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	)	

SUPPLEMENTAL NOTICE OF INQUIRY

Adopted: April 8, 2009 **Released: April 9, 2009**

2008
Comment Date: May 20, 2009
Reply Comment Date: June 20, 2009

2009
Comment Date: July 29, 2009
Reply Comment Date: August 28, 2009

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

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I. INTRODUCTION

1. This *Supplemental Notice of Inquiry* ("*Supplemental Notice*") solicits additional data, comment, and analysis for the Commission's 14th annual report to Congress.[1] On January 16, 2009, the Commission released a *Notice of Inquiry* ("*Notice*") seeking information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the marketplace, prospects for new entrants, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.[2] The *Notice* requested data as of June 30, 2007. By this *Supplemental Notice*, we request additional information to ensure that the 14th Annual Report includes information as of June 30, 2008, and June 30, 2009.[3]

2. We seek updated information and comment on the questions and issues raised in the *Notice*.[4] Where possible, we request data as of June 30, 2008, and June 30, 2009.[5] Commenters should provide all of the information called for by the *Notice*, as well as the additional information described herein. As detailed in the *Notice*, we ask commenters to provide data on video programming distributors, including: 1) cable systems; 2) direct-to-home satellite services, including direct broadcast satellite ("DBS") services and large home satellite dish ("C-Band") providers; 3) other wireline providers, including local exchange carriers ("LECs"), broadband service providers ("BSPs"), open video systems ("OVS"), and utility-operated systems; 4) over-the-air broadcast television stations; 5) other wireless service providers, including commercial mobile radio services ("CMRS") as well as wireless cable systems using frequencies in the broadband radio and educational broadband services; 6) private cable operators ("PCO" systems), also known as satellite master antenna television ("SMATV") systems; and 7) the Internet and Internet Protocol ("IP") networks.

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[1] Pub. L. No. 102-385, 106 Stat 1460 (1992). Congress imposed an annual reporting requirement on the Commission in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") as a means of obtaining information on "the status of competition in the market for the delivery of video programming." *See also* 47 U.S.C. § 548(g). The Commission's most recent report appears at: *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542 (2009) ("*13th Annual Report*").

[2] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Notice of Inquiry, 24 FCC Rcd 750 (2009) ("*Notice*").

[3] This *Supplemental 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.

[4] The accuracy and usefulness of the report and its findings are directly related to the quality of the data and information we receive from commenters. We encourage thorough and substantive submissions from industry participants and others, including state and local regulators, with the best knowledge of the questions and issues raised. We will augment comments 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 by industry participants. Nevertheless, we are concerned that such publicly available information may not be adequate to gain a full understanding of the state of competition in the video marketplace, especially when various sources provide inconsistent data. Thus, it is important for us to receive complete and accurate information directly from industry sources, as well as from non-industry sources.

[5] As set forth above, we establish separate comment and reply comment filing dates for June 2008 and June 2009, recognizing that we are issuing this *Supplemental Notice* before June 2009. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Order, 24 FCC Rcd 2524 (2009).

II. MATTERS ON WHICH COMMENT IS REQUESTED

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

1. Head-to-Head Competition

3. We seek data and comment regarding consumers' choices for access to video programming and how these choices have changed since June 30, 2007. Consumers generally have access to over-the-air broadcast television, a cable system, and at least two DBS providers. In some areas, consumers have access to video services provided by a second cable system, often operated by a company considered a LEC or BSP. In addition, some consumers have access to multichannel video programming through an emerging technology, such as digital broadcast spectrum and video over the Internet. What changes have occurred since June 30, 2007, with respect to the number and types of video delivery services available to consumers?[6] To continue to report on market trends, we seek data on the number of subscribers, and market share, for each multichannel video programming distributor ("MVPD"), as of June 30, 2008, and June 30, 2009.[7] As emerging technologies become more prevalent, we also solicit information on how many consumers use these distribution technologies as sources for video programming.

4. Since 2007, there have been a number of changes in the market for the delivery of video programming to consumers, including the expansion of the areas where Verizon and AT&T compete with incumbent cable operators and an increase in the amount of video programming distributed over the Internet.[8] Thus, we seek data and comment that will enable us to evaluate changes in competition in the video distribution marketplace on an annual basis since June 30, 2007. In particular, we request comment on incumbent MVPDs' responses to the entry of competitive alternatives for the delivery of video programming. Are incumbent MVPDs modifying their programming services or pricing policies in response to the entry of competing video providers? What changes have occurred with respect to program offerings and the pricing of contracts, including introductory discounts and cancellation penalties, as a result of competition among MVPDs? How does customer service impact the competitive dynamics among MVPDs? Is customer service a factor in subscribers' choices among MVPDs? What other factors affect consumers' decisions to subscribe to one MVPD rather than another?

2. Impact of Regulatory Environment and Barriers to Entry

5. We seek comment on the effect of recent Commission regulatory actions and their effect on competition. The *Notice* mentions two: (1) the October 31, 2007 Report and Order and Further Notice of Proposed Rulemaking regarding the use of exclusive contracts for the provision of video services to multiple dwelling units ("MDUs");[9] and (2) the Commission's Franchising Orders regarding the awarding of competitive video franchises.[10] We also seek comment on other Commission actions that have taken

[6] *See Notice* at ¶¶ 5-8.

[7] *Id.* at ¶ 4. *See also 13th Annual Report* at ¶ 169; Appendix B, Table B-1.

[8] *See* ¶¶ 35, 44-45 *infra.*

[9] In the Order, the Commission adopted a rule prohibiting exclusive contracts between owners of MDUs and centrally managed residential real estate developments and entities subject to Section 628 of the Communications Act, which includes cable operators, common carriers, and OVS providers. In the Further Notice, the Commission sought comment on whether we should extend the ban to other MVPDs, including DBS providers and private cable operators, which are not subject to Section 628. *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007), *appeal pending sub nom. National Cable & Telecommunications Ass'n v. FCC*, No. 08-1016 (D.C. Cir.). *See also Notice* at ¶ 11.

[10] In December 2006, the Commission adopted a *Report and Order* pursuant to Section 621(a)(1) of the Communications Act to ensure that a local franchising authority does not "unreasonably refuse to award an additional competitive franchise." *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket

(continued....)

place since the *Notice* was adopted. To what extent have these actions affected competitive entry into the video marketplace? With respect to the Franchising Orders, we note that a number of states have continued to enact franchising reform laws since the adoption of the *Notice*. How have these state laws facilitated or otherwise changed the prospects for new entrants into the field? We request information regarding the impact of new franchising requirements.

3. Impact of Economic Environment on Video Programming Services

6. *Access to Capital and Investment:* We seek comment on the impact of the current economic environment and its effect on access to capital on the market for the delivery of video programming. How have the economy, lending environment, and debt structure of media companies affected broadcasters' and MVPDs' ability to invest in new technologies and programming services? Several broadcast station group owners have failed in their attempts to sell their publicly-traded stock to private equity firms or individual owners since June 30, 2007.[11] In addition, several broadcasting groups, including the Tribune Company, Equity Media Holdings Corporation, and Pappas Telecasting, have filed for bankruptcy protection.[12] Cable operators and non-broadcast networks have experienced financial difficulties as well. Broadstripe Communications entered Chapter 11 bankruptcy protection on January 2, 2009.[13] ValuVision Media attempted to sell home shopping network ShopNBC, but no bidders emerged.[14] What effect does the current economic climate have on broadcasters' operations, especially their ability to provide local programming?[15] Has the nationwide lack of access to financial resources slowed down MVPDs' capital investment and deployment of programming and/or services, including local programming? What impact will financial difficulties have on MVPDs', broadcasters', and programmers' short-term and long-term economic and strategic decisions?

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No. 05-311, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2007), *pet for review denied, Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008). In October 2007, the Commission adopted a *Second Report and Order* to cover incumbent providers as well as new entrants. *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Report and Order, 22 FCC Rcd 519633 (2007). *See also Notice* at ¶ 10.

