are not offering broadcast HDTV, why are they not doing so? How much non-broadcast HDTV programming is being carried by MVPDs? How many cable operators are carrying multicast DTV or would be willing to do so when broadcasters transmit multiple streams? Where cable operators are carrying multicast DTV, are they carrying all programming streams offered by the broadcaster? To what extent do they decline to carry multicast streams, such as those focusing on local news, that compete with existing or planned cable programming offerings? To what extent do DBS providers and other MVPDs carry broadcast DTV programming? Do non-cable MVPDs carry multicast DTV or plan to carry multiple streams of broadcast DTV programming?

62. We seek information on how MVPDs package and price broadcast and non-broadcast DTV programming. Do MVPDs offer separate packages for broadcast and non-broadcast DTV programming? Do cable subscribers need to purchase the “digital tier”⁷⁹ of service in order to receive any DTV content? What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not?

63. We request information regarding the amount and type of DTV programming (*i.e.*, network, local, syndicated) currently offered by broadcasters and information on broadcasters’ plans to increase the amount of DTV programming. To what extent are broadcasters using their DTV spectrum for SDTV, HDTV, and multicasting?⁸⁰ How much programming is offered in each format, overall and in prime time? We seek this programming information for both broadcast networks and local stations (*i.e.*, network affiliated, independent stations, commercial, noncommercial). To what extent are stations locally producing DTV or HDTV programming? To what extent are stations offered network HDTV programming that they are either not equipped to pass through and broadcast, or for other reasons do not broadcast? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV

⁷⁸ See *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules*, 20 FCC Red 4516 (2005).

⁷⁹ “Digital tier” does not refer to content viewed in digital format; rather, it refers to the tier of programming that is digitally compressed for transmission purposes only in order to offer cable subscribers additional content options. The digital compression process starts with video in analog format, compresses the signal using digital technology, and then the signal is converted back into analog format for viewing.

⁸⁰ For a more complete discussion of multicasting, see ¶ 66 *infra*.

spectrum? Are there differences in the ways that commercial and noncommercial broadcasters are using their DTV spectrum?⁸¹

64. *Consumer DTV Education Efforts:* The Commission continues to conduct outreach programs to educate consumers about the transition to digital television. In the past year, the Consumer and Governmental Affairs Bureau (CGB) has conducted workshops, participated in panels, and spoken at events throughout the country. Our website (www.dtv.gov) was expanded and now provides an extensive amount of information and answers to consumers' frequently asked questions regarding the DTV transition. We conducted a pilot public service advertising project, placing DTV transition awareness ads in Washington, DC, Metro stations and on buses, and are exploring the possibility of conducting transit ad programs in other cities. We also developed an outreach toolkit that can be used by local governments and community organizations. In addition, we created a new DTV publication and updated existing materials to reflect recent developments, including the congressionally mandated digital-to-analog converter box coupon program.⁸² The Commission also maintains a "Consumer Information Registry" and sends subscribers of this service updates on DTV and other telecommunications topics, as warranted.

65. We also continue to monitor industry efforts to educate consumers about the digital transition. We seek information about the efforts of various industry segments, including broadcasters, MVPDs, other video programmers, retailers, and manufacturers, to educate consumers about DTV services and equipment. Have these programs resulted in higher consumer familiarity with DTV in general and HDTV specifically? We seek data regarding consumers' awareness of the DTV transition, including consumer survey results. Do consumers rely on information from the government, consumer electronics retailers, news programming, broadcasters, other video program distributors and producers or others? What type of education effort is currently going on in retail stores? How successful have retailers' education efforts been? Do these efforts correlate to increased DTV equipment sales? How are broadcasters and MVPDs advertising or promoting DTV/HDTV beyond the text indicating that a program is being simulcast in HDTV? To what extent is broadcast advertising time being used to promote DTV/HDTV? How much advertising of DTV/HDTV is there on programming carried by cable operators or other MVPDs? Do newspaper or other television guide listings indicate when programming is available in HDTV format?

66. *Multicasting and Datacasting:* Multicasting is the process by which multiple streams of digital television programming are transmitted at the same time over a single broadcast channel. We seek information on the types of services and content that broadcasters are transmitting using multicasting. In addition, we seek information on whether multicasting is limited to large markets, or if stations in small- and medium-sized markets are multicasting. How much multicast programming is locally produced or locally focused? To what extent is the provision of multicast service dependent upon its carriage by cable and other MVPD operators? In how many markets are cable operators and other MVPDs carrying broadcasters' multicast programming, and which markets are they?

67. DTV also allows broadcasters to use part of their digital bandwidth for subscription multichannel video programming services and datacasting. These services can be provided simultaneously with HD or SD digital programming and can provide delivery of virtually any type of data, audio, or video, including text, graphics, software, web pages, video-on-demand,⁸³ and niche

⁸¹ 2005 Report, 21 FCC Rcd at 2553 ¶ 98.

⁸² Publications are available to consumers at the point of sale, through our Web site, by phone, e-mail, written and fax request, and are distributed at public meetings and events. Both publications and web information are available in Spanish.

