

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

In the Matter of )  
Annual Assessment of the Status of ) MB Docket No. 07-269  
Competition in the Market for the )  
Delivery of Video Programming )

## NOTICE OF INQUIRY

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**Reply Comment Date: March 27, 2009**

By the Commission: Commissioners Tate and McDowell issuing separate statements.

## TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION .....	1
II. MATTERS ON WHICH COMMENT IS REQUESTED .....	4
A. Competition in the Market for the Delivery of Video Programming.....	4
B. Cable Television Service .....	29
C. Direct-to-Home Satellite Services.....	41
D. Other Wireline Service Providers .....	49
1. Local Exchange Carriers .....	49
2. Broadband Service Providers .....	53
3. Open Video System Operators .....	54
4. Electric and Gas Utilities .....	55
E. Broadcast Television Service.....	56
F. Wireless Cable Systems .....	72
G. Private Cable Operators .....	73
H. Commercial Mobile Radio Service Providers and Other Wireless Providers.....	74
I. Web-Based Internet Video.....	77
J. Advanced Services.....	79
K. Technical Issues .....	81
L. Foreign Markets .....	91
III. PROCEDURAL MATTERS .....	92

## I. INTRODUCTION

1. This *Notice of Inquiry* (“*Notice*”) solicits data and information for the Commission’s 14<sup>th</sup> annual report (“2007 Report”).<sup>1</sup> Congress imposed an annual reporting requirement on the Commission in the Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”)<sup>2</sup> as a means of obtaining information on “the status of competition in the market for the delivery of video programming.” In this *Notice*, we request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the marketplace in the last year, prospects for new entrants, factors that have facilitated or impeded competition, and the effect these factors are having on consumers’ access to video programming.<sup>3</sup>

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. In addition, we seek information on video programming distributed over the Internet and via Internet Protocol (“IP”) networks. 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, 2007.

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. To the extent necessary, we expect to do so again in compiling the 2007 Report. 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

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<sup>1</sup> 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 purposes of this Report to Congress.

<sup>2</sup> Pub. L. No. 102-385, 106 Stat 1460 (1992) (“1992 Cable Act”).

<sup>3</sup> Section 628(g) of the Communications Act of 1934, as amended (“the Act”) requires the Commission to report annually on the status of competition in the video marketplace. See Communications Act of 1934, as amended § 628(g), 47 U.S.C. § 548(g). The Commission’s previous reports appear at: *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 9 FCC Rcd 7442 (1994) (“1994 Report”); 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”); 21 FCC Rcd 2503 (2006) (“2005 Report”). The 2006 Report is forthcoming.

receive complete and accurate information directly from industry sources, as well as from non-industry sources.

## 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;<sup>4</sup>
- 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 (“PPV”), and video-on-demand (“VOD”);
- for noncable MVPDs, the number of subscribers and penetration rates for each available programming tier, a la carte services, PPV, and VOD;
- how such cable penetration/subscription rate numbers were derived, and whether the party providing the data considers it a representative sample of the overall cable industry;
- 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.

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

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.<sup>5</sup> 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. Furthermore, 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 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.<sup>6</sup> 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. 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. We seek comment on the benefits for consumers of head-to-head 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?<sup>7</sup> Commission data indicate that the average monthly rate cable subscribers are charged for the combined basic and CPST service tiers rose approximately 93 percent since the period immediately prior to Congress's enactment of the Telecommunications Act of 1996.<sup>8</sup> Indeed, the cost of the CPST rose more than 6 percent or twice the rate of inflation between 2004 and 2005.<sup>9</sup> Commission data indicate that the average number of channels offered on the combined basic and CPST service tiers rose from 43.6 to 70.5 between 1995 and 2005.<sup>10</sup> 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 options 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.<sup>11</sup> To evaluate substitution between MVPD technologies, we seek data on the relative prices

<sup>5</sup> See, e.g., 2005 Report, 21 FCC Rcd at 2506 ¶ 5.

<sup>6</sup> An overbuilder is an MVPD that builds a second cable system "over" one that already exists.

<sup>7</sup> 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*, 21 FCC Rcd 15087, 15090 ¶ 10 (2005) ("2005 Price Survey").

<sup>8</sup> See 2005 Price Survey, 21 FCC Rcd at 15087 ¶ 2.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* at 15111 Attachment 10. In 2006, the average U.S. home received 104.2 channels, and the average household tuned to 15.7, or 15.1 percent of the 104.2 channels available. The Nielsen Company, *Average U.S. Home Now Receives A Record 104.2 TV Channels* (press release), Mar. 19, 2007.

<sup>11</sup> See 2005 Price Survey, 21 FCC Rcd 15087 at ¶ 2 ("Prices are 17 percent lower where wireline cable competition is present. DBS competition, however, does not appear to constrain cable prices – average prices are the same as or slightly higher in communities where DBS was the basis for a finding of effective competition than in noncompetitive communities.").

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?<sup>12</sup> 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 cable and DBS. We also request information on the number of customers switching from one technology to another and the factors responsible for consumers' decisions 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?<sup>13</sup> 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. 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? We seek comment on specific actions that the Commission may take to reduce barriers to competition in the video marketplace and increase consumer choice. The Commission has observed that, for many participants in the marketplace, the ability to offer video to consumers and the ability to deploy broadband networks rapidly are intrinsically linked.<sup>14</sup> 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? We seek comment on what modifications, if any, are needed to pertinent regulations or statutes to foster competition in the deployment of broadband networks and the provision of video services.

10. In particular, we seek comment on franchising and other local and state regulations and their effect on competition in the video marketplace. What is the impact of the local franchise process on new providers' entry into local markets? The Commission recently adopted a new regulatory regime for local

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<sup>12</sup> For example, Cox Communications reports that it is facing aggressive video competition from satellite and LECs, but is still experiencing strong growth, in part because of its bundled service offerings. Cox reports that some video customers are returning to Cox services after subscribing to a competitor. See Cox Communications, *Cox Answers the Phone and Says "Hello" to Continued Growth, Cox Sees Record Year-Over-Year Gains in Phone Subscribers* (press release), May 1, 2007; see also Cox Communications, *A Decade of Bundling Delivers Cox Communications Considerable Competitive Advantages* (press release), Jan. 30, 2007.

<sup>13</sup> For example, DIRECTV has an equipment lease program. See DIRECTV, at <http://www.directv.com/DTVAPP/global/moreInfo.jsp?productId=60169> (visited May 30, 2007).

<sup>14</sup> See, e.g., *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments ("MDU NPRM")*, 22 FCC Rcd 5935 ¶ 1 (2007). See also 47 U.S.C. § 521 (6) and 47 U.S.C. § 157, nt. (incorporating Section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (stating that the Commission shall promote competition in the local telecommunications market and shall remove barriers to infrastructure investment)).

franchising authorities (“LFAs”) intended to foster competitive entry into the video marketplace.<sup>15</sup> In the *Franchise Order*, the Commission concluded that the current operation of the franchising process constitutes an unreasonable barrier to entry that impedes the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment. The Commission found that drawn-out local negotiations with no time limits, unreasonable build-out requirements, unreasonable requests for “in-kind” payments that attempt to subvert the 5 percent cap on franchise fees, and unreasonable demands with respect to public, educational, and government access (or “PEG”) are examples of unreasonable refusals to award competitive franchises.<sup>16</sup> To what extent have the new franchise rules and procedures affected competitive entry into the video marketplace? Similarly, we note that a number of states have enacted franchising reform laws recently. How have these state laws facilitated or otherwise changed the prospects for new entrants into the field?

11. We also request comment on recent developments that affect or will affect the ability of MVPDs to compete, including their ability to gain access to programming networks, 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? In November 2007, the Commission adopted an *R&O and FNPRM* relating to the use of exclusive contracts for the provision of video services to multiple dwelling units (“MDUs”) or other real estate developments.<sup>17</sup> In the Order, the Commission prohibited the enforcement or execution of existing exclusivity clauses and the execution of new ones by MVPDs subject to Section 628 of the Act. In addition, the Commission in May 2007 took additional steps to eliminate barriers to competitive entry in MDUs and in multi-unit premises when a new entrant seeks to compete with an incumbent provider.<sup>18</sup> Specifically, the Commission clarified that (1) competitive video service providers must not be forced to cut through sheet rock to connect their cable wiring to cable home wiring inside a unit and (2) competing telephone companies must have access to the incumbent’s inside wire subloops in multi-unit premises at the terminal block to install service.