[11] The broadcast groups include Hearst-Argyle Television, Inc., Emmis Communications Corp., LIN TV Corp., and Nexstar Broadcasting Group, Inc. *See* Tuna N. Amobi, Erik B. Kolb, *Broadcasting, Cable & Satellite Industry Survey*, Standard and Poor's, June 26, 2008, at 5.

[12] *See* Robin Flynn, Volker Moerbitz, Justin Nielsen, and Michelle Ow, *Broadcast TV Investor: Deals & Finance*, SNL Kagan, Jan. 28, 2009 at 5. In addition, NASDAQ delisted the stock and warrants of Equity Media Holdings on Jan. 26, 2009 and Young Broadcasting on Jan. 23, 2009. *Id.* at 15-16. *See also* NASDAQ, *Delisting of Equity Media Holdings Corporation from the NASDAQ Stock Market* (press release), Jan. 15, 2009, and Young Broadcasting Inc., *Young Broadcasting Inc. Receives NASDAQ Delisting Notice* (press release), Jan. 27, 2009.

[13] *See* Robin Flynn, Ian Olgerson, Mariam Rondeli, Robert Serrano, and Michelle Ow, *Cable TV Investor: Deals & Finance*, SNL Kagan, Jan. 30, 2009, at 5-6.

[14] *See* Derek Baine, Deana Myers, Adam Swanson, *Cable Program Investor: Analyzing Economics of Basic and Premium Programming*, SNL Kagan, Jan. 30, 2009, at 2. "Clearly, the market for networks is at an historic low." *Id.*

[15] "Some local stations . . . are scaling back their original programming, cutting down on the weekend news shows and trimming staff. . . . Stations have pulled the plug entirely on some news shows in Lexington, Ky. and Yakima, Wash. In November, some stations owned by News Corp. and NBC Universal said they would begin pooling their resources." Sam Schechner and Rebecca Dana, *Local TV Stations Face a Fuzzy Future*, WALL STREET JOURNAL, Feb. 10, 2009, at A1.

7. In previous reports, we have observed that cable operators, in particular, have invested significant capital upgrading their systems and adding new video and non-video services.[16] Are cable operators and other MVPDs continuing to invest in system upgrades and service improvements? What effect has the recent economic climate had on cable operators' and other MVPDs' investments or plans to provide additional video and non-video services to their customers?

8. *Access to Revenues and Investment:* Broadcast stations and networks, non-broadcast networks, MVPDs, and Internet sites all derive revenue by selling time or space to advertisers, but some are more dependent on advertising revenue than others. Broadcast stations and networks derive the majority of their revenues from advertisers and a portion from payments by MVPDs obtained through retransmission consent negotiations. Non-broadcast networks earn a significant amount of revenue from licensing fees they charge to MVPDs, based how many subscribers they reach. MVPDs earn the majority of their revenue directly from consumers via subscription fees. While Internet web sites generally are more dependent on advertising revenue than MVPDs, some also earn revenue directly from consumers by charging for viewing and/or listening to content. Some analysts have estimated that companies have already shifted a significant amount of advertising dollars from traditional formats like cable and broadcast television to the Internet.[17] Meanwhile others suggest that online advertising revenue is insufficient to give television programmers or producers an economic incentive to invest in content for newer media such as the Internet.[18] We seek comment on whether shifts in advertising shares among media represent permanent, structural changes within the video distribution industries or temporary changes due to the cyclical nature of advertising and challenging economic conditions.[19] How do the shifts impact program distributors' ability to invest in programming and new technology?

4. Digital Television

9. Since June 30, 2007, broadcasters have been transitioning from analog to digital broadcasting formats. In addition, MVPDs have increased the number of broadcast stations they carry in standard definition ("SD") and high-definition ("HD") formats as well as the number of non-broadcast networks they carry in HD. The DTV Delay Act, enacted on February 11, 2009, extended the date for the nationwide digital television ("DTV") transition from February 17, 2009, to June 12, 2009.[20] We seek

[16] *See 13th Annual Report* at ¶¶ 54-71.

[17] According to Michael Greene, the lead analyst of *Jupiter Research's U.S. Online Advertising Forecast: 2008 - 2013*, "In economically uncertain times, the Internet offers a highly measurable ad medium. . . and everyone's concerned now about getting the most for their dollar." *See* Richard Grincel, *Digital Advertising Budgets to Rise 20 Percent this Year,* SAN DIEGO BUSINESS JOURNAL, Aug. 28, 2008, at 17. *See also Yankee Group Says 2008 is the High-Water Mark for Interactive Cable*, ENTERTAINMENT NEWS WEEKLY, May 26, 2008, at 7 ("Yankee Group announced that there is a significant shift taking place in the advertising industry – cable and IPTV operators will lose out to internet video platforms in the competition for the incremental ad revenue that supports investments in interactive television."); Jenn Abelson, Johnny Diaz, and Jackie MacMullan, *Era of the Celebrity Broadcaster Fades on Local TV*, THE BOSTON GLOBE, April 3, 2008, at A1 ("Television stations . . . and other media are getting squeezed by declining ad revenues, growing competition from the Internet and cable channels, and demands to invest millions in new digital technology . . . Companies have increasingly migrated their advertising dollars away from traditional media, such as network and local TV stations . . . and toward the Internet.")

[18] *See* Tejpaul Bhatia, *The Television Paradigm Shift*, STREAMING MEDIA MAGAZINE, April – May 2007, at 50. ("Consumer behavior and the flow of cash in the current media economy represents [sic] a discrepancy between the priorities and economic incentives of consumers, programmers, and producers.")

[19] "Retransmission revenues look to be the only source of revenue growth for TV broadcast station owners in 2009." *Broadcast Investor* at 12. "[The broadcast television sector] must devise new growth strategies to augment its core advertising revenue model, in our view." *BRC Industry Survey*, at 8. *See also* Sam Schechner and Rebecca Dana, *Local TV Stations Face a Fuzz Future*, WALL STREET JOURNAL, Feb. 10, 2009, at A1. *See also* ¶ 36 *infra*.

[20] *See* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (to be codified at 47 U.S.C. §§ 309 (j)(14) and 337 (e)).

comment on the impact of the digital television transition on consumers, broadcast stations, and MVPDs. What has been the competitive impact on stations that have already ceased analog broadcasting? To what extent has the digital transition affected the number of households that subscribe to MVPDs?

10. How has the availability of national and local programming in HD formats affected the competitive dynamics between DBS, cable operators, LECs, and other MVPDs? How do MVPDs package and price HDTV programming?[21] How many HDTV sets are sold each year and what percentage of TV set sales do they represent? What percentage of set sales has built-in ATSC tuners and what percentage is pure monitors? Does the availability of HDTV programming drive sales of sets, or vice-versa?

11. How many television stations broadcast in HD, and what percentage of the programming day is offered in HD? Of those, how many are carried by MVPDs? Are network affiliates more likely to be carried in HD than unaffiliated stations? With respect to DBS operators, what percent of the broadcast stations carried in HD in a given market are carried pursuant to satellite "must carry" (carry-one, carry-all)? In what markets do MVPDs carry all stations in HD and not just those with major network affiliations? Does the availability of HDTV programming affect retransmission consent negotiations? We seek data and information on the non-broadcast networks and broadcast stations that cable operators offer in high-definition. What effect does the carriage of HD programming have on the bandwidth capacity of MVPDs? Are there differences among MVPDs in the quality of HD programming delivered to consumers? If so, have these differences had an effect on competition? Is the quality of HD programming an important competitive factor? How much capacity do MPVDs devote to HDTV programming, either as video-on-demand ("VOD") or as linear channels? We seek information about the extent to which broadcast stations offer multicast streams of digital programming, the programming broadcasters carry on the multicast channels, and whether MVPDs carry these channels.