⁸³ Video-on-demand via over-the-air broadcast signals may be provided several ways. It may use a model similar to that contemplated by DBS where VOD programming is broadcast and then stored in a local DVR. With the addition (continued....)

programming.⁸⁴ In the past, we have reported that the firm USDTV employs available DTV capacity from multiple broadcasters in a market to offer an MVPD service.⁸⁵ How many TV households subscribe to these services, what markets have access to these services, and what is their expected growth over the next several years? We further request information on how broadcasters are using datacasting to deliver services and content to viewers. What kinds of revenues are being obtained from the offering of these non-broadcast services? How many TV households subscribe to these services, and what is their expected growth over the next several years?

68. *DTV Equipment:* To receive DTV/HDTV programming over the air, a consumer must have an antenna capable of picking up the broadcast signal and a digital television receiver that includes a DTV tuner, or a separate set-top box containing a DTV tuner. In addition, a consumer also can have an analog television set with a digital set-top box that converts digital broadcast signals to analog signals. The Commission has adopted rules to phase in DTV tuner requirements for new television sets that would make over-the-air reception of broadcasters' DTV signals possible without the use of a separate box.⁸⁶

69. We previously reported that digital television adoption is occurring at a rate twice that of the adoption of color television.⁸⁷ We seek updated information on the adoption of the equipment needed to receive digital programming, either over the air or from an MVPD. Specifically, we request information on the total number of digital television displays, including HD-ready and Enhanced Definition (ED)-ready monitors, that have been shipped to retailers and how many have been sold to consumers. What is the average price of DTV sets in each available size? How many of these digital television sets, both shipped and sold, include over-the-air DTV tuners? How many set-top, over-the-air DTV tuners have manufacturers shipped to retailers, and how many of these tuners have retailers sold to consumers? How many DBS receivers contain over-the-air DTV reception capabilities? How many cable set-top boxes include this capability? Tuner cards meeting the Advanced Television System Committee (ATSC) DTV standards may be used in personal computers to view programming on a desktop computer monitor. How many of these cards have been sold? For each of these types of DTV receivers, what is the generation of the underlying chipset, and has the availability of new generations of receivers affected the competitiveness of the incorporating products?

70. We also seek information on the development and availability of digital-to-analog converters that will allow digital TV broadcasts to be converted to analog for viewing on analog TV sets. On June 15, 2005, NAB and the Association for Maximum Service Television, Inc. (MSTV) announced a project in which they will pursue the development of a high-quality, low-cost digital-to-analog converter box for terrestrial DTV reception.⁸⁸ We seek an update on the development of such converter boxes.

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of an Internet connection, it is also possible to provide true VOD by using broadcast for the downstream transmission of video and an Internet connection for the comparatively low bandwidth control signals.

⁸⁴ *2005 Report*, 21 FCC Rcd at 2555-57 ¶¶ 105-108.

⁸⁵ *Id.* at 2556 ¶ 106. See also US Digital Television, Inc., at <http://www.usdtv.com>. USDTV filed for bankruptcy in July 2006. See John M. Higgins, *USDTV: Up From the Ashes*, BROADCASTING & CABLE, Aug. 21, 2006.

⁸⁶ See *Requirements for Digital Television Receiving Capability*, 20 FCC Rcd 11196 (2005) (advancing the date on which 100 percent of TV receivers with screen sizes 25"-36" must include DTV tuners to March 1, 2006). See also *Requirements for Digital Television Receiving Capability*, 20 FCC Rcd 18607 (2005) (advancing the date on which new television receivers with screen sizes 13"-24" and certain other receiving devices must include DTV tuners to March 1, 2007, and applying the DTV reception requirement to new receivers with screen sizes smaller than 13" on the same schedule).

⁸⁷ *2005 Report*, 21 FCC Rcd at 2557 ¶ 109 n.410.

⁸⁸ *Id.* at 2558 ¶ 112.

F. Wireless Cable Systems

71. Wireless cable systems use Broadband Radio Service (BRS) and Educational Broadband Service (EBS) in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers.⁸⁹ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have refocused their operations on providing two-way high-speed Internet access services.⁹⁰ Thus, wireless cable operators offer limited video distribution competition to incumbent cable operators.⁹¹ We seek information on existing wireless cable systems and the video and non-video services they offer. What factors have led wireless cable operators to move away from offering video services? Have issues concerning access to programming, bandwidth considerations, local regulatory considerations, or bundled service offerings affected these decisions?

G. Private Cable Operators

72. As we reported in 2005, PCOs, also known as satellite master antenna television (SMATV) operators, continue to serve a small number of MVPD subscribers, either through their own facilities or through partnership arrangements with DBS operators DIRECTV and EchoStar.⁹² We request information on the types of services offered by PCOs. We request information on the number of PCOs in the United States, the geographic areas they serve, and the identification and size of PCO companies. We also seek information on the business strategies they are pursuing to compete with larger MVPDs. How do the programming packages offered and the prices of such packages compare to those of incumbent cable operators? In 2002, the Commission made PCOs eligible for CARS licenses.⁹³ We seek comment on whether PCOs are using CARS licenses to provide additional competition to incumbent cable operators.