<sup>15</sup> 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, 22 FCC Rcd 5101 (2007) (“*Franchise Order and FNPRM*”). The Commission also initiated a further notice to examine how the findings in the *Franchise Order* have affected existing franchisees, and what local consumer protection and customer service standards should apply to new entrants. *Id.*

<sup>16</sup> *Franchise Order and FNPRM*, 22 FCC Rcd at 5111-12, 5149, 5150-57 ¶¶ 21-22, 105, 109. The *Franchise Order and FNPRM* has been challenged by local government groups. See *Alliance for Community Media v. FCC*, No. 07-3391 (6<sup>th</sup> Cir. filed April 3, 2007); *GMTC v. FCC*, No. 07-9518 (10<sup>th</sup> Cir. filed April 3, 2007); *National Association of Counties v. FCC*, No. 07-1985 (3d Cir. filed April 3, 2007); *National Association of Telecommunications Officers and Advisors v. FCC*, No. 071270 (4<sup>th</sup> Cir. filed April 3, 2007); *Tampa v. FCC*, No. 07-11464-D (11<sup>th</sup> Cir filed April 3, 2007). The challenges were consolidated in the 6<sup>th</sup> Circuit as *Alliance for Community Media, et al. v FCC*, No. 07-3391 (6<sup>th</sup> Cir. filed April 3, 2007).

<sup>17</sup> See *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Development*, 22 FCC Rcd 20235 (2007).

<sup>18</sup> See *Telecommunications Services Inside Wiring Customer Premises Equipment, Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, and Clarification of the Commission’s Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers’ Inside Wire Subloop*, 22 FCC Rcd 10640 (2007) (“*Inside Wiring*”).

12. *Programming Networks:* We request detailed information about nonbroadcast 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 ask MVPDs to identify any programming network that is carried by one or more of its systems. We seek information on existing, planned, 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. The number of international and foreign language networks carried by MVPDs has increased significantly in recent years.<sup>19</sup> Should these networks be counted in our total for the number of national networks and used for the calculation of the percent of networks that are vertically integrated, given that many are simply retransmissions of foreign broadcast stations or networks?<sup>20</sup> 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.

13. We ask for information on the number and ownership of national nonbroadcast networks. We also seek information about the proportion of national nonbroadcast networks that are vertically integrated with a cable operator. How does the counting of international networks, as discussed above, affect the calculation of the proportion of networks that are vertically integrated? We also seek to identify programming networks affiliated with broadcast 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 operators). Moreover, in order to assess trends in vertical integration, we solicit comment and information on the common ownership or affiliation among MVPDs, video programming networks, sports teams, and/or sports venues. We also seek information on the ownership of regional networks, in particular whether they are vertically integrated with cable operators, DBS operators, or other video distributors, including broadcasters. How many regional networks are delivered by satellite and how many are delivered terrestrially?

14. Furthermore, we seek information on several specific types of programming, including locally originated programming, children's programming, foreign language programming, and PEG 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 or obtain additional equipment in order to receive foreign language programming? We also seek comment regarding 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

<sup>19</sup> See Letter from Bradley K. Gillen, Counsel for EchoStar Satellite L.L.C., to Marlene H. Dortch, Secretary, FCC, Mar. 28, 2007 (Ex Parte Presentation in MB Docket No. 06-189).

<sup>20</sup> *Id.*

public interest obligations?<sup>21</sup> 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.

15. *Program Carriage Issues:* We seek comment on programmers' access to MVPDs' transmission systems and their ability to gain carriage. The Commission's program carriage rules prohibit a cable operator or other MVPD from requiring "a financial interest in any program service as a condition for carriage" of such service,<sup>22</sup> from coercing a programmer to grant "exclusive" carriage rights,<sup>23</sup> or from engaging in conduct that unreasonably restrains "the ability of an unaffiliated programming vendor to compete fairly" by discriminating against such vendor "on the basis of affiliation or nonaffiliation."<sup>24</sup> The Commission's rules also limit the number of channels that a vertically integrated cable operator may devote to programming networks in which it has an attributable interest ("Channel Occupancy Rules").<sup>25</sup> In addition to establishing rules governing program carriage, the Commission has established procedures for the review of program carriage complaints and has established appropriate penalties and remedies. These procedures generally provide for resolution of a complaint on the basis of a complaint, answer, and reply.<sup>26</sup>

16. We seek comment on the effectiveness of the program carriage and channel occupancy rules. Furthermore, 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. 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. The Commission imposed a commercial arbitration remedy regarding regional sports network ("RSN") access to Comcast and Time Warner cable systems, recognizing concerns regarding the ability of these companies to unlawfully refuse to carry unaffiliated RSNs.<sup>27</sup> We seek information from RSN programmers that have secured carriage on cable systems through the arbitration process and ask whether the procedures established by the Commission have facilitated access to such programming.

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<sup>21</sup> DBS operators' public interest obligation requires them to reserve 4 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).

<sup>22</sup> 47 C.F.R. § 76.1301(a).

<sup>23</sup> 47 C.F.R. § 76.1301(b).

<sup>24</sup> 47 C.F.R. § 76.1301(c).

<sup>25</sup> 47 C.F.R. § 76.504.

<sup>26</sup> *See* 47 C.F.R. § 76.1302(c), (d), (e). On March 2, 2007, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on the program carriage rules and procedures. The notice seeks comment on whether and how our processes for resolving carriage disputes should be modified. *See Leased Commercial Access, Development of Competition and Diversity in Video Programming Distribution and Carriage*, 22 FCC Rcd 11222 (2007).

<sup>27</sup> *Application for Consent of Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corporation to Time Warner Cable Inc., and from Adelphia Communications Corporation to Comcast Corporation*, 21 FCC Rcd 8203, 8287 ¶ 189 (2006) ("Adelphia Order"). *See also* notes 36 and 67 *infra*.

17. We seek comment on whether carriage by one or more of the largest MVPDs is 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 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?

18. *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?<sup>28</sup> A number of cable multiple system operators ("MSOs"), and DBS operators DIRECTV and EchoStar, now offer family-friendly programming packages.<sup>29</sup> To what extent have these packages been deployed? Are these packages available to all subscribers in an MVPD's service area? If not, what proportion of each MVPD's subscribers can purchase the family tier? 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.<sup>30</sup> In

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<sup>28</sup> 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 or she would be able to select a prescribed number of channels for a set price from among the MVPD's offerings.

<sup>29</sup> Cox Communications, Inc., *Cox Communications Announces Family Friendly Package* (press release), Jan. 10, 2006; Time Warner Inc., *Time Warner Launches Family Choice Tier* (press release), Dec. 15, 2005; Comcast Corp., *Comcast Announces Family Tier* (press release), Dec. 22, 2005; Insight Communications Company, *Insight Communication Announces Plans for Family-Friendly Tier of Programming* (press release), Jan. 17, 2006; EchoStar Communications Corporation, *DISH Network Offers "DishFAMILY" Programming Tier, Providing Parents with Worry-Free TV; Low Cost Package Further DISH Network's Standing as Lowest-Priced All Digital TV Provider in Nation* (press release), Feb. 1, 2006; DIRECTV Inc.; *DIRECTV to Offer Family Programming Package; New Tier Offers More Than 40 Channels of Family-Friendly Programming Including Boomerang, Disney, Noggin, PBS Kids Sprout and a Wide Variety of Public Interest Channels* (press release), Jan. 18, 2006.

<sup>30</sup> *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](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-263740A1.pdf).

addition, the Commission's April 2007 report to Congress on excessively violent television programming and its impact on children observed that MVPDs could provide consumers greater choice in how they purchase their programming so that they could avoid violent programming (*e.g.*, *an a la carte regime* would enable viewers to buy their television channels individually or in smaller bundles).<sup>31</sup> We request comment on MVPDs' efforts to increase consumer options for purchasing programming, especially those efforts that address these issues.