5. Programming Issues

12. We seek updated data and information about the programming issues discussed in the *Notice*,[22] including additional information about regional sports networks ("RSNs").[23] To continue to report on trends in vertical integration, we request information on the number and ownership of non-broadcast networks by cable operators, other MVPDs, and broadcasters as of June 2008 and June 2009. How does consolidation in the MVPD and broadcast markets impact the delivery of video programming? We also solicit comment on the ability of MVPDs to acquire specific programming services and the extent to which programming networks are able to obtain carriage by MVPDs. Has the entry of LECs, such as Verizon and AT&T, and other overbuilders in certain geographic markets affected the ability of programming networks to gain and/or retain carriage on other MVPDs?

B. Advanced Services: Bundling, HSD, Voice, Telephony, VOD, DVRs, and IPGs

13. In the Notice, we sought information on advanced service offerings by MVPDs.[24] We seek updated information on the impact of the bundling of video services with voice and high-speed data services on competition in the market for the delivery of video programming services to consumers. In addition, we seek comment on developments since June 30, 2007, regarding video-on-demand ("VOD")

[21] For example, Comcast Corporation ("Comcast") does not charge additional fees for HD service, while DIRECTV charges a $9.99 monthly "access fee" for HD service. *See* Comcast Corporation, http://www.comcast.com/corporate/shop/hd/hd101.html (visited Feb. 18, 2009) and The DIRECTV Group, Inc. ("DIRECTV"), http://www.directv.com/DTVAPP/global/contentPageNR.jsp?assetId=3420002&footernavtype=-1 (visited Feb. 18, 2009).

[22] *See Notice* at ¶¶ 12-21.

[23] *Id.* at ¶ 20.

[24] *Id.* at ¶¶ 79-80.

services, digital video recorders ("DVRs") and services, and the role of interactive program guides ("IPGs").

14. *Bundling, High-Speed Data, and Voice Services:* Some analysts have noted that the economic environment and intensified competition between cable operators, DBS providers, and LECs have made the bundling of video and non-video services critical to MVPDs' competitiveness.[25] We seek comment on the extent to which MVPDs are bundling voice and data services with video services in double, triple, or quadruple play packages[26] and on the impact of such offerings on competition. In March 2008, Cox Communications, AT&T, and Verizon, successfully bid on the Commission's auction of the 700 Megahertz frequency band.[27] We seek information about the types of services these MVPDs intend to offer using the 700 Megahertz frequency band.

15. *Impact of Video Services on Broadband Deployment:* We seek information on the extent to which the availability of video over the Internet – through services that require high bandwidth, such as YouTube, ITunes, and Amazon.com – has stimulated consumer demand for MVPDs' deployment of ultra-high-speed broadband service, and vice-versa.[28] Do MVPDs expect to offer tiered high-speed data services (*e.g.*, low-priced, slower speed versus higher-priced, faster speed service)? If so, how would such tiering impact consumers' access to video programming?

16. *Video-on-Demand:* We seek updated information on the use of video-on-demand ("VOD") for video programming distribution. Are programmers using VOD in lieu of multiplexing their programming networks? If so, has VOD freed up capacity for new networks, or do MPVDs need higher

[25] *See* Robin Flynn, Ian Olgerson, Mariam Rondell, Robert Serano, and Michelle Ow, *Cable TV Investor: Deals & Finance,* SNL Kagan, Jan. 30, 2009, at 6. ("The cable industry's bet on the churn-busting benefits of its bundling strategy has borne fruit, as the triple-plays's value proposition – and the cable operators' increasing willingness to extend introductory discounts – has delivered on the expectations of consumer 'stickiness.' This benefit has been augmented recently by the poor shape of the economy, as few individuals are moving and changing multichannel providers.") *See also* Tuna N. Amobi, Erik B. Kolb, *Broadcasting, Cable & Satellite Industry Survey*, Standard and Poor's, June 26, 2008, at 3-4. ("The battle of the bundles has intensified competition in the residential market for voice, video, and data services, as the cable operators and [local exchange carriers] continue to encroach into each other's traditional markets.")

[26] Each package represents a mix of services that subscribers can receive from an MVPD. The services can include video programming, voice delivered via IP or fiber networks, high-speed data, and wireless services.

[27] *Auction of 700MHz Band Licenses Closes, Wining Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572 (WTB 2008) and *Wireless Telecommunications Bureau Grants 700 MHz Band Licenses, Auction 73*, Public Notice, 24 FCC Rcd 2255 (WTB 2009). Dish Network bid under the name of its subsidiary, Frontier Wireless, paying $712 million for 168 licenses of 6 megahertz of unpaired spectrum in channel 56 throughout most of the country. *See* Todd Spangler, *Dish, Cox Notch Spectrum Gains,* MULTICHANNEL NEWS, March 24, 2008, at 8; Matt Kapko, *Putting the Mobile Pieces Together*, RCR WIRELESS NEWS, May 19, 2008; and Tuna N. Amobi, Erik B. Kolb, *Broadcasting, Cable & Satellite Industry Survey*, Standard and Poor's, June 26, 2008, at 4.

[28] *Id*. at 4 and 9. *See also* Deborah Yao, *Comcast CEO to Show New Products, Services to Help Cable Company Compete More Broadly*, ASSOCIATED PRESS, Jan. 8, 2008; Verizon Corporation, *Verizon Customers in 27 Texas Cities Now Can Get Ultra-High Speed Internet at Up to 7 Megabits per Second* (press release), Jan. 21, 2008. LECs continue to roll out fiber-optic broadband services with download speeds of up to 50 megabits per second (Mbps), more than double the speeds of traditional digital subscriber line ("DSL") service and cable modem service. The cable industry has developed its own ultra-high-speed service based on its Data Over Cable Service ("DOCSIS") 3.0 standards, which can reach download speeds of 160 Mbps. *See also* Comcast Corporation, *Comcast Puts the Pedal to the Metal: Announces New 65% Benchmark to Roll Out Wideband High-Speed Internet Services in 2009* (press release), Feb. 19, 2009 (" 'What we're finding is that speed really matters to consumers, particularly as they watch more video on the Internet on sites like YouTube and Fancast.com.' . . . said Steve Burke, Chief Operating Officer, Comcast Cable.").

capacity for VOD? How much VOD programming is locally originated or concerns local subject matter? Has the shift in movie release windows affected the viability of VOD programming?[29]

17. *Digital Video Recorders:* What percentage of and types of programming do viewers watch live versus on a time-shifted basis via a digital video recorder ("DVR")? How has time shifting affected the ability of programmers to generate advertising revenue? In May 2007, The Nielsen Company introduced a standardized ratings system that measures audiences for commercials when played back via DVRs as well as when they are viewed live.[30] How has the launch of Nielsen's commercial ratings system and other new audience measurement metrics impacted the ability of programming networks to serve niche audiences?[31] In January 2009, EchoStar Corporation announced that it planned to introduce a new HD DVR with Slingbox capability in Spring 2009. The Slingbox is a TV streaming device that enables consumers to remotely watch their cable, satellite, or digital video recorder programming from a broadband Internet connection.[32] How do trends in DVR capabilities impact competition among MVPDs? Have services unaffiliated with MVPDs such as TiVo experienced difficulty with obtaining licensing agreements?

