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

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

FURTHER NOTICE OF INQUIRY

Adopted: April 20, 2011 **Released: April 21, 2011**

Comment Date: June 8, 2011
Reply Comment Date: July 8, 2011

By the Commission:

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I. INTRODUCTION

A. Scope of the Report

1. Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") amended the Communications Act of 1934[1] and established regulations for the purpose of increasing competition and diversity in multichannel video programming distribution, increasing the availability of satellite delivered programming, and spurring the development of communications technologies.[2] To measure progress toward these goals, Congress required the Commission to report annually on "the status of competition in the market for the delivery of video programming."[3] This Further Notice of Inquiry ("*Further Notice*") solicits data, information, and comment on the state of competition in the delivery of video programming for the Commission's Fourteenth Report ("*14th Report"*). Using the information collected pursuant to this *Further Notice,* we seek to enhance our analysis of competitive conditions, better understand the implications for the American consumer, and provide a solid foundation for Commission policy making with respect to the delivery of video programming to consumers.

2. In 1992, when Congress required the Commission to report annually on the status of competition in the market for the delivery of video programming, most consumers had the limited choice of receiving over-the-air broadcast television stations or subscribing to service from their local cable provider.[4] As the 1990s progressed, cable overbuilders and the introduction of direct broadcast satellite ("DBS") service provided additional alternatives for delivered video programming, introducing competition into multichannel video programming distribution ("MVPD").[5] Today, DBS provides video programming to over 33 million subscribers, and cable offers video service to approximately 60 million

[1] 1992 Cable Act, Pub. L. No. 102-385, 106 Stat 1460, 1494 (Oct. 5, 1992) (stating that "[t]he purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies").

[2] Video programming is defined as: "Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and is exhibited for residential use." *See* 47 C.F.R. § 79.1(a)(1).

[3] *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) ("*First Report"*); 11 FCC Rcd 2060 (1996) ("*Second Report"*); 12 FCC Rcd 4358 (1997) ("*Third Report"*); 13 FCC Rcd 1034 (1998) ("*Fourth Report"*); 13 FCC Rcd 24284 (1998) ("*Fifth Report")*; 15 FCC Rcd 978 (2000) ("*Sixth Report"*); 16 FCC Rcd 6005 (2001) ("*Seventh Report"*); 17 FCC Rcd 1244 (2002) ("*Eighth Report"*); 17 FCC Rcd 26901 (2002) ("*Ninth Report"*); 19 FCC Rcd 1606 (2004) ("*Tenth Report"*); 20 FCC Rcd 2755 (2005) ("*11th Report"*); 21 FCC Rcd 2503 (2006) ("*12th Report*); and 24 FCC Rcd 542 (2007) ("*13th Report*").

[4] In most areas, consumers had only one choice of cable provider, although cable overbuilders offered another option in some areas. *See Tenth Report*, 19 FCC Rcd at 1659, ¶ 79.

[5] Section 602 (13) of the Communications Act of 1934, as amended, defines a multichannel video programming distributor ("MVPD") as a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming. MVPDs include, but are not limited to, cable systems, direct broadcast satellite ("DBS") systems, and other entities that sell multiple channels of video programming to consumers.

subscribers.[6] In 2005 and 2006, major telephony providers Verizon and AT&T introduced multichannel video service, further expanding choices for consumers in some regions.[7] Today, these entities provide video programming to a total of approximately 6.5 million subscribers.[8] The increased availability of video programming over the Internet, made available by online video distributors ("OVDs"), offers the potential to expand consumer choice further.[9] With the entry of each new delivery technology, some consumers have been provided additional choices for the delivery of video programming, and we therefore seek to collect data that will shed light on topics such as the deployment of new technologies and services, innovation, and investment.

3. Pursuant to its statutory mandate, in 2009 the Commission solicited 2007, 2008, and 2009 data, information, and comment for the *14th Report* similar to that which had been requested for earlier years.[10] However, since that time, the Commission has initiated a comprehensive review of the way in

[6] *See* DIRECTV Inc., *DIRECTV Fourth Quarter Results Complete Another Record Setting Year for the Company* (press release), Feb. 23, 2011, where DIRECTV reports 19,223,000 subscribers at the end of Dec. 2010; DISH Network Corp., *DISH Network Reports Fourth Quarter and Year End 2010 Financial Results* (press release), Feb. 24, 2011, where DISH Network reports 14,133,000 subscribers at the end of Dec. 2010; and SNL Interactive, Industry Analysis, Media and Communications, U.S. Cable Subscriber Highlights, Basic Subscribers, Sept. 2010 (visited Feb. 25, 2011), where SNL reports 60,350,247 basic cable subscribers in Sept. 2010.

[7] *See* Verizon Communications Inc., *Verizon FiOS TV is Here!* (press release), Sept. 22, 2005, where Verizon unveiled its FiOS TV service in Keller, TX, its first market; and AT&T Inc., *AT&T Delivers Strong Second-Quarter Earnings Growth Driven by Merger Integration Progress, Solid Wireline Execution, Advances at Cingular Wireless* (press release) July 25, 2006, where AT&T announced expansion of its U-verse video service in San Antonio to additional neighborhoods and plans to expand U-verse video service to additional markets late in 2006. We note that in addition to Verizon FiOS and AT&T U-verse, some rural telephone companies (*e.g.*, Oneida Telephone Exchange in Illinois) also offer video services using their broadband infrastructure.

[8] *See* Verizon Communications Inc., *Verizon Reports Strong 4Q and Year-End 2010 Results, Highlighted by Cash Flow, Wireless and FiOS Growth* (press release), Jan. 25, 2011, where Verizon reports 3.5 million FiOS TV customers; and AT&T Inc., *AT&T Reports Record 2.8 Million Wireless Adds, Strong U-verse Sales, Continued Revenue Gains in Fourth Quarter* (press release), Jan. 27, 2011, where AT& T reports nearly 3 million U-verse subscribers.

[9] An "OVD" is any entity that provides video programming by means of the Internet or other Internet Protocol (IP)-based transmission path provided by a person or entity other than the OVD. An OVD does not include an MVPD inside its MVPD footprint or an MVPD to the extent it is offering online video programming as a component of an MVPD subscription to customers whose homes are inside its MVPD footprint. *See Application of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-4, at Appendix A (rel. Jan. 20, 2011) ("*Comcast-NBCU Order"*). Consumers need a broadband connection to receive video programming from OVDs. The issue of whether a certain type of OVD also qualifies as an MVPD under the Act and our regulations has been raised in pending program access complaint proceedings. *See, e.g.*, *VDC Corp. v. Turner Network Sales, Inc., et al*., Program Access Complaint (Jan. 18, 2007); and *Sky Angel U.S., LLC v. Discovery Communications LLC, et al.*, Program Access Complaint (Mar. 24, 2010). Nothing in this *Further Notice* should be read to state or imply our determination on this issue.

[10] *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 of Inquiry"*) (requesting data as of June 2007). The Commission subsequently adopted a Supplemental Notice of Inquiry requesting data as of June 2008 and June 2009. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, Supplemental Notice of Inquiry, 24 FCC Rcd 4402 (2009) (*"Supplemental Notice of Inquiry"*). *See also 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) (announcing, *inter alia*, that the Commission would issue a single report for 2007, 2008, and 2009 to bring its reporting up to date).

which it uses data, including data used for its statutory competition reports.[11] In the course of that review, we determined that the data submitted in response to the notices of inquiry for the *14th Report* are insufficient to produce an adequate report. We are therefore requesting additional data for 2009 and for the first time asking for data for 2010. In submitting additional data for 2009 and new data for 2010, to the extent that it is not unduly burdensome, we encourage commenters to also submit comparable historical data for 2007 and 2008, which will facilitate the Commission's analysis of trends.

4. As described below, we intend to adopt a number of changes to our analytic framework to ensure that we are collecting and presenting the most useful information concerning competition in the video programming market. Importantly, this new framework will also allow the Commission to present competitive data in a uniform manner that is consistent in format with the recently revised Mobile Wireless Competition Report.[12] Of particular note, in the *14th Report,* we plan to include OVDs for the first time, in light of the growing importance of online video distribution to consumers.

[11] *See FCC Launches Data Innovation Initiative* (news release) June 29, 2010, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299269A1.pdf (visited Dec. 29, 2010). The Data Innovation Initiative was launched to modernize and streamline how the FCC collects, uses, and disseminates data. As part of the Data Innovation Initiative, the Commission's Wireline, Wireless, and Media Bureaus released public notices seeking input on what current data collections should be eliminated, what new ones should be added, and how existing collections can be improved. *See*, *e.g., Pleading Cycle Established for Comments on Review of Media Bureau Data Practices*, MB Docket No. 10-103, Public Notice, 25 FCC Rcd 8236 (2010). The public notices grew out of a recent FCC-wide review of FCC systems and processes for data collection, analysis and dissemination led by the Office of Strategic Planning and Policy Analysis. *See FCC Agency Reform,* presentation before the Commission (July 22, 2009) at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293108A1.pdf (visited Dec. 29, 2010); *FCC Advances Data Innovation Initiative,* presentation before the Commission (Feb. 8, 2011) at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0208/DOC-304533A1.pdf.