19. *MVPD Access to Programming:* We seek information on specific programming services, whether they are national or regional/local, that are unavailable to cable or noncable 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 noncable MVPDs producing their own programming, and, if so, is such programming available to competing MVPDs? Do cable or noncable MVPDs secure exclusive rights to certain programming services? 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? We are aware of DIRECTV's agreement with NFL Sunday Ticket that extends through the 2010 football season<sup>32</sup> and Major League Baseball's brief exclusive relationship with DIRECTV.<sup>33</sup> Are there similar examples of exclusive programming agreements? 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 noncable 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?

20. We also seek comment on MVPDs' access to particular genres of programming. Are there certain "must-have" programming services,<sup>34</sup> 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.*, RSNs), which are often owned by, or affiliated with, cable operators. In the *News-Hughes Order*, the Commission addressed allegations of potential harms arising when certain programming is vertically integrated with an MVPD. To address these concerns, the Commission adopted a condition that permits the use of commercial

<sup>31</sup> *Violent Television Programming and Its Impact on Children*, 22 FCC Rcd 7929 (2007).

<sup>32</sup> DIRECTV, Inc., *DIRECTV Extends and Expands Exclusive NFL SUNDAY TICKET Agreement with NFL Through 2010 Season* (press release), Nov. 8, 2004. See also NFL SUNDAY TICKET, at <http://www.nfl.com/ticket> (visited May 16, 2007).

<sup>33</sup> See MLB.com and DIRECTV, Inc., *MLB, DIRECTV Extend, Expand Multi-Year Agreement* (press release), Mar. 8, 2007. Subsequently, Major League Baseball reached an agreement with iN DEMAND. See MLB.com, *MLB Announces iN DEMAND Deal* (press release), Apr. 4, 2007.

<sup>34</sup> 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., *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) ("News-Hughes Order").

arbitration to resolve disputes regarding access to RSNs.<sup>35</sup> The Commission also imposed arbitration conditions regarding access to RSN programming in the *Adelphia Order*.<sup>36</sup> We seek information regarding MVPDs, or their bargaining agent, that have secured access to such programming through the arbitration process and ask whether the procedures established by the Commission have facilitated access to such programming.

21. *Program Access Issues:* We request comment on the effectiveness of our program access rules.<sup>37</sup> We seek comment on the effectiveness of these rules and information regarding MVPDs' experiences obtaining programming that is owned by, or affiliated with, competing MVPDs. 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?<sup>38</sup> 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?

22. *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, the technology used to provide their services, and the cost for such video services. We are

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<sup>35</sup> *News-Hughes Order*, 19 FCC Rcd at 552-555, 677-679, ¶¶ 172-179, App. F. III. The Commission also imposed a similar arbitration condition applicable to retransmission consent negotiations for News Corp.'s Fox television stations.

<sup>36</sup> *Adelphia Order*, 21 FCC Rcd 8203, 8274, App. B & C, 8258-9, 8262-79 ¶¶ 124-125, 130-169. See also note 27 *supra* and note 67 *infra*.

<sup>37</sup> Section 628(c)(5) directs that the prohibition on exclusive programming contracts would cease to be effective on October 5, 2002, unless the Commission found that such prohibition "continues to be necessary to preserve and protect competition and diversity in the distribution of video programming." 47 U.S.C. § 548(c)(5). In 2002, the Commission concluded that the prohibition remained necessary and extended the term for five years. See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution: § 548(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, 17 FCC Rcd 12124 (2002). The Commission recently issued a *Notice of Proposed Rulemaking* to examine whether the rule on exclusive programming contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators continues to be necessary beyond October 5, 2007. See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, 22 FCC Rcd 4252 (2007). The *Notice* also seeks comment on whether and how the Commission's procedures for resolving program access disputes under Section 628 should be modified. In this *Notice of Inquiry*, we request comment on the effectiveness of our program access rules. See also 47 C.F.R. §§ 76.1000-1004, 76.1507.

<sup>38</sup> 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).

particularly interested in information on the experiences of independent cable system operators (*i.e.*, cable systems not affiliated with the largest MSOs). How does competition differ between rural and smaller markets and larger, urban areas? A number of small cable operators and rural LECs are upgrading their facilities to offer a wider range of video and advanced services. 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.

23. We seek information about the ability of small and rural cable operators and LECs to secure access to programming. In particular, we seek 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?

24. *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, PPV, 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.

25. *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.<sup>39</sup> We seek comment on any factors that are unique to competition in MDUs. As noted above, the Commission adopted an *R&O* and *FNPRM* relating to the use of exclusive contracts in the MDU video provider marketplace and the impact of their use on the federal goals of enhanced multichannel video competition and accelerated broadband deployment.

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<sup>39</sup> MDUs may include rental apartments, as well as condominiums and co-operatives.

What effects do the inside wiring,<sup>40</sup> over-the-air reception device (“OTARD”),<sup>41</sup> and cable bulk rate<sup>42</sup> 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?

26. *Access to Programming by Persons with Disabilities:* Video programming distributors are required to caption 100 percent of all new non-exempt English-language programming on each channel.<sup>43</sup> 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.<sup>44</sup> We seek comment on any concerns the public has with their video programming distributors meeting the 100 percent benchmark for new English language programming, which became effective on January 1, 2006. We seek information on captioning quality, accuracy, placement, technology, and any instances of missing or delayed captions.<sup>45</sup> We also seek comment on the issues related to digital programming including programming that contains closed captions translated from analog closed captions.<sup>46</sup> 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 video programming distributors when trying to resolve problems related to a lack of digital captioning? What experiences have viewers had with captioning that is out of sync with 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 considered, 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.<sup>47</sup>

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<sup>40</sup> See 47 C.F.R. § 76.800-806 *et seq.*

<sup>41</sup> 47 C.F.R. § 1.4000.

<sup>42</sup> 47 C.F.R. § 76.984(c)(3).

<sup>43</sup> 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”).

<sup>44</sup> 47 C.F.R. § 79.1(b)(2) (phase-in schedule for “pre-rule” programming). See also 47 C.F.R. § 79.1(a)(6) (definition of pre-rule programming).

<sup>45</sup> See *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking*, 20 FCC Rcd 13211 (2005).

<sup>46</sup> 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.

<sup>47</sup> Commission rules require that emergency information provided in the audio portion of the programming must be made accessible using closed captioning or other methods of visual presentation, such as open captioning, crawls, scrolls, or appropriate signage that appear(s) on the screen. In the case of individuals who are blind or have low (continued....)

27. Between January 1, 2007, and December 31, 2009, the phase-in schedule for “new” Spanish language programming requires distributors to caption at least 1,350 hours of Spanish-language programming or all of its new non-exempt Spanish language programming per channel per quarter, whichever is less.<sup>48</sup> After January 1, 2005, each video programming distributor must caption 30 percent of its pre-rule non-exempt Spanish-language programming on each channel during each calendar quarter.<sup>49</sup> The rules exempt several specific classes of programming from closed captioning requirements.<sup>50</sup> Video programming providers also may petition the Commission for an exemption from the closed captioning rules if the requirements would impose an undue burden.<sup>51</sup> The closed captioning rules are enforced through a complaint process, with the complaint initially directed to the video programming distributor responsible for compliance with the rules.<sup>52</sup> In anticipation of increased captioning requirements set to take effect in January 2008, we seek comment on what, if any, concerns industry and the public have with meeting these increased captioning requirements for new Spanish language and “pre-rule” English language programming.<sup>53</sup> We also seek information on the level and quality of captioning for non-English language programming.

28. We also request comment on the availability of video description services, currently provided by programmers on a voluntary basis.<sup>54</sup> We request information regarding the amount and types of video programming that includes video descriptions and whether MVPDs generally carry video descriptions inserted by programmers.

## B. Cable Television Service

(Continued from previous page) —  
vision, emergency information that is provided in the video portion of a regularly scheduled newscast, in a newscast that interrupts regular programming, or in “crawls” or “scrolls” during regular programming must be made aurally accessible. There are no exemptions to these rules. *See Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning*, 21 FCC Rcd 15084 (2006).

<sup>48</sup> 47 C.F.R. § 79.1(b)(3)(iii). The previous closed captioning requirement for this programming between January 1, 2004, and December 31, 2006, was 900 hours. *See* 47 C.F.R. § 79.1(b)(3)(ii). As of January 1, 2010, and thereafter, 100 percent of the programming distributor’s new non-exempt Spanish language video programming must be provided with captions. 47 C.F.R. § 79.1(b)(3)(iv).