18. *Interactive Program Guides:* In the *Notice*, we requested information on the development and deployment of electronic programming guides ("EPGs"), including the number and type of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute them.[33] As interactive television has developed, the functionality of EPGs has evolved and they are now more commonly known as interactive program guides ("IPGs").[34] Since June 30, 2007, newspapers have been reducing or discontinuing their television programming listings, in part to reduce operating costs, and in light of continually changing program scheduling, the increased number of programming networks, and readers' access to listings over the Internet and via their MVPDs' IPGs.[35]

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[29] *See* Dawn C. Chmielewski, *Studios Editing Video Strategy: Some Are Testing Offering Online and Cable Rentals on the Same Day as DVD Releases to Boost Sales*, LOS ANGELES TIMES, June 16, 2008, at C1. Traditionally movie studios have waited to distribute films via MVPDs (through VOD) and the Internet until after their DVD release date. The studios wanted to avoid undercutting DVD sales. Since 2007, Warner Brothers has experimented with releasing movies via MVPDs, the Internet, and DVDs simultaneously. In addition, some studios are weighing the possibility of offering high-definition versions of movies via MVPDs before their DVD release date, pending the Commission's granting MVPDs permission to block in-home copying.

[30] Previously advertisers and program networks used audience ratings to negotiate the buying and selling of commercial time. In light of the increasing use of DVRs and the ability of consumers to fast-forward commercials, clients asked Nielsen to provide a closer measurement for the audiences of commercials. *See* The Nielsen Company, *Nielsen Launches Commercial Minute Ratings in Standardized File; "The Office" has Highest Percentage of Commercial Viewing via DVR Playback Compared to Live Programming* (press release), May 31, 2007.

[31] *Id.*

[32] EchoStar Corporation, *EchoStar Unveils World's First Placeshifting HD DVR at 2009 CES* (press release), Jan. 8, 2009. *See also* John P. Falcone, *EchoStar SlingLoaded HD DVR 922 Combines Slingbox and DVR Into One Super Set-Top Box*, CNET, Jan. 8, 2009, at http://ces.cnet.com/8301-19167_1-10137052-100.html (visited Feb. 23, 2009).

[33] *See Notice* at ¶ 83.

[34] *See* "Electronic Program Guide (EPG) & Interactive Program Guide (IPG)" at http://www.itvdictionary.com/epg_ipg.html (visited Feb. 14, 2009).

[35] On Feb. 2, 2009, *The Washington Post* announced an "Opt-In" program for its TV Week for home-delivery subscribers in Arlington and Alexandria, Virginia. *See* "To Our Readers," TV Week, *The Washington Post*, Feb. 8, 2009, at 2. Other newspapers limiting or discontinuing the publishing of program listings since June 30, 2007, include *The Los Angeles Times (See* James Rainey, *Times Scraps Guest Editor Program, Announces Probe,* THE LOS ANGELES TIMES, March 27, 2007 at C3); *The Brownsville Herald* (Texas) (*See* "*The Herald" Now Running Enhanced TV Listings in Daily Editions*, THE BROWNSVILLE HERALD, Sept. 19, 2008, State and Regional News);

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What role do IPGs play in consumers' viewing choices? How does the demise of TV program listings in newspapers impact the role of IPGs? Are IPGs now the primary source for viewers to obtain program listings? If so, how does this impact the market for the delivery of video programming?

C. Technical Issues

19. In our annual reports, we address regulatory and market developments affecting technology and their effect on the state of competition.[36] In the *Notice*, we sought information on developments as of June 30, 2007, covering technologies and technical standards developed by CableLabs, including middleware[37] such as the Open Cable Application Platform ("OCAP"), CableCARDS, and PacketCable.[38] We also sought comment on the status of navigation devices and the impact of the Commission integration ban separating security from non-security functions in system access devices.[39] In addition, we requested information about advances in digital broadcasting, home networking, and content mobility developments as well as the impact of digital rights management on the deployment of new technologies.[40] We seek similar information on the status of these technical issues as of June 2008 and June 2009, including analysis of the following developments.

1. Set-Top Boxes and Technology

20. *Technical Standards for MVPDs' Set-Top Boxes:* In 2004, CableLabs initiated Enhanced Television ("ETV") and the Enhanced Television Binary Interchange Format ("EBIF") to allow set-top boxes already installed in subscribers' households (*i.e.*, "legacy boxes") to receive interactive software and programming.[41] In 2001, CableLabs introduced OCAP to make it easier to introduce new devices and to speed the availability of interactive applications to MVPDs' systems.[42] In January 2008, the cable industry adopted the name "tru2way" to brand and market OCAP products.[43] EBIF and tru2way are complementary middleware standards to promote interactive television on cable set-top boxes. Tru2way devices can be continually updated with new applications and data because of their two-way capabilities.[44] For example, tru2way can provide advertisers with better audience metrics, such as those

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and *The Centre Daily Times* (State College, PA) (*See* Bob Heisse, *Difficult Changes Represent Steps Toward the Future of Newspapers*, CENTRE DAILY TIMES, July 13, 2008, at A1).

[36] *See, e.g., 13th Annual Report* at ¶¶ 261-281.

[37] Middleware is a term for software that acts as an interpretation layer between the operating system and specific devices of a piece of hardware and software.

[38] *See Notice* at ¶¶ 81-86.

[39] *Id.* at ¶ 83.

[40] *Id.* at ¶¶ 87-89, 90.

[41] *See* CableLabs, *OpenCable – Enhance Television (ETV*) at http://www.opencable.com/etv/ (visited Feb. 12, 2009); OCAP/EBIF Developer Network (OEDN), *What is EBIF*, http://www.oedn.net/content/what-ebif (visited Feb. 24, 2009); OEDN, *OEDN Glossary: EBIF: Enhanced TV Binary Interchange Format*, http://oedn.net/glossary?filter0=enhanced+tv (visited Feb. 25, 2009); and John Latta, *Cable 2008*, THE WAVE REPORT, July 18, 2008, at http://www.wave-report.com/conference_reports/2008/Cable2008.htm (visited Feb. 24, 2009).

[42] *See* CableLabs, *What is the OCAP specification?* http://www.opencable.com/ocap/ocap.html (visited Feb. 25, 2009).

[43] *See* CableLabs, *Tru2Way™ Brand to Succeed "Open Cable™ Platform" in Consumer and Retail Settings* (press release), Jan. 7, 2008, *available at* http://www.cablelabs.com/news/pr/2008/08_pr_tru2way_010708.html. We begin to use that term in this *Supplemental Notice*.

[44] *See* Mark Robuck, *OCAP Coming Out of Idle*, CT REPORTS, March 3, 2007.

found in Internet advertising, as well as new technologies with addressable advertising.[45] We seek updated information on the availability of tru2way-compliant and EBIF-compliant devices, the merits and drawbacks of each standard, the number of such devices in use by subscribers, and the types of services enabled by each middleware standard.

21. We also seek comment on the strategic implications of the availability of these enhanced services on the state of competition in the market for delivery of video programming. How will the ability to offer enhanced advertising and other interactive services impact MVPDs' ability to compete with each other and with broadcast television stations for audiences and advertising revenue? How does the availability of highly-targeted advertising affect MVPDs' and programmers' ability to offer local and niche programming for traditionally unserved and underserved audiences?

22. *CableCARDs*: In 2003, the Commission adopted rules that allow television sets to be built with "plug-and-play" functionality for one-way digital services.[46] The adopted interface for the separation of the security elements is commonly referred to as a "CableCARD." Consumers must obtain CableCARDs from their cable operator in order to receive secured digital cable services on television sets and other electronic devices without the addition of a set top box. As of December 2008, cable operators have deployed more than 10 million CableCARDs.[47] Since our last report, cable operators have developed a multi-stream CableCARD (*i.e.*, CableCARDs that deliver more than one channel to subscribers at a time) and are in the process of testing retail two-way devices equipped with CableCARDs in certain trial markets.[48] We request information on the status of these trials and the merits of multi-stream versus single-stream CableCARDs.

2. Competition Among Navigational Devices

23. *Technical Standards for Consumer Electronics*: CableLabs has established a private negotiation process by which individual consumer electronics manufacturers may develop two-way plug-and-play electronic devices, including HDTV sets, digital video recorders, mobile phones, and personal computers that are compatible with cable operators' technology through tru2way. Using the tru2way interface, a developer can write an application only once and it can run on any tru2way-compliant set-top box or cable-ready television set.[49] We request updated information regarding applications using tru2way.