[12] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407 (2010) ("*Fourteenth Mobile Wireless Report*").

B. Analytic Framework

5. Under our new analytic framework, we first will categorize entities that deliver video programming into one of three groups:[13] MVPDs,[14] broadcast television stations,[15] and OVDs.[16] Second, we will examine industry structure, conduct, and performance, considering factors such as:

- *Structure*: The number and size of firms in each group, horizontal and vertical integration, merger and acquisition activity, and conditions affecting entry and the ability to compete.
- *Conduct*: The business models and competitive strategies used by firms that directly compete as video programming distributors, including product differentiation, advertising and marketing, and pricing.
- *Performance*: The quantity and picture quality of programming, prices charged for delivered video programming, financial indicators (*e.g.*, revenue and profit margins), and investment and innovation activities.

Third, we will look upstream and downstream to examine the influence of industry inputs and consumer behavior on the delivery of video programming. We expect to discuss three key upstream industry inputs: video content creators, video content aggregators, and consumer premises equipment.[17] Figure 1 below displays the proposed scope of the *14th Report*. We seek comment on whether this proposed analytic framework is a useful way for the Commission to assess and report on the status of video programming competition.

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[13] Our plan to assign entities that deliver video programming into one of three groups is based on the "strategic group" concept used in strategic management that groups companies within an industry that have similar business models or similar combinations of strategies. *See* Michael E. Porter, COMPETITIVE STRATEGY: TECHNIQUES FOR ANALYZING INDUSTRIES AND COMPETITORS (Free Press) (1980) at 129-155.

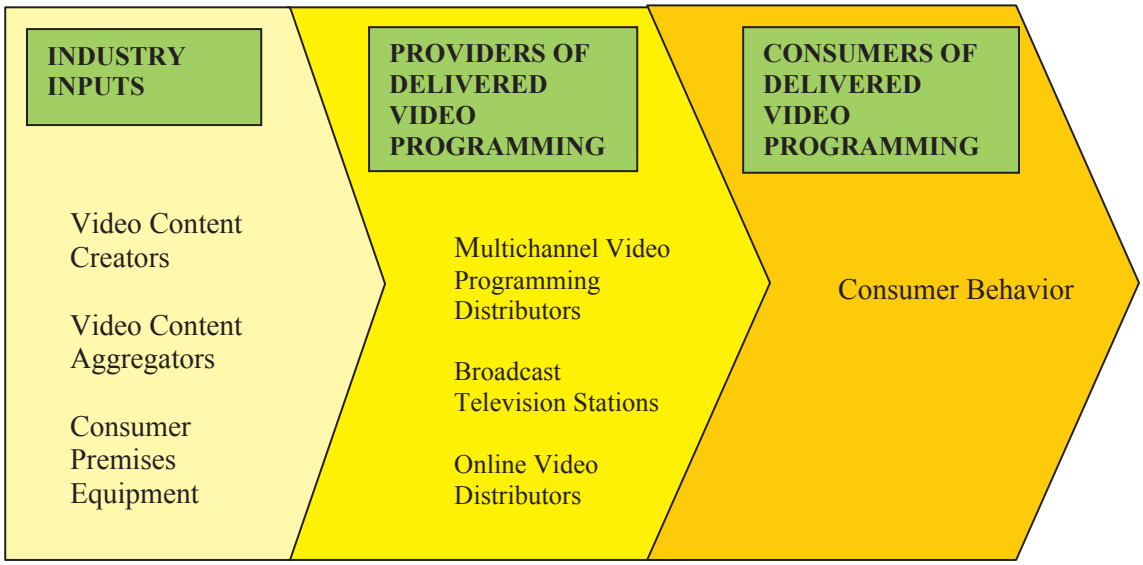
[14] We recognize that we have not addressed the extent to which wireless providers of video programming other than DBS, wireless cable system operators, home satellite dishes and private cable operators should be classified as MVPDs under the Act. We do not intend to address that issue in this proceeding, but do seek comment in the section on MVPDs below on the competitive impact that such providers have on MVPDs and the deliver of video programming generally. *See infra* ¶ 15.

[15] We expect to consider broadcast television stations separately for the *14th Report*, as we have done in previous reports. Although broadcasters have transitioned to digital transmission and have the capability to offer additional linear channels, they still offer far fewer programs than are available from MVPDs and do not provide a subscription service. The Commission has previously held that broadcast television alone is not sufficiently substitutable with the services provided by MVPDs to constrain attempted MVPD price increases, and hence declined to broaden the MVPD product market. Accordingly, we treat broadcasters as part of a separate group. *See General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee,* Memorandum Opinion and Order, 19 FCC Rcd 473, 509 ¶ 75 (2004) (citing *Competition, Rate Deregulation, and the Commission's Policies Relating to the Provision of Cable Television Services,* Report, 5 FCC Rcd 4962, 5003, ¶ 69 (1990)); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20607-09, ¶¶ 109-115 (2002) ("*EchoStar-DIRECTV HDO*").

[16] We note that, in the past, we reported on web-based Internet video, focusing on the content available over the Internet for downloading and streaming. In the *14th Report,* we plan to treat OVDs as a separate group because we have concluded that for most consumers they are not a substitute for MVPD service today, but rather an additional method for viewing video programming. *See Comcast-NBCU Order* at ¶¶ 79-85.

[17] As described more fully below in Section IV, content creators are firms that produce video programming and content aggregators are entities that assemble packages of video programming for distribution by MVPDs, broadcasters, and OVDs.

Figure 1. *Proposed Scope of 14th Report*



C. Data

6. The data reported in previous reports on the status of competition for the delivery of video programming were derived from various sources, including data the Commission collects in other contexts (*e.g.*, FCC Form 477 and FCC Form 325),[18] comments filed in response to notices of inquiry and other Commission proceedings; publicly available information from industry associations; company filings and news releases; Security and Exchange Commission filings; trade and industry publications; research firms' publicly-available data; equity analysts' reports; scholarly publications; and vendor product releases and white papers. We seek comment on whether there are additional data sources available for our analysis. What other sources of data, especially quantitative data, should we use to perform a comprehensive analysis of the delivery of video programming? Are there certain stakeholders that should be reached out to in order to diversify the data and further supplement the record? We also ask commenters to suggest how we can best use this information to report on competition for the delivery of video programming.

7. In previous NOIs, we have requested data as of June 30 of the relevant year to monitor trends on an annual basis.[19] To continue our time-series analysis, we request data as of June 30, 2009, and June 30, 2010. We also recognize that a significant amount of data and information are reported on a

[18] FCC Form 477 collects information about broadband connections to end user locations, wired and wireless local telephone services, and interconnected Voice over IP services, in individual states. FCC Form 325 is the Cable Television System Report that collects information about cable television systems.

[19] *See, e.g.*, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Notice of Inquiry, 21 FCC Rcd 12229, 12230, ¶ 2 (2006); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Notice of Inquiry, 20 FCC Rcd 1117, 1118, ¶ 2 (2005).

calendar year basis, and, as such, we ask commenters to provide year-end 2009 and year-end 2010, when readily available and relevant.

8. We invite all interested parties to provide input for the *14th Report*. We request data, information, and comment from entities that provide delivered video programming directly to consumers. These entities include MVPDs, broadcast television stations, and OVDs. We also seek data, information, and comment from entities that provide key inputs into video programming distribution. These include content creators, content aggregators, and manufacturers of consumer premises equipment, including equipment that enables consumers to view programming on their television sets as well as on other devices (*e.g.*, smartphones and tablets). In addition, we request data, information, and comment from consumers and consumer groups. The accuracy and usefulness of the *14th Report* will depend on the quality of the data and information we receive from commenters in response to this *Further Notice*, and so we encourage thorough and substantive submissions from industry participants, as well as state and local regulators, with knowledge of the issues raised. When possible, we will augment reported information with submissions in other Commission proceedings and from publicly available sources.

II. PROVIDERS OF DELIVERED VIDEO PROGRAMMING

9. In this section, we seek information and comment that will allow us to analyze the structure, conduct, and performance of MVPDs, broadcast television stations, and OVDs. To improve our description and analysis of the video products within each group, we seek specific and granular quantitative and qualitative data and information from companies in each group. In addition, we request comment on whether and to what extent, each group considers the other groups' offerings to be complements and/or substitutes: Do MVPDs consider broadcast televisions stations and/or OVDs competitors? Likewise, we seek comment on whether broadcaster television stations consider MVPDs and/or OVDs competitors, and whether OVDs consider MVPDs and/or broadcast television stations competitors.