<sup>49</sup> 47 C.F.R. § 79.1(b)(4)(i). As of January 1, 2012, and thereafter, 75 percent of the programming distributor’s pre-rule non-exempt Spanish language video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning. 47 C.F.R. § 79.1(b)(4)(ii).

<sup>50</sup> 47 C.F.R. § 79.1(d).

<sup>51</sup> 47 C.F.R. § 79.1(f).

<sup>52</sup> 47 C.F.R. § 79.1(g).

<sup>53</sup> Specifically, effective January 1, 2007, at least 1,350 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).

<sup>54</sup> 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).

29. We request data and comments on the current state of competition in the cable industry, including system upgrades, ownership transactions, and program packaging.

30. *System Upgrades and Channel Capacity:* Cable operators have reduced their spending for the rebuilding and upgrading of their plant in recent years, while increasing their capital expenditures for customer premises equipment as advanced service subscriptions have grown.<sup>55</sup> 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. One method for increasing capacity is switched digital video, which is a method of delivering programming to subscribers only when those subscribers actively request that programming, as opposed to delivering all programming feeds at the same time to all subscribers. To what extent are cable operators using switched digital video to increase their system capacity? 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.<sup>56</sup> 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

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<sup>55</sup> See, e.g., Mariam Rondeli, *HSD, Cable Telephony Headline Q2 Earnings Season*, Cable TV Investor: Deals and Finance, Kagan Research, Inc., July 31, 2006, at 6-7.

<sup>56</sup> 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.

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. 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 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 information 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.<sup>57</sup> 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 data 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 data 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. *Other Regulatory Issues: Section 612(g) Benchmarks.* Section 612(g) of the Act states that: (1) “at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States” and (2) “are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources.”<sup>58</sup> We previously concluded that the first prong of the test has been met.<sup>59</sup> We request data and comment on whether both prongs of the 70/70 test have been met. That is, cable operators should submit the following information on a zip code basis:

1. Total number of homes the cable operator currently passes;
2. Total number of homes the cable currently passes with 36 or more activated channels;
3. Total number of subscribers, including all subscribers in MDUs; and
4. Total number of subscribers with 36 or more activated channels.

<sup>57</sup> 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).

<sup>58</sup> 47 U.S.C. § 532(g). This provision was added to the Communications Act by the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779.

<sup>59</sup> 2005 Report, 21 FCC Rcd at 2513 ¶ 32.

To the extent that cable operators filed 2007 data for the purposes of complying with our *2006 Video Competition Report*, they need not submit this same data again.<sup>60</sup> We also seek comment on whether telephone companies that provide video service and overbuilders should be included in the 70/70 calculation.

37. 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.<sup>61</sup> Commercial broadcast television stations may elect carriage on cable systems pursuant to either mandatory carriage (must carry) or retransmission consent.<sup>62</sup> 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.<sup>63</sup> 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 nonbroadcast programming networks, provide advertising time, or otherwise compensate broadcasters? To what degree have compensation arrangements changed from non-cash to cash in recent years? If commenters identify such a trend, we request information on when it began and what marketplace factors appear to be driving it. We ask commenters to address 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 on MVPDs and consumers of agreements that require the carriage of nonbroadcast networks in exchange for the right to carry local broadcast stations. 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.

38. Section 612 of the Communications Act established the leased access rules, which require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator and provide standards for rates, terms and conditions for the use of leased access.<sup>64</sup> The 1992 Cable Act gives the Commission the authority to: (1) determine the maximum reasonable rate that a cable operator may establish for leased access use, (2) establish reasonable terms and conditions for leased access, and (3) establish procedures for the expedited resolution of leased access disputes.<sup>65</sup> The methodology for determining the applicable leased access rate is proscribed in the Commission's rules.<sup>66</sup>

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<sup>60</sup> See *2006 Report* at ¶43. Any false certification made to the Commission may be punished by fine and/or imprisonment under 18 U.S.C. § 1001. We also emphasize that any false information provided to the Commission pursuant to the requirements set forth above may be similarly punished under 18 U.S.C. § 1621.

<sup>61</sup> 47 U.S.C. §§ 614(b), 615(b); 47 C.F.R. § 76.56.

<sup>62</sup> 47 C.F.R. § 76.64(f).

<sup>63</sup> 47 C.F.R. § 76.56; see also 47 C.F.R. § 76.55(c) (definition of a qualified local commercial television station).

<sup>64</sup> 47 C.F.R. § 76.971.

<sup>65</sup> 47 U.S.C. § 532(c)(4).

<sup>66</sup> 47 C.F.R. §§ 76.970-977.

39. We seek comment regarding leased access channels, including the number of channels currently being used by cable operators for these purposes and the types of programming offered on such channels. In addition, we seek information on the use of commercial leased access channels, either on a part-time or full-time basis. Are these channels accomplishing their intended purpose of providing competition to the programming channels under the control of the cable operator? In the *Adelphia Order*, the Commission addressed allegations of potential public interest harm for nationally distributed programming.<sup>67</sup> To address concerns raised by commenters, the Commission adopted a condition that permits the use of commercial arbitration to resolve disputes regarding commercial leased access.<sup>68</sup> Pursuant to this condition, programmers seeking to use commercial leased access may submit disputes about the terms of access to an arbitrator for resolution. The arbitrator will be directed to settle disputes about pricing in accordance with the formula set forth in the Commission's leased access rules.<sup>69</sup> We seek information regarding programmers that have secured carriage through the arbitration process and ask whether the procedures established by the Commission have facilitated leased access carriage agreements. In addition, the Commission's recent notice on leased access solicits comment on a range of issues, including, for example, the rate formula, alternative rate methodologies, and the effect of the digital transition on channel capacity and channel count for purposes of the calculation of carriage obligations and average rates.<sup>70</sup>

40. We also request comment on the "tier buy-through" option mandated by Section 623(b) (8) of the Communications Act,<sup>71</sup> 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 Services<sup>72</sup>

41. As of the end of June 2006, direct to home ("DTH") (*i.e.*, DBS and C-Band) operators served approximately 27.97 million subscribers, led by DBS operators DIRECTV and EchoStar.<sup>73</sup> We seek

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<sup>67</sup> See *Adelphia Order*. Commenters argued that Comcast's and Time Warner's increased subscribership as a result of the transactions will allow them, either unilaterally or in concert with each other, to determine which programmers survive in the video marketplace. *Id.* at 8250 ¶ 100. See also paras. 16 and 20 *supra*.

<sup>68</sup> *Id.* at 8253-54 ¶ 109. This condition is in effect for six years from the date of adoption of the *Adelphia Order*, July 13, 2012.

<sup>69</sup> 47 C.F.R. § 76.970.

<sup>70</sup> *Leased Access NPRM* at 22 FCC Rcd at 11225 ¶¶ 8-9. See note 26 *supra*.

<sup>71</sup> 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 Act of 1992.

<sup>72</sup> 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.

<sup>73</sup> See *C-Band Numbers Keep Dwindling*, Satellite Business News FAXUpdate, July 7, 2006 at 2; The DIRECTV Group, Inc. *SEC Quarterly Report Form 10-Q Pursuant to Section 13 or 15(d) of the Securities Act of 1934 for the Quarterly Period Ended June 30, 2006*, at 19; and EchoStar Communications Corp., *SEC Quarterly Report From 10-Q Pursuant to Section 13 or 15(d) of the Securities Act of 1934 for the Quarterly Period Ended June 30, 2006*, at 28.

information and data that explain the factors contributing to DBS' growth in the video programming market, which may 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?

42. 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,<sup>74</sup> 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?

43. 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.<sup>75</sup> 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 requirements, which impede the availability of DBS to some potential subscribers, in particular MDU residents and residents in areas with natural obstructions, such as trees. How many, or what percentage of, households cannot receive DBS service because they are not within the line-of-site of the satellite signal?

44. DIRECTV and EchoStar have supplemented their satellite fleets to provide a wider range of programming, in particular high definition programming.<sup>76</sup> 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?

45. *Local-into-Local:*<sup>77</sup> Pursuant to the Satellite Home Viewer Improvement Act of 1999

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<sup>74</sup> 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*, *supra*, note 57.