24. Since June 2007, several consumer electronics manufacturers have signed memorandums of understanding with CableLabs to implement OCAP.[50] Has CableLabs's certification process for

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[45] *See* Mark Robuck, *Building the Business Case for OCAP*, CT REPORTS, May 14, 2007.

[46] *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility between Cable Systems and Consumer Electronic Equipment*, CS Docket No. 97-80, Second Report and Order and Second Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003).

[47] *See* Letter from Neal M. Goldberg, Vice President and General Counsel, NCTA to Marlene Dortch, Secretary, FCC, CS Docket No. 97-80 (December 22, 2008). This number includes CableCARDs deployed for use in retail devices as well as CableCARDs deployed in operator-supplied set-top boxes.

[48] The enhanced standard is known as CableCARD 2.0. *See* Ben Darawbaugh, *CableCARD 2.0 is Ready*, Engadget HD, http://www.engadgethd.com/2007/06/22/cablecard-2-0-is-ready/ (visited Feb. 11, 2009).

[49] *See* Harry Newton, NEWTON'S TECHNOLOGY DICTIONARY (CMP Books, 23rd ed., 2007) at 666. Tru2way uses the same Java-based technology that is used in cell phones, interactive broadcasting, and high-definition Blu-ray Disc players.

[50] *See* CableLabs, *Cable Tru2wayTM Platform Gains Endorsements from Major CE and IT Companies; ADB, Digeo, Intel, Panasonic, Samsung, and Sony Sign Accord with Cable Industry* (press release), June 9, 2008. *See also* CableLabs, *CableLabs Announces New Tru2way™ Retail Host Device License Agreement; Samsung Electronics First to Sign Up* (press release), May 5, 2008 ("This agreement consolidates, clarifies, and provides an alternative to

(continued....)

consumer electronic devices affected the deployment of two-way, multi-stream CableCARD devices? How do applications in electronic devices, including television sets, personal computers, digital video recorders, and mobile phones, compare with those leased by MVPDs to subscribers? How many electronic devices currently have multi-stream CableCARDs and tru2way middleware?

25. *Non-CableCARD Separated Security:* 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 (frequently referred to as "common reliance").[51] In January 2007, the Commission reiterated that alternatives to CableCARDs that rely upon a commonly-used interface comply with the rule requiring separation of security elements from other elements of a set-top box.[52] The Alliance for Telecommunications and Industry Solutions, CableLabs, Beyond Broadband Technology, and Widevine Technologies are working to develop downloadable solutions for separable security. We seek comment on these and any other downloadable security solutions. Are entities that are developing these downloadable solutions working with device manufacturers to ensure compatibility with retail devices? Are they working with one another to ensure that retail devices will allow for national portability as well as MVPD-to-MVPD portability?

3. Other Technical Issues

26. *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, and video game consoles). We seek updated information on the extent to which MVPDs are utilizing or supporting home networking technologies, such as those proposed by the High-Definition Audio-Video Network Alliance ("HANA")[53] or the Digital Living Network Alliance ("DLNA").[54]

(...continued from previous page)
the existing CableCard™-Host Interface License Agreement (CHILA) and the OpenCable™ Application Platform Implementer Agreement.").

[51] *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Report and Order, 13 FCC Rcd 14775, 14808 ¶ 80 (1998); 47 C.F.R. § 76.1204(a)(1); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 7924, 7926 ¶ 4 (2003); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order, 20 FCC Rcd 6794, 6802-03 ¶ 13 (2005). The integration ban became effective on July 1, 2007. *See also 13th Annual Report* at ¶¶ 265-266.

[52] *Commission Reiterates That Downloadable Security Technology Satisfies the Commission's Rules on Set-Top Boxes and Notes Beyond Broadband Technology's Development of Downloadable Security Solution*, CS Docket No. 97-80, Public Notice, 22 FCC Rcd 244 (2007).

[53] The High-Definition Audio-Video Network Alliance is a cross-industry alliance established to provide consumers with a way to share HD content across audio-video devices in their homes through a single connection, easy-to-use interface, and single remote. *See* High-Definition Audio-Video Network Alliance, http://www.hanaalliance.org/ (visited Feb. 13, 2009).

[54] The Digital Living Network Alliance is a consortium of consumer electronics, computer, and mobile device manufacturers. Member companies work together to create new products that are compatible by using open standards and widely available industry specifications. *See* DLNA, *About DLNA*, http://www.dlna.org/about_us/about/ (visited Feb. 13, 2009). *See also* Bill Rose, HANA Technical Work Group, *HANA and DLNA Home Networking Comparison and Coexistence,* VIDEO/IMAGING DESIGN LINE, Jan. 9, 2009 at http://www.videsignline.com/212701557;jsessionid=0CHA31J4ODC24QSNDLPSKH0CJUNN2JVN?printableArticle=true (visited Feb. 25, 2009). Both DLNA and HANA have the goal of making a home network easy for consumers to use. DLNA approaches home networking from a personal computer ("PC") perspective, while HANA approaches it from the perspective of a television set. The alliances' different approaches to home networking reflect the different technical requirements and priorities of the PC and television industries.

27. *Content Protection and Digital Rights Management:* Digital content protection technology seeks to prevent the unauthorized copying and redistribution of digital media. Because digital technology enables the reproduction and distribution of an infinite number of high-quality copies of copyrighted material, digital media is especially vulnerable to piracy. We request an update on what content protection technologies are available or being developed to protect digital media. How have copyright and digital rights laws, regulations, or the lack thereof impacted the competitiveness of MVPDs and their access to programming?

D. Cable Systems

28. *Migration from Analog to Digital Tiers:* We request updated information on MVPDs, including changes in the manner in which video and non-video services are being packaged and priced. One recent trend is the migration of cable programming from analog tiers to digital tiers, or the elimination of analog service in favor of all-digital systems. What percentage of cable subscribers subscribe to analog versus digital packages? What types of programming have been moved from analog tiers to digital tiers? We note that Comcast has begun to convert systems from analog to digital in Portland, Oregon, as well as Seattle, San Francisco, and Philadelphia.[55] How many other cable operators have converted their systems to all-digital, and what percentage of each operator's systems do they represent?[56] Does one system's decision to go all-digital drive competing systems in the same market to follow suit? What are the costs and benefits of digital migration to subscribers? When a system goes all digital, are basic tier subscribers required to lease or purchase set-top boxes? How does migration to an all-digital system affect the price of basic cable service?[57] What effect does the offering of advanced services, such as DVR, IPG, and VOD, have on cable operators' decisions regarding increasing the movement of programming from analog to digital tiers or going all-digital?

29. *Switched Digital Video:* Traditionally, cable operators have delivered all programming feeds at the same time to all subscribers. Switched digital video is a method of delivering programming to subscribers only when those subscribers actively request that programming.[58] What is the role of switched digital video in cable operators' operating strategies? How has the deployment of switched digital video impacted MVPDs' capacity and offering of programming services? To what extent has the deployment of switched digital video been successful? What efficiencies have cable operators realized through the deployment of switched digital and what challenges do they face? How does the deployment of switched digital video affect cable operators' distribution of programming networks? What are the costs and benefits of switched digital video to consumers?

30. *Carriage of Broadcast Stations in Standard and High Definition Digital Formats:* In September 2007, the Commission adopted a *Third Report and Order and Third Further Notice of Proposed Rulemaking* requiring cable operators to either 1) deliver must-carry stations' broadcast digital

[55] According to Comcast Cable Communications Chief Operating Officer and President Stephen Burke, "The idea behind going all-digital is to take 50 to 60 analog channels and move them from analog to digital, which frees up a lots of capacity for high def, ethnic services, DOCSIS 3.0, and anything else that we need the capacity for." CallStreet, *Transcript of Comcast Corporation's Q4 2008 Earnings Call on 02/18/2009 [corrected transcript]*, Feb. 18, 2009, at 8. Comcast began the conversion during the fourth quarter of 2008.