A. Multichannel Video Programming Distributors

1. MVPD Structure

10. MVPDs include all entities that make available for purchase multiple channels of video programming.[20] The distinctions between one type of MVPD and another type of MVPD are based on the technology used (*e.g.*, coaxial cable, fiber, spectrum) or the original business of the parent company (*e.g.*, telephone company, electric company) or a regulatory classification (*e.g.*, open video systems). Previously, we reported separately on many types of competitors in the market for the delivery of video programming including: incumbent cable operators, DBS, home satellite dishes ("HSD"), broadband

[20] *See supra* n.5 (definition of an MVPD).

service providers ("BSPs"),[21] local exchange carriers ("LECs"),[22] open video systems ("OVS"),[23] electric and gas utilities, wireless cable systems, private cable operator ("PCO") systems, also known as satellite master antenna ("SMATV") systems, commercial mobile radio service ("CMRS") and other wireless providers.[24] We request comment on whether this list includes all of the entities that we should consider MVPDs in today's market for the delivery of video programming.[25] Are we including some entities that should not be considered MVPDs or excluding some entities that should be considered MVPDs?

11. For each type of MVPD,[26] we seek data on the number of MVPD providers, the number of households passed, the number of subscribers for delivered video programming, and the number of linear channels offered.[27] For each type of MVPD, we seek comment on the geographic area in which individual providers offer service. In addition, we seek comment on the most appropriate unit of measurement for assessing geographic coverage. We note that different types of MVPDs may report data regarding availability and use that is not standardized to a common geographic unit. This greatly hinders our ability to assess the competitive alternatives available to households and to identify where MVPDs are engaged in head-to-head competition. Should we use zip codes, census tracts, or some other

[21] In previous reports, we defined BSPs as newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network. Most BSPs were overbuilders of incumbent cable systems. *See 13th Report*, 24 FCC Rcd at 591, ¶ 100. In 2010, the Broadband Service Providers Association members joined the American Cable Association and asked that its members be considered cable operators along with other wireline providers of video, voice, and data services for purposes of our statistical reports. Thus, we do not plan to treat broadband service providers as a separate type of MVPD going forward. *See* Letter from Barbara S. Esbin, counsel for the American Cable Association, to Marlene Dortch, Secretary, FCC, July 2, 2010.

[22] In 1996, Congress amended Section 651 of the Communications Act to permit common carriers to provide video services in their telephone service areas. The statute permitted common carriers to: (1) provide video programming to subscribers through radio communications under Title III of the Act; (2) provide transmission of video programming on a common carrier basis under Title II of the Act; (3) provide video programming as a cable system under Title VI of the Act; or (4) provide video programming by means of an open video system. 47 U.S.C. § 571(a)(1)-(4).

[23] In 1996, Congress established the OVS framework, one of four statutorily recognized options for the provision of video programming services by LECs. In previous reports, we have treated OVS providers in a separate section to highlight the separate regulatory classification that Congress created. 47 U.S.C. §571(a)(3)-(4). The OVS framework was designed to streamline the process of entering local MVPD markets by relieving OVS operators of certain regulatory requirements. Title VI regulations apply somewhat differently to OVS certified providers than they apply to cable operators. Among other things, an open video system's carriage rates are entitled to a presumption that they are just and reasonable where one or more unaffiliated video programming providers occupy channel capacity on the system at least equal to that of the open video system operator and its affiliates. Among the rules that apply to open video systems are the Commission's rules governing must carry, retransmission consent, program access, sports exclusivity, network nonduplication, syndicated exclusivity, and public, educational and governmental ("PEG") access channels. *Id.*

[24] For a discussion of each of these types of MVPDs, s*ee 13th Report* 24 FCC Rcd at 552-593 and 604-612, ¶¶ 26-103. 130-149.

[25] *See infra* ¶ 15. *See also supra* n.14.

[26] We ask that commenters also address the questions below in the context of non-MVPD wireless providers of video programming, to the extent applicable.

[27] A linear channel is one that distributes programming at a scheduled time. Non-linear programming, such as video-on-demand ("VOD"), is available at a time of the viewer's choosing.

geographic unit to analyze competition?[28] What data are available for each measure? What are the specific benefits and costs of each measure? For purposes of determining whether the 70/70 benchmark specified in Section 612(g) of the Act has been met, in the *13th Report*, the Commission determined that delivered video subscriber data should be collected on a zip code basis.[29] Is it appropriate to use zip code level data to evaluate the structure of MVPD markets? Is there a significant difference in the data collected if a 5-digit versus a 9-digit zip code is used? We note that we collect data from broadband providers using census tracts.[30] Since many of the firms providing high-speed Internet access use the same delivery technology and infrastructure to provide MVPD service, we seek comment on the feasibility of collecting MVPD data on a census tract basis. For those MVPDs that already use census tracts to report broadband data, what additional steps would be involved in using census tracts to report MVPD data?

12. Wireline MVPDs. Previously we made distinctions between wireline MVPDs and wireless MVPDs and noted that some wireline MVPDs compete in the same geographic areas as existing cable operators. Specifically, we reported on cable overbuilders[31] and LECs that have overbuilt incumbent cable systems.[32] We seek data and information on the number of households that are passed by one wireline MVPD, two wireline MVPDs, and three or more wireline MVPDs. We wish to identify markets and geographic areas where head-to-head wireline competition exists, where wireline entry is likely in the near future, and where wireline competition once existed but failed. We are particularly interested in identifying areas that have access to either Verizon FiOS and AT&T U-verse. Although incumbent cable operators and LECs (especially Verizon FiOS and AT&T U-verse) serve the bulk of wireline MVPD subscribers, we seek comment on whether there are other wireline MVPDs that are also relevant for purposes of our report. For example, we note that in past reports we considered OVS, broadband over powerline, and utility-provided video. Are these technologies still relevant today?[33] If so, explain how and to what extent they are available.

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[28] *See Reform of the FCC Form 477 Data Program*, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscription Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIIP) Subscribership, Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gatherin, Review of Wireline Competition Bureau Data Practices*, WC Docket No. 11-10, 26 FCC Rcd 1508, 1528-31, ¶¶ 53-54, 56-58 (2011) ("*Form 477 Modernization NPRM*").

[29] *13th Report*, 24 FCC Rcd at 560-61, ¶ 43. 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." *See* 47 U.S.C. § 532(g). In the *13th Report*, the Commission adopted a reporting requirement for cable operators that would allow us to determine whether the so-called 70/70 benchmark has been met. The Commission's survey of cable operators for this purpose remains pending.

[30] *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advance Services to All Americans, Improvement of Wireless Broadband Subscriber-Ship Data, and Development of Data on Interconnected Voice Over Internet Protocol (VOIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9695, ¶ 10 (2008).

[31] By overbuilder, we mean a facilities-based wireline MVPD offering delivered video programming to households in the same geographic area as an incumbent cable operator. *See 13th Report*, 24 FCC Rcd at 546, n.9.

[32] Nothing in this *Further Notice* should be read to state or imply whether certain overbuilders meet the statutory definition of a cable system.

[33] In the *13th Report*, the Commission reported that few overbuilders offer service under the OVS model. It also observed that municipal electric and gas utilities were moving forward with MVPD service using fiber-optic

(continued....)

13. Wireless MVPDs. Certain wireless providers – DBS, wireless cable systems, HSDs and PCOs – are included within the statutory definition of MVPDs to the extent that they make available for purchase multiple channels of video programming.[34] DBS has become a significant competitor in the delivery of video programming via satellite signal transmission to small parabolic "dish" antennas located at the individual residences of consumers, businesses, and educational organizations.[35] We seek data and information that explain the principal factors contributing to DBS's growth in the market for delivery of video programming. What factors influence cable subscribers' decisions to switch to DBS and vice versa? We request information identifying differences between DBS subscribers and cable subscribers (*e.g.*, are DBS subscribers more likely to reside in rural areas or areas not served by cable systems?). We seek updated information on the geographic characteristics of DBS subscribership. What percentage of households cannot receive DBS service because they are not within the line-of-site of the satellite signal? We request updated information on the number of markets where DBS operators provide local-into-local broadcast service. Is DBS penetration higher in areas where local-into-local service is available?[36] What effect, if any, does the inability of DBS operators to directly provide broadband and voice service along with their video service have on competition among MVPDs?

14. In addition, several operators of wireless cable systems in the 2.5 GHz band continue to provide multiple channels of video programming under the Commission's rules for opting out of the transition of this band.[37] We seek comment on how and to what extent these wireless cable systems are competing with other MVPDs. Finally, we seek comment on other wireless MVPDs such as home

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networks. We also noted developments to provide video using broadband over power line technology. *See 13th Report*, 24 FCC Rcd at 606-609, ¶¶ 135-138.

[34] *See supra* n.5 (definition of an MVPD).