H. Commercial Mobile Radio Service Providers and Other Wireless Providers

73. In the *2005 Report*, we reported that major commercial mobile service providers, which have upgraded their networks, are now offering video services to cell phone subscribers.⁹⁴ We request updated information on the availability and deployment of mobile television services, including information on programming agreements between video programming networks and other content providers and cell phone companies. Specifically, how many mobile telephone users have access to, and subscribe to, such services? What equipment is needed to receive video over cellular, and what is the cost of equipment and service? In which markets is service available? We also are interested in any studies or surveys that explore the use of mobile video services as a complement to, or a substitute for, traditional

⁸⁹ The BRS and EBS services include the former multipoint distribution service (MDS) and instructional television fixed service (ITFS). Their designations and service rules were changed in 2004. *See Amendment of Parts 1, 21, 73, and 74 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165 (2004).

⁹⁰ *See 2005 Report*, 21 FCC Rcd at 2565 ¶ 131.

⁹¹ *Id.*

⁹² *Id.* at 2564 ¶ 130 (noting that PCO subscribership declined from 1.1 million in 2004 to one million in 2005).

⁹³ *Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service*, 17 FCC Rcd 9930 (2002).

⁹⁴ *2005 Report*, 21 FCC Rcd at 2566 ¶¶ 133-34.

video services.⁹⁵ Do current trends in mobile video suggest that we should consider mobile telephone providers that offer video programming to be MVPDs?

74. We also seek information on video distribution from other wireless devices that are not CMRS providers and on the viewing equipment, including iPods and personal digital assistants (PDAs), used to receive such programming. We seek information on the manner in which video content is delivered to these devices (*e.g.*, broadcast vs. Internet downloading). We seek information on how programmers are re-purposing traditional broadcast and non-broadcast programming for viewing on these devices, and if programmers are creating content specifically for these new devices.

I. Internet Video

75. Video streamed over the Internet is most viable when delivered over broadband networks. We seek updated information as to the quality of readily available streaming and downloadable video. In the *2005 Report*, we found that downloadable video is available on the websites of broadcast and non-broadcast network programmers and independent producers of video content.⁹⁶ Numerous online services allow users to download content to a computer hard drive for viewing on a personal computer, television, or mobile video device. We again seek information on the types of video services offered over the Internet in both real time and downloadable format, and we request comment on its quality relative to traditional video program distribution. We also seek projections of whether Internet video will become a viable competitor in the market for the delivery of video programming and, if so, when such competition will emerge.⁹⁷ In the *2005 Report*, we noted that some companies are offering, or are planning to offer, content distribution via the web for independent content producers.⁹⁸ We identified DaveTV, Brightcove, and Wi-FiTV as companies that provide an Internet-based distribution interface for content producers of all sizes. We also note the entry of Virtual Digital Cable which provides content distribution via the web.⁹⁹ We seek comment on these and other companies providing similar services.

J. Home Video Sales and Rentals

76. We have considered home video sales and rentals as part of the video marketplace because they offer services similar to premium, pay-per-view, and VOD programming services.¹⁰⁰ We seek information regarding the home video sales and rental market, including data on the number or percentage of households with videocassette recorders and DVD players. DVD sales have grown significantly and appear to have supplanted VHS as the preferred format for stored video media. We request information on the amount of programming available in DVD and VHS formats, for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, and VOD offered by

⁹⁵ See, *e.g.*, Li Yuan, *The Small Picture; Are Consumers Ready to Watch TV on Their Cellphones? We'll Find Out Pretty Soon*, WALL STREET JOURNAL, Apr. 3, 2006.

⁹⁶ *2005 Report*, 21 FCC Rcd at 2568 ¶ 139. See also Brooks Barnes, *Disney Will Offer Many TV Shows Free on the Web*, THE WALL STREET JOURNAL, Apr. 10, 2006; Brooks Barnes and Brian Steinberg, *Disney's Web Move Shakes Up Decades-Old TV Model*, THE WALL STREET JOURNAL, Apr. 11, 2006.

⁹⁷ Yuki Noguchi, *Online TV: This Is A Test*, THE WASHINGTON POST, Apr. 11, 2006.

⁹⁸ *2005 Report*, 21 FCC Rcd at 2568 ¶ 139.

⁹⁹ See VDC, Inc., at http://blog.vdc.com/vdc/press_releases/index.html. VDC launched on April 10, 2006. VDC debuted with 15 channels and plans to add additional channels over time. VDC streams content using Microsoft Media Player without the need for additional boxes or software. VDC is available to consumers who have access to a high-speed broadband Internet connection. VDC also can be used from any Windows-powered personal digital assistant (PDA) or Smartphone.

¹⁰⁰ See *2005 Report*, 21 FCC Rcd at 2569 ¶ 140.

MVPDs. We also seek information on Internet-based video sales and rental services and the effect, if any, they have on video distributors' service offerings, such as VOD and pay-per-view.