[56] For example, in 2008, RCN launched an initiative to convert its systems in Boston, New York, Philadelphia, Chicago, and Washington, D.C., to all digital by the end of January 2009. *See* RCN Corporation, *RCN's Major Market Analog Crush to Be Completed January 31st: Boston, New York, Philadelphia, Washington DC, Chicago Consumer Markets to Reach 100% Digital Penetration* (press release), Jan. 20, 2009.

[57] *See* 47 U.S.C. § 543(b)(7). (Requiring each cable operator to provide its subscribers a separately available basic service tier to which subscriptions are required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of local broadcast signals and any public, educational, and government access ("PEG") programming.)

[58] *See Notice* at ¶ 30; *13th Annual Report* at ¶ 233. Switched digital video requires consumers to use set-top boxes.

signals in digital format to all digital cable subscribers and convert the signals to analog format at their headends for all subscribers or 2) for all-digital systems, deliver the must-carry stations' broadcast signals in digital format to all subscribers in the systems.[59] Small cable systems with 552 MHz or less bandwidth that lack the capacity to carry the additional digital must-carry stations may request a waiver of the carriage requirement.[60] We seek comment on the extent to which systems down-convert DTV signals to analog to make them available to subscribers without the need for a set-top box. In September 2008, the Commission released a *Fourth Report and Order*, which, in part, exempts certain cable systems from the material degradation requirement to carry broadcast signals in HD format. The systems must either 1) have 2,500 or fewer subscribers and be unaffiliated with a large cable operator, or 2) have an activated channel capacity of 552 MHz or less.[61] How many systems with 552 MHz or less carry high definition television ("HDTV") networks or stations? Is the lack of HD programming a competitive disadvantage?

E. Direct-To-Home Satellite Services

31. Direct-to-home satellite services include DBS and C-band. In addition to information requested in the *Notice*,[62] we are interested in how the digital transition has affected competition between DBS and cable operators in markets where DBS does not offer local-into-local broadcast television service. How has the availability or lack of local-into-local service impacted consumers' readiness for the digital television transition? Do households drop DBS subscriptions in order to receive DTV programming from another MVPD? We also request information regarding how broadcast stations deliver their signals to DBS operators, *e.g.*, over-the-air reception or alternative feeds, and we seek comment on the extent to which multiple DBS operators share local reception facilities. The number of subscribers to C-band video service has been declining in recent years.[63] Does this trend continue? If so, is C-band still a viable option for multichannel video programming service?

F. Other Wireline Service Providers

32. The *Notice* solicited comments regarding other wireline video programming distributors, including local exchange carriers, broadband service providers, open video system operators, and electric and gas utilities.[64] We seek information on these MVPD services for 2008 and 2009 as well as the following additional information.

33. *Local Exchange Carriers:* In the *13th Annual Report*, we observed that LECs, most notably Verizon and AT&T, have expanded the areas where they provide facilities-based video services.[65] As of December 31, 2008, FiOS TV had over 1.9 million subscribers, representing a net gain of 975,000 customers during 2008, and AT&T's U-Verse had 1.045 million subscribers, representing a net gain of

[59] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission Rules,* CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064 (2007).

[60] *Id*. at 21081 ¶ 37. Such systems must commit to continue carrying an analog version to assure that their subscribers are able to view all must-carry stations carried on the systems.

[61] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission Rules*, CS Docket No. 98-120, Fourth Report and Order, 23 FCC Rcd 13618 (2008).

[62] *See Notice* at ¶¶ 41-48.

[63] *See 13th Annual Report* at ¶ 94.

[64] *See Notice* at ¶¶ 49-55.

[65] *See 13th Annual Report* at ¶¶ 131-134.

814,000 customers during 2008.[66] Verizon and AT&T continue to expand their service areas.[67] What factors determine whether these companies or other LECs enter the video marketplace? Have the Commission's revised franchising rules or state franchising laws had an impact on LEC video services? In addition, several LECs offer video services through marketing agreements with DBS operators. We request updated information regarding these agreements as well as the bundles of services that LECs offer in competition with cable operators. Do LECs compete on price? If not, why not? Do they offer differentiated tiers? How does the amount of HD, VOD, and other programming offered by LECs compare with similar offerings from other MVPDs? Do LECs provide local programming? Do they offer any programming comparable to public, educational, and government access ("PEG") programming? How does the quality of LECs' customer service compare with that of other MVPDs? What percentage of new LEC customers come from other MVPDs versus households relying exclusively on over-the-air reception? We seek comments on what, if any, unique competitive advantages LECs have in comparison with other MVPDs.

G. Broadcast Television Service

34. *Over-the-Air-Only Households:* Consumers who do not subscribe to an MVPD service typically rely on over-the-air reception of local broadcast television signals. MVPD subscribers may rely on over-the air ("OTA") reception on some of their television sets. How many television households rely exclusively on over the air reception, and how many MVPD subscribers rely on over-the-air reception for at least one television set? Of those television sets, how many are analog, digital-ready, or connected to a digital converter box? Some MVPDs are offering introductory discounts to attract new subscribers from OTA-only households. Is the digital transition driving such households to subscribe to MVPDs?[68] On the other hand, is the digital transition causing MVPD subscribers to drop their service and rely on free, over-the-air television? Are broadcast-only households replacing analog sets with digital sets or HDTV sets? Does the need for consumers to upgrade broadcast antennas to receive DTV over-the-air in some situations affect consumers' decision to switch from OTA to MVPD subscribership?

35. *Multicasting:* 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 also using their multicasting capabilities. What types of multicast programming are available? 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 doing so? How has the financial climate and postponement of the digital television transition impacted broadcasters' roll-out of multicast networks?

36. *Must-Carry and Retransmission Consent:* Every three years, broadcast stations elect whether they want to be carried on cable systems under must carry or retransmission consent. Similarly, broadcast

[66] *See* Verizon Communications, *SEC Form 10-K for the Year Ended December 31, 2008*, at II-7, 18; AT&T Corporation, *SEC Form 10-K for the Year Ended December 31, 2008*, at Sec. 29, Ex. 13, 12.

[67] *See, e.g.,* AT&T Corp., *AT&T U-Verse Arrives in Colchester, Portland and Salem* [Connecticut] (press release), Feb. 19, 2009; Verizon Corp., *Verizon Bringing FiOS TV to More Neighborhoods in Manhattan and Queens* (press release), Jan. 8, 2009.

[68] Television stations in the Wilmington, North Carolina, television market switched to digital television in September 2008. Time Warner Cable President and Chief Executive Officer Glenn Britt speculated that Time Warner Cable gained about 5% of OTA-only households as a result of the early digital transition. He cautioned, however, that the Wilmington television market may not be representative of the entire United States, given its relatively low percentage of OTA-only households. CallStreet, *Transcript of Time Warner Cable Inc.'s UBS Global Media and Communications Conference on 12/8/08 [corrected transcript]*, Dec. 8, 2008, at 7.

stations may elect whether to be carried under must carry or retransmission consent in markets where DBS operators offer local-into-local service. The most recent election was on October 1, 2008, for carriage agreements beginning on January 1, 2009. What types of local stations receive compensation pursuant to retransmission consent versus carriage pursuant to must carry? What types of compensation do broadcasters receive from MVPDs in return for carriage? Are broadcasters compensated in cash or through in-kind arrangements? To what extent do broadcast station owners tie carriage of affiliated non-broadcast networks to carriage of their broadcast signals?