[35] *See supra* ¶ 2.

[36] For purposes of the *14th Report*, household penetration is the number of households that subscribe divided by the number of households passed. Subscriber penetration usually refers to mobile services and is the number of subscribers divided by the number of people in the geographic area where service is available.

[37] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, 19 FCC Rcd 14165, 14199-14200, ¶ 77 (2004); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Third Memorandum Opinion and Order and Second Report and Order, WT Docket No. 03-66, 21 FCC Rcd 5606, 5645, ¶ 72 (2006).

satellite dishes ("HSD")[38] and private cable operators ("PCOs").[39] Are these technologies still relevant today? If so, explain how and to what extent they are available.

15. Other Wireless Providers of Video Programming. The Commission has not addressed the extent to which wireless providers offering video programming to mobile phones and other wireless devices should be classified as MVPDs under the Act, and we do not intend to do so within this proceeding. We note that, in past reports, the Commission considered certain of these providers in its analysis of video competition.[40] For the *14th Report*, we seek comment on the competitive impact that other wireless providers have on MVPDs and on competition in the provision of video programming generally.[41] How and to what extent are wireless technologies being used to provide video programming today, and what trends should we anticipate for the future? To what extent do these services compete with the video programming services offered by MVPDs and by other providers of video programming?

16. Horizontal Concentration. In previous reports, we did not directly measure horizontal concentration for video distribution. Rather, we examined concentration for cable programming networks by calculating a national Herfindahl-Hirshman Index ("HHI").[42] In merger reviews, the Commission routinely examines horizontal concentration and has determined that MVPD service is a distinct product market, that individual households are the appropriate focus regarding competitive choices, and that we

[38] In HSD, subscribers use a large dish and receive signals transmitted by satellites operating in the C- and Ku-band frequencies. HSD channels may be transmitted either as clear channels, available for free reception, or as scrambled signals. To receive scrambled channels, a household must purchase an integrated receiver-decoder and pay a subscription fee. HSD systems are typically designed to receive programming from several different satellites at several different orbital locations. Most HSDs include motors that permit the receiving dishes to rotate and receive signals from these many satellites. Space considerations and zoning regulations restrict many viewers' ability to install the large antenna needed for HSD reception, typically ranging from 4 to 8 feet in diameter. *See 13th Report*, 24 FCC Rcd at 588-589, ¶ 93. The status of home satellite delivery service via C-Band is in flux. While Motorola has discontinued its C-band service, Skyvision has developed procedures to enable consumers to continue receiving subscription programming on Motorola receivers. *See* Skyvision, Inc., http://www.skyvision.com/ (visited Jan. 13, 2011); National Programming Service, http://www.callnps.com/ (visited Jan. 13, 2011); *No Zombie Watch: C-Band and* Intelsat, The Morning Bridge, Jan. 3, 2011, at http://www.mediabiz.com/news/articles/?edit_id=15333 (visited Jan. 13, 2011).

[39] PCOs collect video signals using satellite master antenna systems and distribute programming via wiring in apartments, condominiums, hotels, and office buildings. PCOs do not use any public rights-of-way. 1996 Act, sec. 301(a)(2), 47 U.S.C. § 522(7). In addition, PCOs and SMATV operators: (a) do not pay franchise and Federal Communications Commission subscriber fees; (b) are not obligated to pass every resident in a given area; (c) are not subject to rate regulation; and (d) are not subject to must carry and local government access obligations. *Fourth Report,* 13 FCC Rcd at 1085, n.296.

[40] In the past, mobile wireless service providers offered a range of video programming services to their customers. *13th Report*, 24 FCC Rcd at 610-612,¶¶ 142-149; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, 6203-4 ¶¶ 24-26 (2009). For instance, between 2007 and 2010, Verizon Wireless and AT&T offered video programming based on Qualcomm's FLO TV service under the respective brand names of VCAST Mobile TV and AT&T Mobile TV. *Id*. However, Qualcomm announced in late 2010 that it will shut down the FLO TV service in March 2011. Shara Tibken, *AT&T to Pay $1.93B for Qualcomm Spectrum; FLO TV to Fold*, Dow Jones Newswires, Dec. 20, 2010, at http://www.pcmag.com/article2/0,2817,2366846,00.asp.

[41] We also note that some OVDs may be providing video programming over wireless broadband technologies. *See supra* n.9.

[42] *See, e.g.*, *13th Report*, 24 FCC Rcd at 626-628, ¶¶ 177-179.

can examine choices available to individual households with reference to choices available in franchise areas.[43] In the *14th Mobile Wireless Report*, the Commission applied the HHI to shares of subscribers held by facilities-based wireless providers at the level of Economic Areas, calculating shares of subscribers from the providers' number of subscribers.[44]

17. For purposes of the *14th Report*, we seek comment on the appropriate methodology for calculating concentration in delivered video services. Should we continue to consider MVPDs a separate product market, or are there narrower or broader product segments we should consider? What are the appropriate geographic markets associated with these product markets (*e.g.*, individual households, zip codes, census tracts, cable franchise areas, or metropolitan areas)? Instead of assessing concentration on a national level as we have done in the past, should we instead follow the methodology used in *14th Mobile Wireless Report* to assess horizontal concentration at a finer level of granularity? In the *14th Report*, we also propose to identify the geographic areas and number of households having a choice of no MVPDs, one MVPD, two MVPDs, three MVPDs, four MVPDs, and five or more MVPDs to assess consumer choice at the local level. We seek comment on the value of our proposed approach and request data or recommendations for data we can acquire, that will enable us to perform this analysis. We invite analysis regarding the relationship between horizontal concentration and competition. To what extent does horizontal concentration affect price or quality?

18. Vertical Integration. In 1992, Congress enacted provisions related to common ownership between cable operators and video programming networks.[45] In previous reports, we have discussed vertical integration in terms of ownership affiliations between cable programming networks and cable operators.[46] Specifically, we have identified the number of satellite-delivered national programming networks affiliated with cable operators.[47] More recently, we have also looked at the number of satellite-delivered national programming networks affiliated with DBS operators, broadcasters and other media firms.[48] In addition, we have reported on regional programming networks, both satellite-delivered and terrestrially delivered, and identified those affiliated with providers of MVPD service.[49] In the past, we used information provided either by commenters or publicly available data listing the ownership of each programming network, not necessarily referencing the Commission's attribution rules.[50] Using the available data, we were not always consistent in the manner in which we counted standard definition

[43] *See Comcast-NBCU Order* at ¶¶ 40, 42; *Application for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation,* Transferee, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8235, ¶¶ 63-64 (2006).

[44] *See 14th Mobile Wireless Report*, 25 FCC Rcd at 11423, 11452, ¶¶ 4, 50.

[45] *See* 47 U.S.C. § 533.

[46] *See 13th Report*, 24 FCC Rcd at 629-631, 723-730, ¶¶ 184-186, Appendix C, Tables C1, C3.

[47] *Id*. at 629-631, ¶¶ 183-186.

[48] *Id.* at 631-634, ¶¶ 187-189 and Table 12.

[49] *Id.* at 635, ¶ 192.

[50] In most contexts, the Commission determines ownership based on the attribution rules. *See* 47 C.F.R. § 73.3555 n.2 (broadcast attribution rules); 47 C.F.R. § 76.501 n.2 (cable attribution rules).

("SD") and high definition ("HD") versions of the same network or multiplexed networks, sometimes differentiating between the networks and sometimes not doing so.

19. We expect to report improved information in our *14th Report*, and request data, information, and comment on vertical integration between MVPDs and video programming networks. Thus, we request information on satellite and terrestrially delivered national and regional networks.[51] How should we measure such vertical integration? For purposes of analyzing vertical integration, how should we determine affiliation? Should we use a minimum ownership share or apply the attribution rules? Should we simply note which MVPDs are integrated with program networks, or should we also measure the fraction of programming revenues accounted for by firms affiliated with an MVPD? What data should we collect to analyze affiliation and revenue? To measure the extent to which MVPDs and cable networks are vertically integrated, we seek comment on whether to count an SD and an HD version of the same programming network as one or more networks. We also seek comment on how to evaluate multiplexed programming networks.

20. Conditions Affecting Entry and Rivalry.[52] Underlying regulatory, technological, and market conditions affect market structure and influence the total number of firms that can compete successfully in the market. We invite comments and information regarding the conditions that affect the entry into MVPD markets, or other markets we define, and rivalry among MVPDs.

21. Regulations Affecting Entry and Rivalry. A number of provisions of the Communications Act and the Commission's rules affect MVPD operators in the market for the delivery of video programming. These include, for example, regulations governing program access,[53] program carriage,[54] must carry,[55] retransmission consent,[56] franchising,[57] access to multiple dwelling units,[58] inside wiring,[59] customer service,[60] leased access,[61] ownership,[62] and public interest programming.[63] We seek comment on the impact of these regulations and other Commission rules on MVPD entry and rivalry among

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[51] *See Review of Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-198, First Report and Order, 25 FCC Rcd 746 (2010).