K. Advanced Services

77. Last year, we detailed the efforts of MVPDs to offer advanced services to subscribers. Advanced services supplement most operators' video programming and leverage the distribution system to its greatest extent. For example, in addition to video services, cable operators are using their cable plant to offer subscribers cable modem service and telephony. As we reported, MVPDs are offering some of these advanced services on a stand-alone basis, but more often, they are combining them with video packages to offer a bundle of services to their subscribers. Since we began reporting on advanced services, we have found that they comprise an increasing percentage of total revenue for some MVPDs.

78. We seek information on advanced service offerings by cable operators, DBS operators, and other wireline and wireless MVPDs. We seek information on video-on-demand, digital video recorders, high-speed Internet service, telephony, and HDTV. We request information on the advanced service offerings of small and mid-sized cable systems and LECs, as well as for the largest MSOs and DBS operators. We request that commenters provide subscribership statistics and information for each type of service; the subscription cost of each service; and the equipment necessary to receive each type of service. We also request information on how MVPDs bundle services and on how the ability to bundle services affects competition.

- Video-on-Demand: We seek information on MVPDs that currently provide, or plan to provide, video-on-demand. VOD allows subscribers to order video programming from a central server at any time of day, and to fast-forward, rewind, and pause the programming. What types of VOD programming are available? Do the offerings constitute "reruns" of generally available programming? Are there types of programming produced especially for VOD and what percentage of VOD content do these programs represent? How much VOD content is local? To what extent is VOD programming available on a subscription basis as opposed to a program basis? What types of services are MVPDs offering in this manner and how much do they cost? What percentage of VOD content is offered without charge? What percentage of subscribers access VOD content? What percentage of VOD content is exclusive to any one video distributor? Are MVPDs selling their original VOD programming to others? Have MVPDs foreclosed competitors' attempts to obtain VOD programming due to exclusive distribution contracts for that programming? Typically, how much capacity is dedicated to delivering VOD services?
- Digital Video Recorders (DVRs): DVR service allows subscribers to record programs onto a hard drive located in a set-top box, which can then be played back at any time. DVR features include fast-forward, rewind, and the ability to pause live television. We seek information on MVPDs that currently provide or plan to provide DVR service. What percentage of subscribers has access to operator-supplied DVRs, and what percentage of those subscribers opts for the service? What percentage of television households use a DVR not supplied by an MVPD? We seek information on the types of DVR offered, including single tuner or dual tuner set-top boxes, and the storage capacity of the devices. With respect to cable operators, is the service offered in conjunction with digital service or is there a fee in addition to digital service? With respect to DBS, what developments have occurred to enable DBS providers to offer VOD type functionality using digital video recorders? What percentage of the DVR set-top boxes are leased as opposed to purchased by the subscriber? Are the boxes branded by the MVPD or by a third party? What relationships do MVPDs have with third party developers of stand-alone DVR equipment, such as TiVO? How do strategic and co-marketing relationships between MVPDs and DVR manufacturers affect competition in the video programming market? To what extent will consumer uptake of DVRs affect consumer

demand for VOD? Lastly, we seek information on MVPDs' plans to offer a network-based or centralized DVR-like service.¹⁰¹

- **High-speed Internet Access:** What percentage of MVPD subscribers also subscribe to the provider's Internet access service? What percentage of Internet access service subscribers are not video subscribers? We seek information on how the service is priced, whether there are different prices for different speeds, and whether subscribers receive pricing discounts if they subscribe to both video services and broadband Internet access service. Are MVPDs that offer Internet access service giving subscribers a choice of Internet service providers? Has any MVPD offering high-speed Internet service blocked access to certain kinds of Internet content or applications and, if so, what kind? With respect to DBS, we seek information on the status of current and future plans regarding both satellite-delivered high-speed Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by fixed satellite systems (FSS), DTH, and DBS providers. How many consumers subscribe to each type of service and how much do the services cost? We seek comment on the extent to which DBS providers are offering packages in conjunction with other companies, such as co-marketing arrangements with LECs.
- **Voice over Internet Protocol (VoIP):** Many cable operators appear to be adopting VoIP as the platform for their telephony offerings, although some continue to provide telephone service using circuit switched technology. At the end of June 2005, there were 1.2 million subscribers to cable's VoIP service.¹⁰² We seek information on the latest development and deployment of VoIP; the manner in which VoIP service is being marketed to subscribers (e.g., as part of bundled services); and whether discounts are offered to subscribers who subscribe to a package containing VoIP and other advanced services along with video service. In how many markets do MVPDs provide switched circuit telephony, and where are they? To what extent are MVPDs phasing out switched circuit telephony? To what extent do cable operators offer telephony service for low-income households, similar to basic dialtone service or so-called plain old telephone service (POTS)? We also seek information on the extent to which these cable telephony services include 911 or E-911 service and battery back-up systems.