H. Other Wireless Service Providers

37. *Commercial Mobile Radio Service Providers:* As discussed in the *Notice*, major commercial mobile radio service ("CMRS") providers have begun offering video services to users of cell phones and other mobile services.[69] We request updated information on the availability and deployment of mobile video services offered by CMRS providers as of June 30, 2008, and June 30, 2009. Specifically, how many mobile telephone users have access to, and subscribe to, such services? Has the availability of such services increased and how have subscription rates changed over time? To what extent are CMRS providers offering mobile video services over their own spectrum licenses and networks, and to what extent are they partnering with third parties? We request information regarding programming agreements between video content providers and CMRS providers. Do current trends in mobile video suggest that we should classify CMRS providers that offer video programming as MVPDs?

38. We also request updated information on video distribution to wireless devices – including iPods, personal digital assistants, and portable media players – that are not connected to CMRS networks. To what extent do consumers use wireless connections, personal computer sideloading[70] and other methods to receive video content on wireless devices? How have the distribution methods and technologies changed since June 30, 2007? We seek updated information on how video programmers are re-purposing traditional broadcast and non-broadcast programming for viewing on these devices, and the extent to which programmers are creating content specifically for these new devices.

39. In 2007, commercial and public television stations formed the Open Mobile Video Coalition ("OMVC") to accelerate the development and rollout of mobile DTV products and services.[71] In January 2009, OMVC announced the first group of broadcasters that had committed to launching mobile digital television services in 2009.[72] What types of programming do broadcasters intend to provide via mobile digital television? Do they plan to include local news and emergency broadcasting? What are the advantages of mobile video provided by broadcasters versus other providers?[73] We also request

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[69] *See Notice* at ¶¶ 74-76.

[70] The term "sideloading" refers to the process of moving data between two web servers. It has become a means for transferring music files from the Internet or a personal computer to peripheral devices such as cell phones and personal digital assistants. *See* Nationmaster, *Enclycopedia: Sideload,* http://www.nationmaster.com/encyclopedia/Sideload (visited Feb. 26, 2009).

[71] *See* Open Mobile Video Coalition, *Open Mobile Video Coalition to Promote Mobile Digital Broadcast TV in U.S* (press release), April 13, 2007.

[72] *See* Open Mobile Video Coalition, *OMVC Demonstrates Future of Mobile DTV and Details Initial Broadcaster Roll-Out Plans 63 TV Stations in 22 Markets Reaching 35% of U.S. Households to Launch in 2009* (press release), Jan. 8, 2009.

[73] A study commissioned by OMVC's partner, the National Association of Broadcasters ("NAB"), and conducted by BIA Financial and the Law and Economics Consulting Group, concludes that broadcasters have several competitive advantages over other mobile competitors. The advantages include: 1) substantially lower capital requirements, 2) low cost and routine access to content, 3) the ability to cover a greater population at a lower cost, and 4) access advertising revenue. *See* Richard V. Ducey and Mark R. Fratrik, BIA Financial Network, and Joseph S. Kraemer, Law and Economics Consulting Group, *Broadcasters' Competitive Advantages in the Mobile Video Marketplace*, (continued....)

information on whether and how video programmers will use new, IP-based wireless network technologies – such as Worldwide Interoperability for Microwave Access ("WiMAX")[74] and Long Term Evolution (LTE)[75] – to deliver mobile video programming. We seek comment on the extent to which video services offered using these technologies will compete with those offered by traditional video providers.

40. *Wireless Cable Systems:* 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 services to residential subscribers.[76] Licensees originally designed these services for the delivery of multichannel video programming, similar to that of traditional cable systems. Over the past several years, however, licensees have refocused their operations on providing wireless broadband services.[77] Thus, wireless cable operators appear to offer limited video distribution competition to incumbent cable operators. We seek updated information on existing wireless cable systems and the video and non-video services they offer. How many wireless cable systems remain, and how many customers do they serve? Do licensees in these services remain viable competitors in the market for the delivery of video programming?

41. *Private Cable Operators*: Private cable operator ("PCO") systems, also know as satellite master antenna ("SMATV") systems are video distribution facilities that do not use any public rights-of-way.[78] In the *13th Annual Report,* we reported that PCOs serve a decreasing number of subscribers, representing less than one percent of all MVPD subscribers as of June 2006.[79] Has this trend continued into 2008 and 2009? Do PCOs remain viable competitors in the market for the delivery of video programming?

I. Web-Based Internet Video

42. *Programming Network Delivery via Web Sites:* Programmers and content creators are offering an increasing amount of video programming over the Internet. As of Spring 2008, five commercial broadcast networks offered streaming, advertising-supported episodes of their programming on their primary web sites through third-party online video sites, such as AOL, MSN, Yahoo!, CNET, Brightcove, and Joost. Viewers also may purchase and download episodes through Apple Inc.'s iTunes

(...continued from previous page)
July 29, 2008, at 2-4, at OMVC, *For Broadcasters, NAB Fastroad Study,* http://www.omvc.org/broadcasters/ (visited March 3, 2009).

[74] WiMax is a telecommunications technology intended to provide wireless data over long distances in numerous ways. *S&P Broadcasting Cable and Satellite Industry Survey* at 4.

[75] LTE is a high-speed wireless technology that can quadruple existing access speeds for users. Many analysts believe that LTE will become more common than WiMax, since it is the natural upgrade technology for carriers using the Global System for Mobile ("GSM") communications standard, which is the most popular mobile communications standard worldwide. *See* Matt Hamblen, *WiMax vs. Long Term Evolution: Let the Battle Begin: GSM Carriers Widely Plan to Back LTE, but WiMax Will Push Competitors in the U.S.*, COMPUTERWORLD MOBILE WIRELESS, May 14, 2008, at http://www.computerworld.com/action/article.do?command=viewArticleBasic&articleId=9085202.

[76] 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*, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004).

[77] *See 13th Annual Report* at ¶ 141.

[78] *Id.* at ¶¶ 139-140.

[79] *Id.*at ¶ 140, Appendix B, Table B-1.

and Amazon.com's Unbox. Non-broadcast networks such as MTV, HBO, Comedy Central, and the SciFi Channel are streaming programming as well.[80] In March 2007, FOX and NBC launched Hulu.com with Providence Equity Partners to offer a large selection of videos for free. Television shows and movies that have previously aired on broadcast and non-broadcast networks comprise the selection. More than 130 content providers, including FOX, NBC Universal, MGM, Sony Pictures Television, Warner Bros, and PBS, participate.[81] How is the availability of traditional broadcast programming on other outlets affecting the role of broadcast stations and MVPDs as distributors? How do licensing and copyright issues impact competition for the distribution of video programming over the Internet? Has the availability of programming online led to consumers "cord cutting" (*i.e.*, cancelling MVPD service subscriptions) or no longer viewing over-the-air broadcast television?[82]

43. *Direct Streaming of Programming Networks to Consumer Electronics:* In early 2009, consumer electronics manufacturers announced that they plan to increase the number of television sets and DVD players that incorporate streaming technology to enable viewers to watch IP-delivered video.[83] In January 2009, Netflix announced that it would extend its partnership with LG Electronics by integrating its streaming technology into LG's HDTVs. The new sets will be available in Spring 2009 and will join LG's line of Blu-Ray Disc Players that also will have Netflix's streaming software.[84] Netflix also announced a similar partnership with Vizio.[85] At the same time, Blockbuster announced a partnership with SonicSolutions to enable the delivery of Blockbuster content to personal computers and consumer electronics,[86] and Panasonic announced that it would add Amazon Video On Demand streaming to its VIERA CAST-enabled HDTVs and Blu-ray devices.[87] How does the ability to stream

[80] *See* Richard Tedesco, *Eyeballs All the Same . . .,* PROMO MAGAZINE, May 1, 2008, at 8.

[81] *See* Hulu, *Media Info*, http://www.hulu.com/about (visited Feb. 26, 2009), *Partners*, http://www.hulu.com/partners (visited Feb. 26, 2009), and *PBS,* http://www.hulu.com/companies/101 (visited Feb. 26, 2009).