[52] By rivalry, we mean competition among participants in the same product and geographic market. Although a consumer typically selects one MVPD, the rivalry among MVPD firms for that consumer does not end because the consumer can switch MVPDs where more than one is available.

[53] *See* 47 C.F.R. §§ 76.1000-1004.

[54] *See* 47 C.F.R. §§ 76.1300-1302.

[55] *See* 47 C.F.R. § 76.56.

[56] *See* 47 C.F.R. § 76.64.

[57] *See* 47 U.S.C. § 541; 47 C.F.R. § 76.41.

[58] *See* 47 C.F.R. § 76.2000.

[59] *See* 47 C.F.R. §§ 76.801-806.

[60] *See* 47 C.F.R. § 76.1602.

[61] *See* 47 C.F.R. § 76.701.

[62] *See* 47 C.F.R. § 76.501, 47 C.F.R. § 76.503.

[63] A franchising authority may require a cable operator to use channel capacity for public, educational, or governmental (PEG) use. 47 U.S.C. § 531. DBS operators are required to reserve 4 percent of their channel capacity for noncommercial programming of an educational or informational nature. 47 C.F.R. § 25.701.

MVPDs in markets for the delivery of video programming. We recognize that the regulations applicable to cable operators may differ from the regulations applicable to DBS systems and other MVPD operators and seek comment on how regulatory disparities affect their rivalry. We also seek comment on specific actions the Commission could take to facilitate MVPD entry and rivalry among MVPDs and thereby to increase consumer choice in the delivery of video programming. In addition, we seek comment on any state or local regulations that affect MVPD entry and rivalry among MVPDs.

22. Non-Regulatory Conditions Affecting Entry and Rivalry. We seek information and comment on non-regulatory conditions affecting MVPD entry and rivalry. Do these conditions include supply-side economies of scale, where large MVPDs can spread fixed costs over more subscribers or negotiate lower prices for video content? Do these conditions also include expected retaliation, where potential MVPD entrants believe incumbents will lower prices to any household considering switching to the new MVPD entrant? Does bundling MVPD services with broadband, and bundling channels into tiers rather than selling channels à la carte, affect entry and rivalry? Do long-term contracts with penalties for early termination affect entry and rivalry? What other non-regulatory conditions affect MVPD entry and rivalry?

2. MVPD Conduct

23. Business Models and Competitive Strategies. MVPDs may choose from a variety of business models and competitive strategies to attract and retain subscribers and viewers. MVPDs decide, for example, the type of delivered video services they will offer and how they are packaged (*i.e.*, the number of tiers of video programming and the specific programming carried on each tier); the complementary product features they will offer (*e.g.*, HD, DVR (formerly called digital video recorder), VOD, online video programming, and bundled services where telephony and/or broadband is packaged with video service). MVPDs also decide the level of advertising, the degree of vertical integration with suppliers of video programming, whether to initiate or respond to price discounting, and their approach to customer service.

24. What is the capacity being used for public, educational, and governmental ("PEG") channels by MVPDs? What tier are these channels on and is extra equipment required to view them? Are there more or fewer PEG channels carried on your systems than last year? To what do you attribute any changes? What data sources are available to track the availability of PEG programming, and changes to PEG availability?

25. We seek descriptions of the varied business models and strategies used by MVPDs for the delivery of video programming. What are key differences among the business models and strategies in terms of services offered to consumers? How do providers distinguish their delivered video services from their rivals? Are cable and DBS comparable services? Is there a discernable distinction between the type of service that is delivered at a local level or at a national level? Does DBS "local-into-local" delivery of broadcast television signals make it a closer substitute for cable than it would be otherwise? What significance, if any, do distinctions between cable and DBS operators have for Commission precedent concluding that the two transmission technologies compete in the same MVPD product market?[64] To what extent do MVPDs offer unique services (*e.g.*, multi-room DVR service), more channels, more HD, or a variety of bundles to consumers? How do MVPDs advertise their services to existing and potential subscribers? What delivered video services do they feature in their advertising?

26. For each type of MVPD, we seek data on the prices charged for delivered video programming. What prices are subscribers paying for MVPD service? To what extent do MVPDs use promotional or reduced pricing as a competitive strategy? Can consumers easily find the prices of MVPD

[64] *See Comcast-NBCU Order* at ¶ 3; *EchoStar-DIRECTV HDO,* 17 FCC Rcd at 20609, ¶ 115.

video packages and services on their monthly bill and/or MVPDs' web sites and other promotional materials? To what extent do providers of MVPD service use a strategy of reducing prices to attract and retain subscribers? To what extent do MVPDs offer new subscribers price discounts for an introductory period? Do prices change at the end of the introductory period, and, if so, how? Are introductory and long-term prices listed and fixed, or do providers negotiate with individual subscribers over prices before and after introductory periods? Do households that subscribe to the same delivered video services, from the same provider, in the same geographic area, pay different prices? How do bundles of service (*i.e.*, double- or triple-play offerings) change the price of delivered video services? To what extent have MVPDs been adding linear channels and non-linear VOD programming and raising prices as a result? Are there any providers of delivered video programming with a business strategy of offering fewer channels of programming and lowering prices as a result?[65] Are MVPDs packaging programming by offering tiers of programming by genre (*e.g.*, family tiers, sports tiers)? If so, how are they priced? We also seek information on the competitive strategies of MVPDs in providing VOD programming. Specifically, we are interested in learning about any competitive issues MVPDs encounter when acquiring VOD content from video content aggregators.

27. We are particularly interested in learning whether an increase in the number of MVPD rivals affects pricing strategies. For example, do DBS firms price uniformly across large regions or do they, for example, charge lower prices (or use different pricing strategies) for households that have access to a cable provider than for households that do not have access to a cable provider? Do DBS and cable firms charge lower prices (or use different pricing strategies) for households that have access to more than one wireline MVPD? For its Annual Cable Price Survey, the Commission collects price data from a sample of cable systems, but does not collect price data for other types of MVPDs (*e.g.*, DBS and AT&T U-verse).[66] We seek price data for DBS, AT&T U-verse and other MVPDs not included in the Annual Cable Price Survey. What additional data sources on MVPD prices are available for our *14th Report*?

28. In addition to offering bundles of video with voice and/or high-speed Internet, some MVPDs tie video products.[67] We seek data, information, and comment on trends regarding the tying of access to some online programming to a subscription to an MVPD. For example, online programming available through TV Everywhere is available only to subscribers of specific MVPDs.[68] In addition, some

[65] MVPDs are experimenting with low-cost programming packages in a limited number of markets. For example, in November 2010, Time Warner Cable introduced a "TV Essentials" package with promotional rates of $30 to $40 per month in northeast Ohio and New York City. *See* Jeff Simmerman, Director Digital Communications, Time Warner Cable, *Untangled*, *We're Testing a New Slimmer Package: Time Warner Cable TV Essentials*, "http://www.twcableuntangled.com/2010/11/were-testing-a-new-slimmer-package-time-warner-cable-tv-essentials/ (visited Jan. 20, 2011). *See also* Brian McNeill, *Report: Charter Experiments With Cut-Rate Package*, SNL Kagan, Jan. 14, 2011.

[66] Section 623(k) of the Communications Act, as amended by the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish a statistical report on average rates charged for the basic cable service and cable programming service tiers, and cable equipment. *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*, MM Docket No. 92-266, Report on Cable Industry Prices, 26 FCC Rcd 769 (MB, 2011).

[67] In bundling two products A and B, consumers may purchase separately A or B, or purchase a bundle that includes both A and B. In tying two products A and B, consumers do not have the choice to purchase separately A or B. Consumers are given one choice only and must purchase both A and B.

[68] For example, Comcast offers proprietary online video on its XfinityTV.com website exclusively for its MVPD subscribers as part of the industry wide "TV Everywhere" initiative. *See* Comcast Corp., *Time Warner Inc. Announces Widespread Distribution of Cable TV Content Online, Comcast and Time Warner Develop Principles for*
(continued....)

MVPDs, such as AT&T and Comcast, make video programming available on mobile wireless networks and mobile devices.[69] We seek comment on these and other developments in tying arrangements for video programming delivered over different delivery technologies.

29. We seek data and comment on the provision of local news by MVPDs as a competitive strategy in the delivery of video programming and the extent to which local news programming is available. What other types of local programming do MVPDs offer? What data sources are available to help in our analysis of MVPD provision of local news and other local programming?