L. Technical Issues

79. Technological developments have important consequences for the state of video competition. We will report on regulatory and market developments in this area and how they may affect the manner and state of competition. We seek comment and data on a range of developments related to consumer equipment, navigation devices, the Open Cable Application Platform (OCAP), PacketCable, CableCARDs, advanced compression techniques, technical standards, and home networking.

80. *Consumer Equipment:* We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. We request information on the number of households that currently have analog television sets and the number of those television sets that are connected to an external set-top box that allows for the provision of various MVPD services. We request information on the number of these set-top boxes that only provide analog services and the number that provide different types of digital service, *i.e.*, those that decode and display

¹⁰¹ See, e.g., *Cablevision to Test Network DVR*, CNET, Mar. 27, 2006; Matt Stump, *Cablevision Thinks Outside the Box*, MULTICHANNEL NEWS, Mar. 27, 2006.

¹⁰² *2005 Report*, 21 FCC Rcd at 2535 ¶ 66.

high definition signals, those that decode high definition signals but display all signals only in standard definition digital or analog formats, and those that display and decode only standard definition signals. In addition, we are interested in how many digital set-top boxes are capable of tuning and delivering analog cable channels to attached televisions. Similarly, we request information on the number of households that have digital television sets and the number of those sets that are connected to set-top boxes for each type of service provided by such boxes. How many of these MVPD set-top boxes also contain cable modems or IP telephony interfaces and how are such modems or interfaces priced? How many contain DVR capabilities and how are these services priced? How many contain home networking capabilities? How many are capable of providing video programming on an a la carte basis and is any video programming provider offering this service?

81. *Navigation Devices*: We also seek information on the retail availability of navigation devices to consumers.¹⁰³ How many such devices have been sold? What are the obstacles to equipment manufacturers and others for 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 customer premises equipment? How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market? We request information on the development and deployment of electronic programming guides (EPGs), including the number and type of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute EPGs. What relationships or partnerships exist between video providers and developers of EPGs? To what extent are MVPD-affiliated EPGs available to competitors? Do exclusive agreements covering EPGs affect competition in the video programming market? To what extent do video programming subscribers have access to EPGs that are unaffiliated with their video provider? In 2003, the Commission adopted technical, labeling and encoding rules to permit television sets to be built with “plug-and-play” functionality for one-way digital cable services.¹⁰⁴ We request information on how many products are currently available with plug-and-play functionality, or are soon to be available.

82. *Open Cable Application Platform*:¹⁰⁵ The *2005 Report* discussed the development and deployment of CableLabs’ Open Cable Application Platform (OCAP) middleware solution in 2005.¹⁰⁶

¹⁰³ Under the Commission’s navigation rules, video programming distributors (except DBS providers) 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. To ensure the competitiveness of separated security, the Commission determined that by July 1, 2007, 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*, 20 FCC Rcd 6794 (2005) (*Navigation Second Report and Order*). See also *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices* 18 FCC Rcd 20885 (2003) (*2003 Navigation Devices Second Report and Order and FNPRM*). See also 47 C.F.R. § 76.1204 (a)(1).

¹⁰⁴ *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003).

¹⁰⁵ 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*).

¹⁰⁶ Middleware is a term of art for software that acts as an interpretation layer between the operating system and specific devices of a piece of hardware and software. OCAP is related to the more familiar Java platform developed by SUN Microsystems. For each operating system (such as Microsoft Windows or Apple Mac OS), a version of the Java Virtual Machine must be adapted. Once this is done, any program written in Java will run properly. Once OCAP has been tested and certified on a platform (or set-top box, television, or other consumer electronics device), (continued....)

We seek updated information on developments since our last report, including information on which manufacturers are incorporating OCAP into their products, the number of OCAP compliant products that have been deployed, and how many are in use by subscribers today. What percentage of cable subscribers are able to use OCAP-compliant devices today? When do MSOs plan to deploy OCAP compliant devices? What types of applications exist for OCAP? Do smaller cable systems have plans to deploy OCAP compliant devices and, if so, how will they do it? In January 2006, several MSOs announced they would begin trials of OCAP in select markets: Comcast in Philadelphia, Denver, Boston, and Union, New Jersey; Time Warner in New York, Milwaukee, Green Bay, Lincoln, and Waco; and Advance/Newhouse in Indianapolis. In addition, Cox, Cablevision, and Charter made similar announcements, but did not specify the markets where the trials would occur.¹⁰⁷ We seek information on the results of these trials and whether they are expected to lead to commercial implementations and, if so, when. OCAP is also expected to facilitate bi-directional services and interactive television (ITV) applications and services.¹⁰⁸ We request information on industry developments in this area. Last year, we reported that the Consumer Electronics Association and the National Cable & Telecommunications Association agreed to incorporate support for OCAP in interactive Digital Cable Ready (iDCR) devices. We seek updated information on the state of that agreement and any technical issues that remain.¹⁰⁹

83. *PacketCable*: In the *2005 Report*, we discussed PacketCable, another CableLabs project, which is the specification standard developed for the delivery of advanced real-time multimedia services over two-way cable plant.¹¹⁰ PacketCable uses IP technology to enable a wide range of services, including IP telephony, multimedia conferencing, interactive gaming, and general multimedia applications. We previously reported that CableLabs had certified 35 PacketCable-embedded multimedia terminal adapter devices and 31 DOCSIS certified modems with PacketCable capabilities. For the 2006 Report, we solicit updated information on the PacketCable project.