<sup>75</sup> See GAO, *Telecommunications: Direct Broadcast Satellite Subscribership Has Grown Rapidly, But Varies Across Different Types of Markets*, GAO 05-257 (Apr. 2005).

<sup>76</sup> See, e.g., James Hibberd, *Suddenly, the Race Is on for HD Channels*, ELECTRONIC MEDIA, Jan. 15, 2007, at 3 and EchoStar Communications Corp., *DISH Network Expands Nation's Largest HD Package; More National HD Channels, More HD Regional Sports Networks* (press release), July 10, 2007.

<sup>77</sup> Local-into-local refers to the retransmission of local broadcast television stations into the local markets they serve by satellite operators.

(“SHVIA”), DBS operators provide local-into-local broadcast television service.<sup>78</sup> We request information on the number of markets where local-into-local television service is offered, or will be offered in the near future, including the number and affiliation of the stations carried. What 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 also 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?

46. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”) was enacted.<sup>79</sup> SHVERA extended certain provisions of the SHVIA, primarily pertaining to distant signal copyright licensing and retransmission consent negotiations.<sup>80</sup> The statute also added some new provisions to the Communications and Copyright Acts concerning 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.<sup>81</sup> 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?

47. *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

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<sup>78</sup> SHVIA was enacted as Title I of the “Intellectual Property and Communications Omnibus Reform Act of 1999” (IPACORA) (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in various sections of 17 and 47 U.S.C.), Pub. L. No. 106-113, 113 Stat. 1501, Appendix (1999).

<sup>79</sup> Pub. L. No. 108-447, 118 Stat 2809 (2004) (codified in various sections of 17 and 47 U.S.C.). SHVERA was enacted as Title IX of the Consolidated Appropriations Act, 2005.

<sup>80</sup> In 2006, a district court in Florida issued a nationwide permanent injunction barring EchoStar from providing any distant network programming pursuant to the statutory copyright license. See *CBS v. EchoStar*, 472 F. Supp. 2d 1367 (S.D. Fla. Oct. 20, 2006).

<sup>81</sup> 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).

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

48. *C-Band or Large Dish:* 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

49. Several major incumbent LECs (“ILECs”) – AT&T,<sup>82</sup> Qwest, and Verizon – have launched joint service with DBS service providers, and several have 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”).<sup>83</sup>

50. 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 into the video service market? To what extent are LECs offering cable services? Do LECs that offer cable services 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

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<sup>82</sup> We note that the former BellSouth and SBC companies have merged with AT&T. See *AT&T Inc. and BellSouth Corporation Applications for Transfer of Control*, 22 FCC Rcd 5662 (2007).

<sup>83</sup> 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 node (a point of interconnection on the fiber transmission line), 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, 22<sup>nd</sup> ed., 2006), at 387, 410. See also Althos On-Line Telecommunications Dictionary, at [http://www.voipdictionary.com/aw\\_definitions\\_main.asp](http://www.voipdictionary.com/aw_definitions_main.asp) (visited May 30, 2007).

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 a factor as to whether LECs choose to enter a market or not? To what extent are investments in plant that are useful for multiple purposes influenced by state public service commission price cap decisions or other mandates and policies?

51. 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. 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?

52. 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

53. We define BSPs (broadband service providers) as newer firms that are building state-of-the-art facilities-based networks to provide voice, video, and data services over a single network. Most BSPs are overbuilders competing directly with existing cable operators.<sup>84</sup> 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).<sup>85</sup> 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? 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, and business models). Have BSPs become more competitive

<sup>84</sup> The term “BSP” is not intended to imply anything with respect to Commission policy or proceedings that might involve broadband services. Usually, the services of a BSP can be purchased separately as well as in a bundle. *Id.*; see also 2002 Report, 17 FCC Rcd at 26948-52 ¶¶ 102-11.

<sup>85</sup> 2003 Report, 19 FCC Rcd at 1658-59 ¶ 78. See also 2004 Report, 20 FCC Rcd at 2801 ¶ 70.

in recent years? Are there still significant barriers to entry? What are the technical and economic factors that determine whether overbuild systems are successful?

### 3. Open Video System Operators

54. 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.<sup>86</sup> 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 and *vice versa*). 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

55. Some electric and gas utilities continue to move forward with ventures involving multichannel video programming distribution, though such services still are not widespread.<sup>87</sup> We seek information regarding utility companies that provide video services or plan to deploy them. 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

56. 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.

57. *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. We seek data on broadcast network and station audience shares relative to those of nonbroadcast 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

<sup>86</sup> 47 U.S.C. § 571(a)(3)-(4); *1996 Report*, 12 FCC Rcd at 4395-98 ¶¶ 68-71.

<sup>87</sup> See, e.g., Dinesh Kumar, *Analysts Tie BPL Growth in 2007 to Tex. Project’s Fate*, COMM. DAILY, Jan. 22, 2007, at 5.

broadcast stations?<sup>88</sup> If the compensation is not cash based, how is it accounted for? What market changes, if any, are taking place that might result in increases in retransmission consent compensation?

58. According to Nielsen Media Services, approximately 14 percent of U.S. households rely on over-the-air broadcasting to receive television.<sup>89</sup> 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.<sup>90</sup> 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).

59. *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.<sup>91</sup> 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.<sup>92</sup> For the 2007 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; 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.

60. *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 on the number of households that rely on over-the-air reception of broadcast television. We also seek data on the number of, or percentage of, households that rely solely on over-the-air reception of broadcast signals that have digital televisions, including the number that have built-in or separate DTV tuner capability. In addition, we request specific information and data that will provide an estimate of, or allow the Commission to estimate, the number of households that will need digital to analog converter boxes as of February 17, 2009, because they rely on over-the-air broadcast television

<sup>88</sup> See, e.g., Peter Grant, *Broadcasters Want Cash from Cable Companies for Signal*, THE WALL STREET JOURNAL, Feb. 5, 2007.

<sup>89</sup> Nielsen Media Service data for the 2006-2007 television season. Nielsen Media Research annually reports television household estimates each September based on information from a variety of sources, including Claritas (a leading provider of demographic data), the U.S. Census Bureau, and Nielsen's own television samples. See also *Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers* Media Bureau, Feb. 28, 2005 (“OTA Report”), MB Docket No. 04-210, available at [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-257073A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-257073A1.pdf).

<sup>90</sup> See OTA Report at 4-5.

<sup>91</sup> *Review of the FCC’s Rules and Policies Affecting the Conversion to Digital Television*, 17 FCC Rcd 15978, 15995-96 ¶¶ 39-40 (2002).

<sup>92</sup> The National Telecommunications Information Administration (“NTIA”) has announced the final rule for the digital-to-analog converter box coupon program. See NTIA, *Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes*, 72 Fed. Reg. 12097 (Mar. 15, 2007); 47 C.F.R. Part 301.

reception and do not have televisions with digital tuners. How many MVPD subscribers are DTV households, and how many of these households choose to receive broadcast DTV signals over the air?

61. 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?

62. Currently, carriage of broadcast DTV signals by cable and satellite systems is generally voluntary.<sup>93</sup> 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? 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 of programming? 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 noncable MVPDs carry multicast DTV or plan to carry multiple streams of broadcast DTV programming?

63. 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”<sup>94</sup> of service in order to receive any DTV content? What additional equipment, if any, do consumers need to receive MVPDs’ DTV signal? What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not?

64. 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? 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

<sup>93</sup> See generally *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the FCC’s Rules*, 20 FCC Rcd 4516 (2005).

<sup>94</sup> “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.

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 do not broadcast for other reasons? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV spectrum? Are there differences in the ways that commercial and noncommercial broadcasters are using their DTV spectrum?

65. *Consumer DTV Education Efforts:* In July 2007, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on several proposals related to consumer education about the digital television transition.<sup>95</sup> We 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? Are retailers complying with the Commission's recent Order regarding retail labeling of analog-only sets and, if so, what effect is that labeling having?<sup>96</sup> 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 6 MHz 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. *Advanced Broadcasting Technologies:* In the *Second DTV Periodic Report and Order*, the Commission approved, in principle, the use of distributed transmission systems for digital television ("DTS").<sup>97</sup> DTS operation is similar to analog TV booster stations, a secondary, low-power service using the parent station's channel to "fill in" gaps in its coverage area, but DTS technology may enable this type of operation more efficiently than analog TV boosters.<sup>98</sup> We seek comment on the extent to which DTS is currently in use as well as future plans to deploy DTS. We further seek comment on activities by broadcasters to improve their service and offerings through the use of Enhanced VSB ("E-VSB") and/or

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<sup>95</sup> See *DTV Consumer Education Initiative*, 22 FCC Rcd 15933 (2007).