30. Conduct Resulting from Horizontal and Vertical Mergers. As discussed earlier, we seek data, information, and comment on trends in horizontal and vertical mergers and acquisitions.[70] Cablevision's merger with Bresnan represents a recent horizontal merger and Comcast's merger with NBC Universal represents a recent vertical merger.[71] Have these and other horizontal and/or vertical mergers contributed to, or provided incentives for, the possible exercise of market power by incumbent MVPDs, both downstream to subscribers and upstream to creators and aggregators of video content?[72] Has any MVPD acquired sufficient market power to impair competition? Has the possible exercise of market power by an MVPD adversely affected consumers of video programming, such as by increasing price or restricting quantity of service available to consumers? Has the possible exercise of market power by an MVPD adversely affected creators and aggregators of video programming, such as by decreasing the price paid for video programming? In addition, we invite comment on any other issues concerning MVPD conduct that will assist our analysis of competition in the delivery of video programming by MVPDs.

3. MVPD Performance

31. We seek comment on the information and time-series data we should collect for the analysis of various MVPD performance metrics, including quantity and quality; subscribership and penetration rates; financial performance; and investment and innovation. Are there any other quantitative or qualitative metrics that would enhance our analysis of MVPD performance? To the extent commenters can provide such data, we request that it be submitted for use in preparation of the *14th Report.*

(...continued from previous page)
*"TV Everywhere Model", Comcast to Begin National Technical Trial of "On Demand Online***"** (press release), June 24, 2009, *available at* www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=883 (announcing Comcast's and Time Warner's partnership to develop a "TV Everywhere" model for the MVPD industry). *See also* DISH Network Reply Comments, GN Docket No. 09-191 and WC Docket No. 07-52 (filed April 26, 2010), at 5-7 (describing MVPDs that provide online video services).

[69] According to AT&T spokeswoman Jenny Bridges, "We're always working to secure programming rights to offer new content and features across the three screens—the TV, the PC, and the wireless device." Sarah Barry James, *Has Mobile Made Its Way Into Cable Distribution Talks?*, SNL KAGAN, Nov. 15, 2010. *See also* Comcast Corporation, *Comcast Announces Launch for Xfinity TV App for IPad with the Ability to Watch TV Shows and Movies Anytime, Anywhere* (press release), Nov. 15, 2010.

[70] *See supra* Section II.A.1 that discusses MVPD market structure, specifically horizontal concentration and vertical integration.

[71] Cablevision Systems, Corp., *Cablevision Announces Acquisition of Bresnan Communications* (press release), June 14, 2010, *available at* http://www.cablevision.com/investor/index.jsp (visited Jan. 14, 2011); Comcast Corp., Comcast and GE to Create Leading Entertainment Company (press release), Dec. 3, 2009, available at http://www.cmcsk.com/releasedetail.cfm?ReleaseID=427988.

[72] *See infra* Section IV (discussion of industry inputs).

32. Quantity and Quality. We seek data, information, and comment on trends in the number of linear video channels and VOD programs offered by MVPDs. Has the number of linear channels and VOD programs available increased? What are the most popular MVPD programming packages? Describe these packages in terms of the total number of analog and SD channels, number of HD channels, and number of VOD offerings. What effect has the entry of an additional MVPD had on programming choices and quality of service? What effect has the growth in OVD services had on the quantity and quality of MVPD service?[73]

33. Subscribership and Penetration Rates. We seek data and information regarding the number of households passed and the number of subscribers and penetration rate for MVPD service.[74] We also seek subscription data for the channel lineup packages (including international, other specific genres, and premium) and other delivered video programming services that MVPDs currently market to consumers.[75] What percentage of customers subscribe to these video packages and other delivered video programming services? How often do consumers switch providers (*i.e.*, what is the level of "churn" and is it increasing or decreasing)?

34. Financial Performance. We request information on various measures of MVPD financial performance, including data on MVPD revenues, cash flows, and margins. To the extent possible, we seek five-year time-series data to allow us to analyze trends. Specifically, what is the average revenue per MVPD subscriber?[76] What are the major sources of video-related revenue for MVPDs? What percentage of total revenue is derived from each of these sources? What are the major video-related drivers of revenue growth? We seek data, information, and comments regarding profitability. What metrics and data should we use to measure profitability (*e.g.*, return on invested capital, operating margins)? Are there any other quantitative or qualitative metrics that would add to our analysis of MVPD financial performance? We recognize that many MVPDs also provide non-video services, such as voice service, and often offer these services on a bundled basis.[77] Our focus, however, is delivered video programming, and commenters submitting financial data should separate video from non-video services. Commenters should specify the methodology each firm uses for allocating joint and common costs. Likewise, commenters should explain the methodology each firm uses for allocating bundled revenue.

35. Investment and Innovation. Investment and the deployment of next-generation technologies impact the quantity and quality of delivered video programming service. We seek comment on how investment affects competition among MVPDs. How has investment affected competition between MVPDs and other providers of delivered video programming? We seek information on deployment of next generation MVPD technologies. What MVPD services are driving the deployment of new MVPD technologies?

[73] *See infra* Section II. C. (discussion of OVDs).

[74] We define penetration as the number of subscribers to an MVPD service expressed as a percentage of the number of households that have access to the MVPD. Is this an appropriate definition or should we consider another alternative?

[75] *See Form 477 Modernization NPRM*, 26 FCC Rcd at 1536-38, Section IV.B.3.

[76] *See id.* at ¶¶ 71-73.

[77] *See 13th Report*, 24 FCC Rcd at 573-579, ¶¶ 64-71.

B. Broadcast Television Stations

1. Broadcast Television Structure

36. Providers of broadcast television service include both individual and group owners that hold licenses to broadcast video programming to consumers. Consumers who do not subscribe to an MVPD service may rely on over-the-air distribution of broadcast televisions for their video programming. Also, many MVPD households receive broadcast television stations over the air on television sets that they have chosen not to connect to MVPD service.[78] The Commission already collects data on the number of broadcast television stations in each designated market area ("DMA") and ownership of broadcast television stations using our CDBS database[79] and data purchased from BIA/Kelsey[80] and The Nielsen Company.[81] Is there a non-proprietary geographic area upon which the Commission could base its analysis?[82] We seek additional data that would help us analyze trends in the number of households that rely exclusively on over-the-air broadcast television service rather than receiving broadcast programming from an MVPD. In addition to the number of households relying on over-the-air broadcast service, we request information regarding any demographic characteristics of such households. How many households routinely view broadcast programming over-the-air in addition to subscribing to an MVPD?

37. Horizontal Concentration. We are interested in tracking common ownership of broadcast stations by DMA. Commission rules limit the number of broadcast television stations an entity can own in a DMA, depending on the number of independently owned stations in the market.[83] The Commission already collects data that we can use to assess the horizontal structure of the broadcast television stations, including the number of stations in each DMA, and the ownership of each station. We seek comment on how to best report this information in order to assess horizontal concentration.

38. Vertical Integration. The Commission has collected data that we can use to analyze trends in vertical integration, including data on the ownership of the broadcast stations owned by video content creators and video content aggregators.[84] For the *14th Report,* we again seek to report on the vertical integration of broadcast television stations with broadcast networks and cable networks as we have done

[78] *See id.*, 24 FCC Rcd at 593, ¶ 104.

[79] The Commission collects data on broadcast stations through the Broadcast Radio and Television Electronic Filing System (CDBS). *See* Federal Communications Commission, *Media Bureau: MB-CDBS: CDBS Public Access*, http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm. We collect ownership data on FCC Form 323 – Ownership Report for Commercial Broadcast Station – and the data are available in CDBS.

[80] *See* BIA/Kelsey, *Research: Media Access Pro*, http://www.bia.com/data_mapro.asp.

[81] Under Commission rules, broadcast television stations serve a community of license. However, Nielsen's DMA market definition is commonly used as the geographic coverage area for broadcast television stations. A DMA is a group of counties that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMAs, covering the entire continental United States, Hawaii, and parts of Alaska. The DMA boundaries and DMA data are owned solely and exclusively by The Nielsen Company. *See* nielsen.com/content/dam/nielsen/en_us/documents/.../Nielsen%20DMA.pdf.

[82] *See Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming*, Public Notice, MB Docket No. 10-238, 25 FCC Rcd 16220 (MB, 2010) (seeking comment on whether there are alternative to DMAs for defining local television markets).

[83] *See* 47 U.S.C. § 73.3555.

[84] *13th Report*, 24 FCC Rcd at 633-34, Table 12; and at 695-722, Appendix C, Table C-2. *See also supra* Section II.A.1. (which discusses MVPD vertical integration).

in recent reports. As such, we seek data on the vertical structure of the broadcast television. How many broadcast television stations, nationally and within each DMA, are vertically integrated with a broadcast network or a cable network? Recognizing that the recent venture of Comcast and NBC Universal resulted in increased vertical integration between broadcast stations and cable networks, we seek information on trends in vertical integration between television stations and broadcast networks or cable networks. We seek comment on how to best report this information in order to assess vertical integration and whether we should make any changes to the way we report this information.