84. *CableCARDS*: CableCARDS permit the reception of secured digital cable services without the addition of a set-top box.¹¹¹ As we reported in 2005, the 10 largest MSOs have deployed CableCARDS to more than 90,000 subscribers.¹¹² We seek updated information on the number of CableCARDS operators have placed in service. We also seek information on the manner in which subscribers must obtain a CableCARD, whether operators require professional installation of the card, and any subscription charges or one-time fees associated with installing or authorizing the CableCARD. What is the monthly price, if any, for a CableCARD? What problems have MVPDs or consumers encountered with CableCARDS and how have they been resolved? Cable operators continue to develop

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application developers, including the MSOs themselves, may write a single version of their application and test it on one OCAP implementation and be assured it will run on all OCAP implementations.

¹⁰⁷ CableLabs, *Cable Television Industry Voices Support for OCAP and Two-Way Digital Cable-Ready Product Deployments* (press release), Jan. 11, 2006.

¹⁰⁸ Interactive television (ITV) is a service that supports subscriber-initiated choices or actions that are related to one or more video programming streams.

¹⁰⁹ *2005 Report*, 21 FCC Rcd at 2600 ¶ 216. See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 20 FCC Rcd 20404 (2005).

¹¹⁰ *2005 Report*, 21 FCC Rcd 2608-9 ¶ 235.

¹¹¹ At present, CableCARDS support only one-way transmission of the cable signal from the cable operator to the television. In 2003, the Commission adopted technical, labeling, and encoding rules to permit television sets to be built with “plug-and-play” functionality for one-way digital cable services. *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003).

¹¹² *2005 Report*, 21 FCC Rcd 2598 ¶ 211.

multi-stream and two-way CableCARDs. We seek information on the status of this development and the impact it has on the competitive marketplace for digital cable-ready receivers, including DVRs.¹¹³ In addition, we seek information on the compatibility of devices that depend on CableCARDs that are connected to systems using switched video. In 2005, we reported that consumers currently need a set-top box to receive two-way services (e.g., VOD, pay per view (PPV)), but that efforts were underway to develop two-way digital televisions, which will permit full-featured interactivity without a set-top box.¹¹⁴ We request updated information on these efforts.

85. In March 2005, the Commission issued a *Second Report and Order* maintaining the ban on cable operator deployment of integrated set-top boxes but deferring the effective date of the ban by 12 months from July 2006 to July 2007.¹¹⁵ The Commission extended the date of the integration ban in part to allow the development of a downloadable conditional access system. Downloadable conditional access relies upon development of a common platform consisting of hardware and/or software capable of securely downloading software from any cable operator that will then mimic the cable operator's existing hardware-based conditional access.¹¹⁶ Under this concept, if a subscriber removes the set-top box and uses it with a different cable operator, the new cable operator can download a new security system compatible with its conditional access system and erase the previous software-based conditional access code. We note that, on November 30, 2005, NCTA submitted to the Commission the required downloadable security report, which contained a detailed timeline for the development and deployment of downloadable conditional access.¹¹⁷ NCTA stated that it expected cable operators nationwide to deploy downloadable conditional access by July 1, 2008.¹¹⁸ We request updated information on any deployments that have taken place.

86. Digital content protection technology seeks to prevent the unauthorized copying and redistribution of digital media, which is susceptible to piracy because an unlimited number of high quality copies can be made and distributed in violation of copyright laws. The absence of adequate content

¹¹³ Multi-stream unidirectional CableCARDs will permit the development of multi-tuner DVRs without requiring the use of multiple CableCARDs to access each stream. *2005 Report*, 21 FCC Rcd at 2598 ¶ 211.

¹¹⁴ *Id.*

¹¹⁵ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794 (2005) (*Second Report and Order*). See also *Charter Communications Inc. v. FCC*, No. 05-1237 (D.C. Cir. Aug. 18, 2006) (affirming the Commission's decision). "Integrated" set-top boxes are those that have not separated conditional access and security functions from the tuning, navigation, and other features of the box. To ensure cable compliance with the third-party compatibility requirements of separated security, the Commission has determined that cable operators must rely on separated security as of July 1, 2007, and may not integrate set-top box functionality and security after that date. In addition, the Commission required the cable industry to report to the Commission no later than December 1, 2005 regarding the feasibility of a downloadable security solution. On November 30, 2005, NCTA submitted to the Commission the required downloadable security report, providing a timeline for the development and deployment of downloadable conditional access and stating that it expected cable operators nationwide to deploy downloadable conditional access by July 1, 2008. See Letter from Daniel L. Brenner, Senior Vice President for NCTA, to Marlene H. Dortch, Secretary, FCC, CS Docket 97-80 (Nov. 30, 2005) (Brenner Letter). Comments and reply comments on NCTA's report were accepted January 20, 2006 and February 6, 2006, respectively. See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 20 FCC Rcd 20404 (2005). The proceeding is pending.