<sup>96</sup> *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 22 FCC Rcd 8766 (2007).

<sup>97</sup> *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18283, 18355-57 ¶¶ 9, 174-78 (2004) ("Second DTV Periodic Report and Order").

<sup>98</sup> The Commission's Spectrum Policy Task Force recommended that DTV broadcasters be permitted to operate distributed transmission systems within their present service areas. See *Spectrum Policy Task Force Report*, ET Docket No. 02-135 (Nov. 2002), available at <http://www.fcc.gov/sptf/reports.html>.

Advanced VSB (“A-VSB”). To what extent are broadcasters currently deploying, planning to deploy, or considering A-VSB and E-VSB, and of which additional features of A-VSB and E-VSB do broadcasters intend to take advantage?

68. 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,<sup>99</sup> and niche programming. What types of services are being offered? 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?

69. *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.

70. 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?

71. 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. NTIA announced in March 2007 the final rule for the digital-to-analog converter box coupon program. Manufacturers of converter boxes that can be purchased with coupons must build devices that include specific features and meet certain performance specifications identified in the final rule.<sup>100</sup> We seek an update on the development of such converter boxes.

#### F. Wireless Cable Systems

72. Wireless cable systems use the Broadband Radio Service (“BRS”) and the Educational Broadband Service (“EBS”) in the 2 GHz band to transmit video programming and provide broadband

<sup>99</sup> 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 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.

<sup>100</sup> See note 92 *supra*.

services to residential subscribers.<sup>101</sup> 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. Thus, wireless cable operators offer limited video distribution competition to incumbent cable operators. 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? Have licensees in these services moved away from their original orientation as “wireless cable” providers such that they no longer should be tracked in the Report? Are licensees in these services now more likely to compete with major commercial mobile radio system providers in offering mobile video?

#### G. Private Cable Operators

73. Private cable operators, 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. 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, the identification and size of PCO companies, and the type of facilities they serve (*e.g.*, hotels, apartment buildings, mobile home parks). 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? How often do PCOs provide service pursuant to exclusive agreements as opposed to facing competition in the buildings or developments they serve? To what extent are PCOs offering video services through agreements with other MVPDs, such as cable, LEC, and DBS systems, rather than providing their own services? In 2002, the Commission made PCOs eligible for CARS licenses.<sup>102</sup> 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

74. Major commercial mobile service providers and other wireless providers have begun offering video services to users of cell phones and other mobile services. We request updated information on the availability and deployment of mobile video 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 systems, 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 video services.<sup>103</sup> Do current trends in mobile video suggest that we should consider mobile telephone providers that offer video programming to be MVPDs?

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<sup>101</sup> 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 FCC’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).

<sup>102</sup> *Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service*, 17 FCC Rcd 9930 (2002).

<sup>103</sup> *See, e.g.*, Michal Lev-Ram, *Coming Soon to Your Cell: Live TV*, BUSINESS 2.0 MAGAZINE, Apr. 18, 2007.

75. We 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.

76. We also request comment on alternative wireless distribution methods and technologies and the extent to which providers have adopted or are considering adopting them. Standards groups have developed WiMAX to create a last-mile solution for delivery of video, voice, and data.<sup>104</sup> We seek comment on the extent to which these technologies are used to provide services that compete with those offered by traditional video providers, as well as information on the deployment of municipal Wi-Fi networks.

#### I. Web-Based Internet Video

77. The amount of web-based video available over the Internet continues to increase significantly each year. Many traditional broadcast and nonbroadcast programmers, as well as many independent content producers, currently provide streaming and downloadable video content on their Internet web pages. We seek statistics on the use of the Internet for access to video content.

78. Major Internet portals, such as Google, Yahoo, and AOL, offer user-posted content but are increasingly entering into licensing agreements to offer pre-existing and original video content from traditional video providers.<sup>105</sup> Other online video providers, including Wi-Fi TV, BrightCove, Virtual Digital Cable (“VDC”), and LX.TV Lifestyle Television,<sup>106</sup> mostly provide prepackaged programming offered as “channels” of video to monthly subscribers, and other services, such as CinemaNow and Movielink, continue to offer downloadable video through their web sites. In addition, traditional broadcast and nonbroadcast networks continue to experiment with alternate programming content options on their own web sites. We request information on the types of video services offered over the Internet in both real time and downloadable formats, and request comment on the quality of web-based video relative to traditional video program distribution. We also ask commenters to provide projections of whether web-based video will become a viable competitor in the marketplace for the delivery of video programming and, if so, when such competition is likely to emerge. Further, we seek information on the extent to which Internet video distribution also has become a means by which some new programming networks are developing audience interest in their programming absent agreements with one of the major MVPDs for distribution of their programming over cable or DBS.

#### J. Advanced Services

<sup>104</sup> WiMAX (“World Interoperability for Microwave Access”) is based on the IEEE 802.16 standard and offers higher speeds and greater distances than IEEE 802.11 based Wi-Fi. WiMAX is being developed as a solution to providing Metropolitan Area Networks (“MANs”). *See, e.g.* Intel Corporation, *What is WiMAX*, at <http://www.intel.com/netcomms/technologies/wimax/index.htm> (visited March 27, 2007), The IEEE 802.16 Working Group on Broadband Wireless Access Standards at <http://www.ieee802.org/16/> (visited March 27, 2007), WiMAX Forum at <http://www.wimaxforum.org/home/> (visited March 27, 2007).

<sup>105</sup> *See, e.g.*, Kris Oser *Video in Demand*, ADVERTISING AGE (MIDWEST REGION ADDITION), April 4, 2005, at S1-S6.

<sup>106</sup> *See* Wi-Fi TV, Inc., *Wi-Fi TV Corporate*, at <http://www.wi-fitv.com/Corporate.php>; Brightcove.com, *Corporate*, at <http://corp.brightcove.com/>; VDC Corporation, at <http://www.vdc.com>; LX.TV, at <http://code.tv> and <http://code.tv/#footdata>.

79. Many MVPDs offer advanced services to subscribers. For example, in addition to video services, cable operators are using their cable plant to offer subscribers cable modem service (*i.e.*, Internet access and other data services), and voice services. 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. Advanced services comprise an increasing percentage of total revenue for some MVPDs.

80. 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 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? To what extent are movies distributed through VOD services? Are there types of programming produced especially for VOD, and, if so, 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 per-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 DVRs? 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.<sup>107</sup>

- **High-speed Internet Access:** According to the Commission's 2005 Cable Price Survey Report, 96 percent of MVPD subscribers were offered Internet access service and 31 percent of subscribers actually purchased the service.<sup>108</sup> We seek updated information about high-speed Internet access offered by MVPDs. What percentage of subscribers to an MVPD's video programming service 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? Are MVPDs transitioning to DOCSIS 3.0 to offer increased bandwidth to subscribers? 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 voice offerings, although some continue to provide traditional telephone service using circuit switched technology. 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 backup systems.

## K. Technical Issues

81. 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, the Commission's integration ban separating security from non-security functions in

<sup>107</sup> Cablevision's introduction of a remote DVR service that provides subscribers with full DVR functionality without the need for a set-top box in their homes has been slowed by a recent court decision that requires Cablevision to obtain licenses from the programmers whose services it carries. *See Twentieth Century Fox Film Corp. v. Cablevision Systems Corp.*, 478 F. Supp. 2d 607 (S.D.N.Y. 2007).

<sup>108</sup> 2005 Price Survey, 21 FCC Rcd at 15100, Tables 10 and 11.

system access devices, digital rights management, advances in digital broadcasting, technical standards, home networking, and content mobility.

82. *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 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?

83. *Navigation Devices:* We also seek information on the retail availability of navigation devices to consumers.<sup>109</sup> How many such devices have been sold?<sup>110</sup> What are the obstacles to equipment manufacturers and others to 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

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<sup>109</sup> 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 *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998) (“*Navigation Devices Order*”). 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).