39. Conditions Affecting Entry and Rivalry. We note that the Commission's spectrum allocation policies, licensing policies, and spectrum interference rules affect the structure of broadcast television by limiting the number of stations that can be located in a geographic area.[85] We seek comment on the effect of these policies and rules on entry and rivalry in broadcast television. Other Commission rules limit the number of broadcast television stations an entity can own in a DMA and also limit the national audience reach of commonly owned broadcast television stations.[86] We seek data, information, and comment on the effect of ownership limits on entry and rivalry in broadcast television.[87] Does the ability to provide more than one programming stream as a result of the digital transition increase the competitiveness of broadcast stations? What other regulations affect entry and rivalry of broadcast television stations? We ask commenters to provide data and examples for each regulation that effects entry and rivalry.

40. We seek information and comment on non-regulatory conditions affecting entry and rivalry. For example, are there supply-side economies of scale that enable commonly owned broadcast television stations to spread fixed costs over greater audiences? Are there demand-side economies of scale that enable commonly owned broadcast television stations to negotiate lower prices for video programming? We invite analysis of the relationship between the advertising market and entry and exit in broadcast television. What other non-regulatory conditions influence entry and rivalry? To what extent do they influence entry and rivalry? Does the ability to offer multiple programming streams since the digital transition enhance the ability of broadcasters to compete against MVPDs? Do broadcast television stations, collaborating in conjunction with OVDs or other media, have an increased ability to compete with MVPDs?

2. Broadcast Television Conduct

41. Business Models and Competitive Strategies. As of June 12, 2009, all full-power broadcast television stations have transitioned from analog to digital service. Each station has been allotted 6 MHz of spectrum that permits multiple linear program streams and/or HD broadcasts. We seek data, information, and comment on the use of multiple linear program streams as a business strategy to enhance a broadcaster's competitive position in the delivery of video programming. What types of programming are broadcasters carrying on their multiple streams? To what extent are broadcasters providing multiple linear streams of video programming to attract viewers to over-the-air video service and away from subscription MVPD service? Digital television allows broadcasters to use part of their digital bandwidth for subscription video, datacasting, and other pay services as long as they maintain their

[85] *See generally* 47 C.F.R. Part 73, Subpart E.

[86] *See* 47 C.F.R. § 73.3555.

[87] While we collect data and information about the ownership of broadcast television stations for our Quadrennial Media Ownership review, the purpose of that review is different from our purpose here. In that context, we explore whether the current broadcast ownership rules promote the Commission's goals of competition, localism, and diversity in broadcasting. Here we are specifically exploring how the structure of broadcast television affects competition in video programming distribution.

primary broadcast television service.[88] Do broadcasters have business plans to combine and transition some of their digital capacity into a subscription service or to lease a portion of their digital spectrum capacity to others for a subscription service?[89] Are broadcasters using HD programming as a strategy to attract viewers? Has digital transmission benefited television broadcasters? We seek comment on specific benefits that have accrued to broadcasters as a result of the transition. Has the transition benefitted households that rely solely on over-the-air television service? If so, we seek information on specific advantages that have accrued to these households. Has the digital transition presented particular difficulties for broadcasters or viewers?

42. Commercial broadcast television stations earn revenue from advertising.[90] In addition to advertising, some commercial broadcast television stations earn revenue from retransmission consent fees they receive from MVPDs in return for carriage of their stations.[91] We seek data, information, and comment on the business strategies of broadcast television stations as they confront changes in the advertising market, both long-term changes and recent changes brought on by the economic downturn. We also seek information regarding any business strategies to grow revenue through retransmission consent fees paid by MVPDs to broadcast stations for the rights to carry their stations. We seek data on trends in prices for spot and local advertising on broadcast television stations. What prices (per subscriber) are broadcast stations receiving from MVPDs for retransmission consent?

43. We are interested in business strategies associated with making broadcast programming available online. To what extent is local broadcast programming available online? How does placing video content online benefit broadcasters? To what extent are broadcast stations tying retransmission consent negotiations with MVPDs for linear programming to online programming?[92]

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[88] Commercial and noncommercial educational DTV broadcast station licensees report annually, using Form 317, whether they have provided ancillary or supplementary services at any time during the 12 month period preceding September 30. Licensees that earn revenues from such services are required to pay fees to the Commission. *FCC Annual DTV Ancillary/Supplementary Services Report*, 18 FCC Rcd 23972 (2003). *See also* 47 U.S.C. § 336 (a), (e). *See also 13th Report*, 24 FCC Rcd at 598 n.396.

[89] Previously, we reported on U.S. Digital Television, Inc., which combined broadcast spectrum licensed to a number of broadcasters to create subscription video distribution via DTV streams. *See 13th Report,* 24 FCC Rcd at 598-599, ¶115.

[90] Based on Commission staff estimates of data from SNL Kagan, between 1998 and 2008, local and national spot advertising has represented about 98 percent of television broadcast stations' revenues. SNL Kagan, MEDIA TRENDS, *TV Station Revenues, 1998 – 2008*, at 21 (2009). While 2010 marked an increase in revenue for television stations, due in part to political advertising, SNL Kagan estimates that broadcast stations' advertising revenues were nevertheless below 2008's total of $22.0 billion. Robin Flynn, *Broadcast Station Revenue Projections: Boosting TV, Not Radio*, SNL Kagan, Nov. 16, 2010, at 1-2.

[91] *See, e.g.*, Nexstar Broadcasting Group, Inc., *Webcasts, Presentations, Conference Calls & Notices*, http://www.nexstar.tv/index.php?option=com_content&view=section&layout=blog&id=9&Itemid=41 (visited Nov. 24, 2010) (Nexstar Broadcasting Chairman, CEO, and President Perry Sook claims that "[a] revenue stream that literally didn't exist five years ago for our company contributes $30 million of fee income . . .").

[92] For example, in August 2010, Comcast signed a 10-year retransmission consent agreement with CBS. Comcast Chief Financial Officer and Executive Vice President Michael Angelakis characterized it as "a multi-platform contract [that] provides us access to programming whether it's online or on demand or other platforms that we think are unique and correct." Thomson Reuthers, *Comcast Corporation at Bank of America Merrill Lynch Media, Communications and Entertainment Conference* (final), Sept. 15, 2010 at 6 available at Comcast Corporation, *Investor Relations: Events and Presentations*, http://www.cmcsk.com/eventdetail.cfm?eventid=85682 (visited Jan. 14, 2011). During a retransmission consent dispute with Cablevision, News Corp. temporarily blocked Cablevision's broadband subscribers from accessing Fox network programming online. Brian Stelter, *Internet is a*

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44. Broadcasters remain important providers of local news.[93] We seek data and comment on the provision of local news as a competitive strategy in the delivery of video programming and the extent to which local news programming is available. Moreover, for many years, broadcast television networks have used their local broadcast television affiliated stations as their primary distributor of programming. We seek comment on the strategies broadcast television stations use to remain the primary distributor of broadcast television network programming, as well as the strategies and partnerships they use to deliver news online. Does the ability to distribute programming online lead some broadcasters to increase their investment in news and information programming or provide news to consumers that might not otherwise be available?

45. What competitive strategies do broadcast television stations use to distinguish themselves from other broadcast television stations? For example, is there local programming other than news used to enhance the competitive position of broadcast stations? We seek data, information, and comment on these other business strategies broadcast television stations use to compete in the delivery of video programming.

46. Conduct Resulting from Horizontal and Vertical Mergers. We seek data, information, and comment on the use of horizontal and vertical mergers to improve the competitive position of broadcast television stations in the delivery of video programming. We seek comment on whether commonly owned stations have a competitive advantage in the delivery of video programming. Do joint sales agreements ("JSAs"), local marketing agreements ("LMAs") and shared services agreements ("SSAs") have an effect on the ability of independent stations to remain competitive? Does business strategy favor group ownership within a DMA to increase advertising revenue? Does group ownership across DMAs lower prices for video content? Are broadcast television stations that are vertically integrated with a broadcast television network better able to compete in the delivery of video programming?

3. Broadcast Television Performance

47. We seek information and time-series data for the analysis of various performance metrics for broadcast television. These metrics should include the quantity and quality of broadcast television station programming, viewership from over-the-air, viewership from carriage on MVPDs, prices of advertising, revenue from advertising, revenue from retransmission consent fees, other revenue, investment and innovation, and rate of return/profitability.

48. Quantity and Quality. We seek data, information, and comment on the impact of the transition to digital television on the number of linear broadcast television channels available in each DMA, counting both primary stations and additional multicast programming streams. How many broadcast television stations offer video content in HD? What percentage of their programming is in HD?

49. Viewership. We seek data, information, and comment on the viewership of broadcast television stations both from over-the-air reception and carriage by MVPDs. What is the trend in total viewership in total household terms? With respect to linear programming, what is the trend in the share of the total audience that broadcast television stations receive relative to the share received by cable networks carried by MVPDs. Some broadcast stations also place some of their programming online.