¹¹⁶ For a description of demonstrations of downloadable conditional access functions, see *2005 Report*, 21 FCC Rcd at 2599 ¶ 212.

¹¹⁷ Brenner Letter, n.115 *supra*.

¹¹⁸ *Id.*

protection schemes may serve as a disincentive for content providers to permit distributors to carry certain digital programming and for consumers to invest in digital equipment and technologies. We seek comment on what content protection technologies are now available, how they work, and what legal or marketplace impediments have affected the roll-out of such tools. What technologies have consumer electronic manufacturers included in their set-top boxes or other devices designed to receive and display digital programming? What types of content protection requirements have video program networks negotiated with MVPDs to secure distribution of digital media? What types of content protection technologies are MVPDs using to secure on-demand digital media or programming made available through DVRs? What is the relationship between content protection technologies and the availability of digital navigation devices for sale at retail establishments? We seek comment on what security measures are in use by IP-based technology providers, and the effect of the choice of such security measures on competition. We also invite comment on how the Commission can encourage the development of digital rights management technology that will promote consumer uses of, and access to, high value digital content.

87. *Advanced Compression Techniques:* In the *2005 Report*, we noted that MVPDs have been adopting advanced video compression technologies (codecs) such as MPEG-4/H.264 (also known as AVC)¹¹⁹ and Microsoft's VC-1 (formerly Windows Media 9/VC-9).¹²⁰ The use of advanced codecs can significantly decrease the amount of bandwidth required to transmit digital video.¹²¹ For example, in 2005, DIRECTV began transitioning to AVC, which will allow it to provide HD channels nationwide by 2007.¹²² We request updates on MVPDs' implementation of advanced codecs. We are particularly interested in examples of how the implementation of advanced codecs has increased efficiency or created specific benefits flowing to subscribers.

88. *Technical Standards:* We seek information on the effect that technical rules and standards have on the market for video programming services. Are there specific actions with respect to the establishment of technical rules and standards that the Commission may take to foster greater competition among video service providers? Do current technical rules and standards related to the provision of video services, such as the "plug-and-play" standards, provide a level playing field among competitors in the video delivery marketplace?¹²³ We seek comment on this and other technical standards.

89. *Home Networking:* Home networking allows consumers to connect multiple devices in the consumer's home (e.g., set-top boxes, television sets, personal computers) to a central processing device (e.g., set-top box, cable modem). As we reported in the *2005 Report*, the most common application for home networking is to connect multiple PCs to cable modems. Within the context of video competition, home networks also may be used to transmit video, such as downloaded VOD movies

¹¹⁹ MPEG-4 is an International Standards Organization/International Engineering Consortium standard developed by the Moving Pictures Experts Group (MPEG). H.264 is an annex to the MPEG-4 standard. See MPEG Industry Forum, at <http://www.m4if.org/mpeg4>.

¹²⁰ VC-1 is a standard developed by Microsoft, Inc., and is also known as Windows Media Video 9 (WMV 9). See Microsoft Windows Media, at [http://www.microsoft.com/windows/windows media/default.aspx](http://www.microsoft.com/windows/windows%20media/default.aspx).

¹²¹ *2005 Report*, 21 FCC Rcd at 2605 ¶ 229.

¹²² The DIRECTV Group, Inc., *DIRECTV Transmits High-Definition Local Channels in New MPEG-4 Transmission Standard in Los Angeles* (press release), Dec. 12, 2005; The DIRECTV Group, Inc., *DIRECTV Demonstrates World's First Live MPEG-4 HD Transmission Via Satellite; Advanced Transmission and Compression Technology Will Support Massive Expansion of Programming* (press release), Jan. 6, 2005.

¹²³ *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003).

or video recorded on a DVR, between devices and locations.¹²⁴ We seek information on industry developments with respect to the creation of specifications and standards to support the wider introduction of home networks by MVPDs.

M. Foreign Markets

90. In previous reports, we have examined foreign markets because developments in other countries can lend insight into the nature of competition in the United States and the relative efficiency of market structures and regulations within our nation. In the *2005 Report*, we examined IPTV over DSL in a number of foreign markets. We seek current information and case studies on video delivery in foreign markets. Specifically, we seek data regarding the differences between the United States and other national markets in the distribution of video programming, including developments in pricing and packaging of programming, such as a la carte offerings; developments in VoIP; the digital television transition; and broadcast, cable, and satellite competition. We seek information regarding adoption rates for these video distribution platforms, the technology platforms that are proving successful, and the regulatory models associated with increased levels of competition. We seek input from video distributors operating both in the United States and in foreign markets. How do different regulatory approaches affect their business models?

III. PROCEDURAL MATTERS

91. *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, 47 U.S.C. §§ 154(i), 154(j), 403, and 548(g).

92. *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).