<sup>110</sup> In order to promote a competitive market for set-top boxes, the Commission in 1998 required MVPDs to separate security in their leased devices and rely on the same conditional access mechanism that consumer electronics manufacturers use (commonly referred to as “common reliance”). *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14808 ¶ 80 (1998); 47 C.F.R. § 76.1204(a)(1) (“*First Navigation Report*”). The integration ban originally was set to go into effect on January 1, 2005, but was extended twice at the urging of cable operators, first to July 1, 2006, and ultimately to July 1, 2007. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926 ¶ 4 (2003); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6802-03 ¶ 13 (2005) (“*2005 Deferral Order*”). In 2006, the D.C. Circuit Court of Appeals upheld the integration ban against a challenge by the cable industry. *Charter Communications Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

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.<sup>111</sup> We request information on how many products are currently available with plug-and-play functionality, or are soon to be available. In June 2007, the Commission adopted a *Third Further Notice of Proposed Rulemaking* seeking comment on (1) proposed standards to ensure bidirectional (*i.e.*, two-way) compatibility of cable systems and consumer electronics equipment, (2) whether any rules the Commission adopts in the proceeding should apply to noncable MVPDs, and (3) whether there are technological solutions that are network agnostic and deployable across all MVPD platforms.<sup>112</sup>

84. *Open Cable Application Platform:*<sup>113</sup> CableLabs has established a private negotiation process by which individual consumer electronics manufacturers may develop devices that include two-way functionality using the CableLabs’ Open Cable Application Platform (“OCAP”) middleware solution.<sup>114</sup> 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. These markets include 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.<sup>115</sup> In addition, Cox, Cablevision, and Charter made similar announcements, but did not specify the markets where the trials would occur.<sup>116</sup> We seek information on the results of these trials and whether they are expected to lead to commercial implementations and, if so, when. OCAP also is expected to facilitate bi-directional services (*i.e.*, two-

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<sup>111</sup> *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885.

<sup>112</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, 22 FCC Rcd 12024 (2007).

<sup>113</sup> The OpenCable standard (also known as “two-way plug-and-play”) 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 *Navigation Devices Order*, 13 FCC Rcd 14775.

<sup>114</sup> 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), 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.

<sup>115</sup> CableLabs, *Cable Television Industry Voices Support for OCAP and Two-Way Digital Cable-Ready Product Deployments* (press release), Jan. 11, 2006.

<sup>116</sup> *Id.*

way) and interactive television (“ITV”) applications and services.<sup>117</sup> We request information on industry developments in this area. In November 2006, CEA presented an alternative means of achieving limited interactivity to provide support for video-on-demand, interactive program guides, and switched digital broadcast called DCR+.<sup>118</sup> We seek additional information on DCR+ and any technical issues that remain.

85. *PacketCable*: Another CableLabs project, PacketCable, is the specification standard developed for the delivery of advanced real-time multimedia services over two-way cable plant. PacketCable uses IP technology to enable a wide range of services, including IP telephony, multimedia conferencing, interactive gaming, and general multimedia applications.<sup>119</sup> PacketCable has the potential to allow the rapid introduction of new services, such as the integration of the cable network with wireless networks and cross platform feature integration (*e.g.*, set-top box applications that integrate with the voice service for features including caller ID display on the TV and the ability to forward incoming calls to voicemail or other telephone numbers. For the 2007 Report, we solicit information on the PacketCable project.

86. *CableCARDs*: CableCARDs permit the reception of secured digital cable services without the addition of a set-top box.<sup>120</sup> As of June 2007, cable operators have deployed more than 271,000 CableCARDs.<sup>121</sup> We seek updated information on the number of CableCARDs operators have placed in service. We also seek information on the manner in which subscribers may 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 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.<sup>122</sup> 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, PPV), but that efforts were underway to develop two-way digital televisions, which will permit full-featured interactivity without a set-top box.<sup>123</sup> We request updated information on these efforts.

<sup>117</sup> Interactive television (“ITV”) is a service that supports subscriber-initiated choices or actions that are related to one or more video programming streams.

<sup>118</sup> Letter from Consumer Electronics Association to Kevin J. Martin, Chairman, FCC, CS Docket 97-80 (Nov. 7, 2006) (proposal for bi-directional digital cable compatibility and related issues submitted by consumer electronics and information technology companies and the Consumer Electronics Association).

<sup>119</sup> Kevin Jacobs, Eric Rosenfeld, *PacketCable 2.0 – Design Goals, Strategic Drivers and Architecture*, CED WEB EXTRA, Dec. 1, 2006, at <http://www.cedmagazine.com/article/CA6398269.html> (visited Jan. 30, 2006).

<sup>120</sup> 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.

<sup>121</sup> See Letter from Neal M. Goldberg, Vice President and General Counsel, NCTA to Marlene Dortch, Secretary, FCC, CS Docket No. 97-80 (June 25, 2007).

<sup>122</sup> Multi-stream unidirectional CableCARDs will permit the development of multi-tuner DVRs without requiring the use of multiple CableCARDs to access each stream.

<sup>123</sup> *2005 Report*, 21 FCC Rcd at 2598 ¶ 211.

87. *Digital Rights Management.* 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 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? In this regard, we note that in 2003 the Commission adopted an interim policy to allow CableLabs to make “initial determinations regarding the use of new output or content protection technologies.”<sup>124</sup> Is CableLabs taking the proper steps to approve outputs and associated content protection technologies? 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.

88. *Advances in Digital Broadcasting:* Broadcasters continue to improve their service and offerings through enhancements to digital Vestigial Sideband Broadcasting (“VSB”), called Enhanced VSB (“E-VSB”) and Advanced VSB (“A-VSB”). E-VSB was approved by the American Television Standards Committee in July 2004, as an amendment to the standard that allows broadcasters to choose between bit rates and added robustness without impeding HDTV.<sup>125</sup> Possible uses of the technology include applications such as robust data broadcasting to desktops, transmissions of file-based information to handheld receivers, and “fallback” audio.<sup>126</sup> However, E-VSB adoption has been slow due to a lack of demand and a lack of E-VSB enabled receivers.<sup>127</sup> A-VSB is another amendment being proposed to the ATSC for mobile video applications.

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<sup>124</sup> 2003 Navigation Devices Second Report and Order and FNPRM, 18 FCC Rcd at 20919 ¶ 79.

<sup>125</sup> Broadcast Engineering, *Real-world Test Detail Reliable E-VSB Performance*, May 1, 2006, at <http://broadcastengineering.com/news/evsb-performance-test-20060501/> (visited Jan. 29, 2007). A higher bit rate enables the broadcaster to transmit more data but limits the receivable range of the signal. Lowering the bit rate reduces the amount of data that can be sent, but increases the distance at which the data can be received.

<sup>126</sup> “Fallback audio” is a more robust audio stream used if the primary audio stream is unavailable due to signal degradation or other circumstances. Advanced Television Systems Committee, *ATSC Approves Enhancements to DTV Standard* (press release), July 20, 2004.

<sup>127</sup> Claudia Kienzle, *E-VSB in Search of a Market*, TV TECHNOLOGY, April 24, 2006, at [http://www.tvtechnology.com/features/news/2006.04.24-n\\_E\\_VSB\\_in\\_search.shtml](http://www.tvtechnology.com/features/news/2006.04.24-n_E_VSB_in_search.shtml) (visited Jan. 29, 2007).

ATSC has accepted the proposal of A-VSB, but it has not yet reached the “candidate standard” stage,<sup>128</sup> which involves more exacting technical review.<sup>129</sup> We request information on these and other technological advances in digital broadcasting.

89. *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?<sup>130</sup> We seek comment on this and other technical standards.