[82] In a February 2009 conference call discussing his company's earnings, Time Warner Cable President and Chief Executive Officer Glenn Britt predicted that as cable networks continue to put more content online for free, MVPD subscriptions will decline. He stated that ". . . the reality is we are starting to see the beginnings of cord cutting where people, particularly young people, are saying all I need is broadband, I don't need video, and obviously they're already saying they don't need wireline phone." Call Street, *Transcript of Time Warner Cable Inc.'s Q4 2008 Earnings Call on 02/04/2009 [corrected transcript]*, Feb. 4, 2009, at 11. *See also* David Rosen, *Data Points to TV's Popularity Despite Fears of Video Cord-Cutting*, SNL Kagan, Feb. 26, 2009.

[83] Sling Media, Inc. introduced SlingCatcher in January 2007 to enable consumers to wirelessly project any website or digital audio/video format onto their television sets. *See* Sling Media, Inc., *SlingMedia Announces SlingCatcher; "Reverse Slingbox" Takes Revolutionary Approach to Delivering the Full-Blown Web and PC Digital Media Experience to the TV* (press release), Jan. 8, 2007. Sling Media Entertainment President Jason Hirchorn predicted that the technology would reach the mass market in 12-18 months. *See* Anne Becker, *Slinging Las Vegas; Eight Questions for Sling Media Entertainment President Jason Hirschhorn,* BROADCASTING & CABLE, Jan. 8, 2006, at 34.

[84] *See* LG Electronics, *LG Electronics Debuts Full Line of Network Blu-ray Disc Players and Home Theater Systems; Hew Devices Deliver Superior Image Quality, Enhanced Entertainment Options Through New Content Alliances* (press release), Jan. 8, 2009.

[85] *See* Netflix Inc., *Netflix Announces Partnership with Vizio to Instantly Stream Movies to New High Definition TVs* (press release), Jan. 7, 2009.

[86] *See* Blockbuster Inc., *Blockbuster and Sonic Solutions Team for Internet Movie Delivery* (press release), Jan. 14, 2009.

[87] Panasonic, *Panasonic Creates Ultimate HDTV and Blu-Ray Entertainment Devices with Amazon Video On Demand; VIERA CAST Functionality Expanded to Provide Amazon.com's Massive Selection of Movies & TV Shows On Demand to Consumers* (press release), Jan. 7, 2009. Panasonic's VIERA CAST technology enables consumers to view targeted web sites such as YouTube and Bloomberg News on an HDTV without an external box or PC.

video programming over computers and television sets impact the demand for MVPD service? We seek information about these initiatives and any other developments relating to the distribution of web-based Internet video.

J. Foreign Markets

44. 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.[88] We again seek information and case studies on video delivery in foreign markets, including the transition to digital television, the emergence of IPTV as a competitor in the MVPD market, and the implications of both these trends for market structure and consumer choices. We also seek information regarding recent developments in pricing and packaging of programming, including a la carte offerings and the degree to which consumers can choose channels in bundles or singly; technological developments; developments in VoIP; and broadcast, cable, and satellite competition. We also ask commenters to provide comparisons of the video programming choices available to consumers between the United States and other countries. In addition, we seek comment about the impact of global technical standards on the development of video programming services and technology within the United States.

III. PROCEDURAL MATTERS

45. *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).

46. *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).

47. 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 Supplemental 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.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov.[89] 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, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

[88] *See 13th Annual Report* at ¶¶ 282-289; *Notice* at ¶ 91.

[89] We note that the *Notice* contained incorrect Commission web site links and e-mail addresses in the filing instructions. *See Notice* at ¶¶ 94-95. The correct information is provided herein.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, DC 20554.

- In addition, parties must serve the following with either an electronic copy via e-mail or a paper copy of each pleading: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail at www.bcpiweb.com; (2) Marcia Glauberman, Media Bureau, 445 12th Street, S.W., Room 2-C264, Marcia.Glauberman@fcc.gov; and (3) Dana Scherer, Media Bureau, 445 12th Street, S.W., Room 2-C222, Dana.Scherer@fcc.gov.

48. *People with Disabilities*: Contact the Commission to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

49. 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
ACTING CHAIRMAN MICHAEL J. COPPS

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

We haven't done a very good job recently of meeting our obligation to report annually to Congress on the state of video competition. That's putting it about as mildly as I can. The last Annual Report was supposed to assess the state of competition in 2006, but it wasn't adopted until November 2007 and then wasn't actually ***released*** until ***January 2009***. By the time it was released, almost ***three years*** had elapsed since the issuance of the previous "Annual" Report and the data was stale.

Also this past January, the Commission released its Notice of Inquiry for its next Annual Report—requesting 2007 data for a Report likely to be issued at the end of 2009. This just doesn't "get it." We need to play catch up, and that's what this item will help us do. To meet our statutory obligation, we need to provide Congress and the American people with a snapshot of the video marketplace as it exists ***today***, not as it existed two years ago. This supplemental NOI solicits data for 2008 and 2009 and seeks comment on a number of more recent marketplace developments. The goal is to bring our reporting up to date and to adopt a single Report covering 2007, 2008, and 2009 this year.

These Reports are important. They are not the kind of Reports that simply gather dust on the shelf. They are used—by Congress, the Commission and many, many others—to monitor changes in the competitive environment and to make policy choices. Here, as everywhere else, we can't have good, fact-based decision-making without good data. This item will help us get back on the right track.

Thanks to the Bureau for putting this together. I realize we're giving you a lot of work to do with this catch-up, but you perform a real public service in getting us all current with what's going on in the market so we can determine how consumers are faring with the choices they have.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

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

I am pleased to support this *Supplemental Notice of Inquiry*, which will allow the Commission to obtain a comprehensive picture of the status of the video programming and distribution marketplace, and to evaluate the regulatory environment.

The cable industry is evolving rapidly, expanding its services, and facing increased competition from other types of MVPDs. Accordingly, it is crucial for us to have up-to-date, relevant, and comprehensive data in order to set sound rules and policies. Through this *Supplemental Notice of Inquiry*, the Commission is reintroducing some much needed integrity into our regulatory process concerning video providers. The Commission should no longer narrowly focus on one aspect of the industry or one video pricing model, to the exclusion of everything else, as the driving force behind the Commission's examination and judgment of the industry's practices. Today, we are broadening our view, in an objective, even-handed manner, to account for the plethora of challenges facing this industry, and options for its consumers.

This *Supplemental Notice of Inquiry* will allow us to evaluate developments in the delivery, pricing and use of video across all platforms, including cable, satellite, broadcast, and wireline and wireless broadband. We endeavor to better understand how distributors and programmers are innovating to meet the needs of consumers through system upgrades and new services, and how they are innovating in response to competitive pressures.

I applaud the effort to seek information on the broad and diverse interests and concerns of MVPDs and consumers, so that we can acquire a comprehensive body of information. We will need it for setting policy, and advising Congress on appropriate measures in future lawmaking.

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

The last video competition report on which I had a chance to vote covered data through June of 2006. While we have voted on efforts to collect more data since then, the Commission is nearly three years behind in its statutory duty to report to the American people on the state of competition in the video marketplace.

With this action, we accelerate our efforts to make amends and "catch up." Having sought comment earlier on developments in this marketplace for only the twelve-month period ending in June 2007, we ask for new data covering (to paraphrase the late broadcaster Paul Harvey) the "rest of the story" – meaning the twenty-four months between July 1, 2007 and June 30, 2009. This NOI also adds useful questions on new realities confronting the marketplace today, especially the effect of the recession on broadcasting, cable and other participants in the multichannel video programming arena and on consumer migration to free online video providers.

Finally, and thankfully, the Supplemental Notice does not purport to take on any of the legal implications of the so-called "70/70 text" under Section 612(g) of the Communications Act. A proposed new survey form relevant to factual questions about the current level of cable subscribership is the subject of a separate, pending initiative.

I look forward to reviewing the data that this Notice will produce.