93. 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 the Notice of Inquiry, MB Docket No. 06-189 on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov,

¹²⁴ An example of a home networking device is the Slingbox. The Slingbox is a device that connects to a television set, cable set-top box, satellite dish receiver, or digital video recorder and an Internet cable modem or DSL router. Using software installed on a personal computer or laptop, Slingbox allows a user to watch and control their television viewing from any location using an Internet connection. The Slingbox streams the programming in real time to the user's location. *See* Sling Media, at <http://www.slingmedia.com>.

and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

- *Paper Filers:* 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, filers 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). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 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, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, DC 20554.
- In addition, parties must serve the following with either an electronic copy via e-mail or a paper copy of each pleading: (1) the Commission’s duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail at www.bcpweb.com; (2) Marcia Glauber, Media Bureau, 445 12th Street, S.W., Room 2-C264, Marcia.Glauber@fcc.gov; and (3) Anne Levine, Media Bureau, 445 12th Street, S.W., Room 2-A864, Anne.Levine@fcc.gov.

94. *People with Disabilities:* Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

95. The Media Bureau contacts for this proceeding are Marcia Glauber and Anne Levine at (202) 418-2330.

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* (MB Docket No. 06-189)

We all want the market for video programming to be competitive. Not for the sake of competition, but because competition is the surest road for bringing real benefits to consumers. When they have more options, consumers reap big rewards—better services, higher technology and, very importantly, lower prices.

There is enormous potential for increased competition in the video programming market. We are seeing large investments from existing participants in the marketplace and also from telephone company entrants and others that are expanding their efforts to deliver video programming. We are seeing new technologies that have the potential to utterly transform the viewing experience. Getting these new products and services out to all Americans is going to be a challenge, however, so we need to be working toward the kind of competition that leaves no area behind, whether it's the inner city or the rural farm. We should also work to ensure that competition expands consumer options. While consumers have access to more channels than ever before, it does not follow that they have the power to reject objectionable programming or keep at bay rates that are rising at 2-½ times the rate of inflation. Different interests cite different reasons for these problems, but we owe it to consumers and to Congress to get to the bottom of these questions in the Report that will follow from today's Notice of Inquiry.

If we are going to continue to improve these Reports, we need the submission of detailed comments from the widest possible range of sources. Our analysis can be only as good as the data going into it. If the record that develops falls short in any way, the Commission must then rely upon other public data to round out the picture of competition in the video programming marketplace. My preferred method would entail, in addition to the submitted comments and public data, intensive and proactive Commission information-gathering to obtain independent and verified data. Such an effort would help ensure the accuracy of our findings and help us to fulfill Congress' directive.

So thanks to the Bureau for its work in teeing this up and my hope is that this thirteenth Report will be the charm.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (MB Docket No. 06-189)

I am pleased to support this Notice of Inquiry because it not only complies with our statutory obligation to “annually report to Congress on the status of competition in the market for the delivery of video programming,” but it also should provide this Commission the data and information necessary to perform an objective analysis of the myriad issues involving competitive entry, distribution, programming and the consumer experience in the video marketplace.

The market for the delivery of video programming has experienced significant changes since the 2005 Report, and it is important for the Commission to assess the impact of these developments. For instance, fifteen states – California, Texas, New Jersey, Virginia, Indiana, Arizona, Kansas, North Carolina, South Carolina, Kentucky, Connecticut, Vermont, New Hampshire, Alaska and Hawaii – have either passed video franchise legislation to facilitate competitive entry or mandated state franchise terms. Reportedly, AT&T has video franchising relief for more than 50 percent of its lines, and Verizon has regulatory relief for approximately 40 percent of its lines. These are indeed very positive developments. The Commission should analyze how these and other regulatory, technological, and marketplace changes have impacted competitive entry, price competition, programming choices, quality of service and the introduction of advanced services.

In the past, I have expressed concern with the analytical depth of some of the information that the Commission has presented. I voted to approve the 2005 Report because it was a promising improvement over previous years, as it attempted to provide at least a semblance of thoughtful analysis. Today’s notice, which seeks information for the 2006 Report, is a comprehensive and appropriate way to start. It contains meaningful questions which, if answered fully, would be useful for the Commission, the Congress and the public. We should again strive to make sure that we are doing all that an expert agency can to grasp and relay to Congress the dynamic aspects of the video programming delivery market.

Given the technological transformations upon us, it is more important than ever that the Commission gather the necessary information on which we and the Congress can make appropriate policy determinations.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (MB Docket No. 06-189)

I am pleased to support this Notice, which posits a comprehensive set of questions about the state of competition in the market for the delivery of video programming. The data, analyses and comments sought by the Notice will inform our policy determinations in the media sector and in several other areas, as emerging technologies continue to develop and new entrants from related industries continue to offer new video services to consumers. Last year's report found that strong competition in the MVPD market provided consumers with the benefits of greater choice in providers, better picture quality and technological innovations that enable more control over when and how they receive video programming and information. But, of course, there is plenty of room for more competition in this sector. I look forward to the results of this year's inquiry and thank the Media Bureau for their work on this Notice.