90. *Home Networking and Content Mobility:* Home networking allows consumers to connect multiple devices in the home (e.g., set-top boxes, television sets, personal computers, video game consoles) with each other and to the Internet. Companies such as Verizon<sup>131</sup> and AT&T<sup>132</sup> are looking to technologies from standards groups such as the Multimedia over Coax Alliance (“MoCA”),<sup>133</sup> Home Phoneline Networking Alliance (“HomePNA”),<sup>134</sup> and HomePlug<sup>135</sup> to utilize existing wires in the home to carry networking signals. Current wireless networks, using the 802.11b/g technical standard, typically have lower throughput than wired networks and are subject to interference from other wireless devices.<sup>136</sup> These networks can have difficulty carrying a single HD video stream. A new wireless standard under development intended to address the throughput issue is IEEE 802.11n.<sup>137</sup> The 802.11n standard has not been finalized, but devices have been built based on draft versions of this standard and are currently available at retail (e.g., the Linksys WRT300N Wireless-N Broadband Router). The standard is targeted to have an estimated maximum throughput of 600 Mbps and should be capable of carrying multiple HD video streams simultaneously, allowing a wireless network to be a practical solution for moving video

<sup>128</sup> A Candidate Standard is a document that has received significant review within a specialist group. Advancement of a document to Candidate Standard is an explicit call to those outside of the related specialist group for implementation and technical feedback. See The Advanced Television Systems Committee, *Candidate Standards*, [http://www.atsc.org/standard/candidate\\_standards.html](http://www.atsc.org/standard/candidate_standards.html) (visited Feb. 7, 2007).

<sup>129</sup> Doug Lung, *NAB RF Reflections: A-VSB and DTx*, TV TECHNOLOGY, June 14, 2006 at [http://www.tvtechnology.com/features/On-Rf/2006.06.14-f\\_Doug\\_Lung.shtml](http://www.tvtechnology.com/features/On-Rf/2006.06.14-f_Doug_Lung.shtml) (visited Jan. 29, 2007).

<sup>130</sup> 2003 Navigation Devices Second Report and Order and FNPRM, note 111 *supra*.

<sup>131</sup> Craig Matsumoto, *Entropic, Verizon Serve Up MOCA*, LIGHT READING, Jan. 5, 2006, at [http://www.lightreading.com/document.asp?doc\\_id=86434](http://www.lightreading.com/document.asp?doc_id=86434) (visited Jan. 30, 2007).

<sup>132</sup> AT&T Says ‘Yes’ to HomePNA, ‘No’ to MoCA, THE ONLINE REPORTER, Sept. 2, 2006, at [http://www.onlinereporter.com/article.php?article\\_id=7568](http://www.onlinereporter.com/article.php?article_id=7568) (visited Jan. 30, 2007).

<sup>133</sup> Multimedia over Coax Alliance, at <http://mocalliance.org> (visited Jan. 30, 2007).

<sup>134</sup> Home Phoneline Networking Alliance, at <http://www.homepna.org> (visited Jan. 30, 2007).

<sup>135</sup> HomePlug Powerline Alliance, at <http://www.homeplug.org> (visited Jan. 30, 2007).

<sup>136</sup> Throughput is defined as the data-carrying capacity of a network, a result of the number of data bits transferred at one time and the rate at which they are transferred. The 802.11b/g standard estimates a maximum throughput of 54 million bits per second (“Mbps”), but real-world performance usually results in a maximum throughput of less than 24 Mbps shared among all devices on the network. An Ethernet home network usually has a reliable throughput of 100 Mbps for each device. A high definition video stream requires a constant 12-20 Mbps for reliable live playback.

<sup>137</sup> IEEE, *IEEE 802.11n Report*, at [http://grouper.ieee.org/groups/802/11/Reports/tgn\\_update.htm](http://grouper.ieee.org/groups/802/11/Reports/tgn_update.htm) (visited Jan. 30, 2007).

content around the home. We seek updated information on technical standards and other developments regarding home networking.

#### L. Foreign Markets

91. 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. We seek current information and case studies on video delivery in foreign markets, including the offering of digital tiers and a la carte services. 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 different 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? Commenters also should identify any country in particular that the Commission should examine.

### III. PROCEDURAL MATTERS

92. *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).

93. *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).

94. 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. 07-269, 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.Commission.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](mailto:ecfs@fcc.gov), 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 12<sup>th</sup> 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 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail at [www.bcpweb.com](http://www.bcpweb.com); (2) Marcia Glauberman, Media Bureau, 445 12<sup>th</sup> Street, S.W., Room 2-C264, [Marcia.Glauberman@fcc.gov](mailto:Marcia.Glauberman@fcc.gov); and (3) Dana Scherer, Media Bureau, 445 12<sup>th</sup> Street, S.W., Room 2-C222, [Dana.Scherer@fcc.gov](mailto:Dana.Scherer@fcc.gov).

95. *People with Disabilities:* Contact the Commission to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at [Commission504@Commission.gov](mailto:Commission504@Commission.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

96. The Media Bureau contacts for this proceeding are Marcia Glauberman and Dana Scherer at (202) 418-2330.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE\***

*Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269

Since arriving at the FCC, I have been pleased to support policies that have facilitated commercial negotiations, provided incentives for investment, and encouraged competition; all of which hopefully results in real world benefits for consumers, whether through quality, choice, or new advances in technology.

The Annual Video Competition Report is one of the most important that this agency produces for Congress. It is the goal of this Commission to encourage competition, especially in the video marketplace. We have taken a number of steps to encourage new entrants, and consumers now have more options for video than ever before.

Our deregulatory decisions in the U.S. communications industry have resulted in significant investment--likely more than \$70 billion by the telecommunications industry in 2007 alone. We have seen unparalleled investment in new fiber deployment and new entrants offering video and broadband. Consumers are reaping the benefits with triple and even quadruple plays.

Competition can benefit consumers in terms of lower prices, a broader panoply of products, improved fidelity and quality, and even totally new tools to enhance the consumer experience. It also leads to investment, which advances both technology and innovation. With this in mind, the findings of the Annual Video Competition Report serve as a foundation for much of our policymaking. Therefore, the accuracy and transparency of the information is of paramount import.

Reasonable minds may differ in drawing conclusions from data. However, that data must be available for review and able to withstand scrutiny. Data should be complete and viable. That is why it is crucial that we set in motion a process for future competition reports as soon as possible, and that we ensure reliability and completeness prior to making an analysis of the underlying data, and then drawing a final conclusion.

This year's Report focuses heavily on the findings of one source, rather than the numerous sources our reports have included in the past. I believe we must consider a broader universe of information sources when we are considering so broad a change in policy. One option would be to supplement our analysis by requesting that Form 325 Survey information be provided by all cable operators. Just as our sister agency, the Securities and Exchange Commission, relies upon information it receives from cable companies, we should also be able to rely on the trustworthiness of the industry's own information. Finally, there should be no reason that this Commission cannot aptly analyze all relevant data, from all appropriate sources, as we do for other competition reports.

I am now able to approve this item concluding that the 70/70 test has not been met for the 2006 Report. However, I do not agree that we should postpone its delivery to Congress or to the public. I believe the information contained in the current draft supports the Report's conclusion that this data does not demonstrate with certainty that the second prong of the 70/70 test has been met. Therefore, I would like

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\* This statement was prepared while Commission Tate was in office.

to see us move expeditiously to send this already-delayed Report to Congress now.

I look forward to working with the Chairman and my colleagues to resolve the questions that have been raised regarding the underlying data in this Report in order to provide our 2007 Report in a more timely, thorough manner. We cannot debate philosophy and substance until we all have access to full and complete information upon which to base our respective positions. And I hope that we can work together to finalize our 2007 Report to Congress expeditiously.

**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. 07-269

I support this Notice, which posits a comprehensive set of questions about the state of competition in the market for the delivery of video programming. As our prior Video Competition Reports have demonstrated, today's video marketplace is dynamic and more competitive than ever. Virtually every American enjoys more options for the delivery of video programming and more choices in programming content and services than ever before. The once dominant cable industry's share of multichannel video customers has declined steadily over the past 15 years, while the two DBS companies continue to grow and the incumbent telephone companies have begun to compete for video customers in earnest. Moreover, the rapid decline in vertical integration of cable operators and program networks and the increase in the number of channels available on MVPDs provide further evidence of robust competition.

I look forward our study of the data, analyses and comments sought by the Notice to inform our policy determinations in the media sector. The Commission should examine the results carefully and with an objective view aimed toward developing the policies appropriate to the competitive market environment. I hope that our experience with this year's 2006 Video Competition Report, with its radical departure in methodology from previous reports, will be an anomaly in Commission history.