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Weapon in Cable Fight, THE NEW YORK TIMES, Oct. 19, 2010, at http://www.nytimes.com/2010/10/20/business/media/20hulu.html (visited Jan. 14, 2011).

[93] Surveys indicate that more adults chose broadcast television stations as their daily news source over any other major medium. Television Bureau of Advertising, Inc., *Planning and Buying: Local News*, http://www.tvb.org/planning_buying/120562 (visited Jan. 14, 2011).

How many households view broadcast television stations online? What share of online viewership are broadcasters receiving?

50. Financial Performance. We seek data on broadcast television station revenues, cash flows, and margins. To the extent possible, we seek five-year time-series data to allow us to analyze trends. Specifically, what is the average revenue earned per broadcast television station? We realize that some broadcast stations are integrated with other businesses but are only interested in financial data related directly to the delivered video programming of the broadcast television station, such as the sale of advertising tied to the video programming and retransmission consent fees. What are the major drivers of revenue growth? We also seek data regarding the profitability of broadcast television stations. What metrics and data should we use to measure profitability (*e.g.*, return on invested capital, operating margins)? Are there any other quantitative or qualitative metrics that would add to our analysis of the financial performance of the broadcast television station group?

51. Investment and Innovation. We seek comment on how investment in digital television affects competition among broadcast television stations and with the larger market for the delivery of video programming. We seek data on broadcast television station investment in digital television, the innovations related to this investment, and the financial returns on this investment. What has investment in digital television done to enhance the competitive position of broadcast television stations in the delivery of video programming?

C. Online Video Distributors

1. OVD Structure

52. OVDs are entities that distribute video programming over the Internet to consumers.[94] To receive video programming distributed by an OVD, a consumer must subscribe to a high-speed Internet access service. The Commission already collects data on entities that provide fixed and mobile high-speed Internet access services, so we have much information regarding the structure, conduct, and performance of the broadband markets, including the number and size of participants, the number of households that have access to each provider's high-speed Internet service, the download and upload speeds, the services offered by broadband providers, and the prices charged for broadband service.[95] We have not, however, previously collected data on OVDs. Therefore, we seek comment on the best available sources of information to enable us to analyze OVDs.[96]

53. We recognize that over the time period we plan to cover in the *14th Report* – 2007 to 2010 – OVDs have made an increasing amount of video programming available to consumers over the Internet. Broadcast networks, broadcast television stations, and cable networks that offer video content online through their own brands, such as nbc.com, wabc.com, and Hallmarkchannel.com, are OVDs.[97] Cable networks, broadcast networks, and studios also sell or license their programming to stand-alone OVDs,

[94] *See supra* n.9 (definition of OVD).

[95] *See* FCC Form 477 Broadband Data*; Sixth Broadband Report*, 25 FCC Rcd 9556; and *Fourteenth Mobile Wireless Report,* 25 FCC Rcd 11407. *See also Form 477 Modernization NPRM supra* n.28.

[96] The Commission has addressed OVDs in its review of the Comcast-NBC Universal transaction and in the Open Internet proceeding. *See Comcast-NBCU Order* at ¶¶ 74-90. *See also Preserving the Open Internet, Broadband Industry Practices*. GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17912-13, 17916, 17975-76, 17978 (2010) ¶¶ 16, 22, 128-129, 132 ("*Open Internet Report and Order*").

[97] *Open Internet Report and Order*, 25 FCC Rcd at 17979, n.421.

such as Netflix, Apple's iTunes, Wal-Mart's Vudu, and Hulu.[98] We request, data, information, and comment on the number and size of OVDs. What data sources are available for analysis of the structure of OVDs? We also seek comment on whether individual OVDs view other OVDs as competitors. In addition, to what extent do OVDs compete with MVPDs and/or broadcast television stations?

2. OVD Conduct

54. What business models and competitive strategies do OVDs use to compete in the delivery of video programming? What challenges do OVDs face? Do OVDs highlight the availability of increasing amounts of online video to attract more viewers and/or subscribers? What media do OVDs use to advertise their service? To what extent is OVD service a substitute for MVPD service? Or, alternatively, is it a complement to MVPD service? How is OVD service advertised? Do OVDs that are not MVPDs have a different business strategy for attracting subscribers than OVDs that are also MVPDs? We seek data, information, and comment on business strategies that tie OVD service to subscription to MVPD service. We seek information on the extent to which OVDs rely on advertising, subscription fees, per-program fees or other sources of revenue, including information on the use of subscription fees. We also seek information on the prices for the programs or the subscriptions charged by OVDs that sell access to video content over the Internet. To what extent do OVDs rely on a combination of advertising and per-program, subscription, or other fees? Is there a trend among OVDs toward greater reliance on charging consumers?

3. OVD Performance

55. We seek comment on the total amount of video programming available online and the extent to which consumers are viewing video programming offered by OVDs. Has the entry of OVDs in the marketplace resulted in reduced viewership of video programming from MVPDs and broadcast television stations? What metrics should we use to compare OVD viewership, MVPD viewership, and broadcast television station viewership? In what ways have OVDs improved the quantity and the quality of their video programming since our *13th Report*? Do OVDs provide local news or other local programming? What financial returns do OVDs earn on their investments? What data are available and what metrics should we use to analyze the extent to which OVDs' services are substitute or a complement to MVPD service?[99]

III. GEOGRAPHIC AVAILABILITY

A. Rural Versus Urban

56. Section 628(a) of the Communications Act sets as a goal increasing the availability of delivered video programming to persons in rural and underserved areas.[100] As in previous reports, we expect to compare competition in the market for the delivery of video in rural markets with that in urban

[98] Hulu aggregates television programs and is a joint venture of Providence Equity Partners and Disney, NBC Universal, and News Corp, which operate the ABC, NBC, and Fox broadcast networks, respectively as well as several able networks. *See* Hulu, *Media Info*, www.hulu.com/about.

[99] *See Comcast-NBCU Order* at ¶ 86 (finding that "OVDs pose a potential competitive threat to Comcast's MVPD service"). *See also Open Internet Report and Order*, 25 FCC Rcd at 17975-76, ¶ 129 (finding that "a cable or telephone company's interference with the online transmission of programming by . . . stand-alone video programming aggregators that may function as competitive alternatives to traditional MVPDs would frustrate Congress's stated goals in enacting Sec. 628 of the Act . . . ").

[100] 47 U.S.C. § 548(a).

markets.[101] For the purpose of measuring the availability of and competition among providers of video programming, how should we define "rural" and "urban"? The Communications Act does not include a definition of what constitutes a rural area, and the Commission has used various proxies to define rural areas, including Economic Area ("EA") Nodal versus Non-nodal counties[102] and Metropolitan Statistical Area ("MSA") counties versus Rural Service Areas ("RSA") counties.[103] In the *14th Mobile Wireless Report*, the Commission adopted a "baseline" definition of rural as a county with a population density of 100 persons or fewer per square mile.[104] Are there other alternatives we should consider based on zip codes, census tracts, or some other geographic unit to compare competition among video programming distributors in rural and urban areas?[105]

57. We seek data, information, and comment to analyze whether there are differences in the delivered video programming between rural and urban areas and the factors that affect these differences. How does competition differ between rural and urban areas? What are the demographic, geographic, and economic factors that drive differences in competition between rural and urban markets? Which, if any, delivered video programming services are most often lacking in rural areas? How does access to broadcast television stations differ between rural and urban areas? We recognize that most households have access to two DBS services – DIRECTV and DISH Network – that provide national service. How does access to other MVPD service differ between rural and urban areas? To what extent do rural areas lack access to a cable system or other wireline MVPD? How many households lack access to a cable system? What percentage of these households are in rural areas? Do rural areas have less access to high-speed Internet service and, therefore, less access to OVD services relative to urban areas?

58. We seek information, data, and comment regarding the differences in the availability and price of delivered video service in rural areas relative to urban areas. When cable service is available in rural areas, are prices higher or quality lower relative to urban markets?[106] Are there examples of rural

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[101] *See 13th Report,* 24 FCC Rcd at 579-580, ¶¶ 72-73; *see also Notice of Inquiry*, 24 FCC Rcd at 760-761, ¶¶ 22-23.

[102] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act – Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eighth Report*, 18 FCC Rcd 14783, 14836 ¶ 12 (2003) (*"Eighth Wireless Competition Report*"); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act – Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Seventh Report* (*"Seventh Wireless Competition Report*"), 17 FCC Rcd 12985, 13033 at 13022 (2002). Economic Areas are defined by the Department of Commerce's Bureau of Economic Analysis, and consist of one or more counties that are "Economic Nodes" and the surrounding commercially related counties. As a proxy for urban and rural geographic areas, the Commission compared counties that made up economic nodes, *i.e*., nodal counties, with those that do not make up economic nodes, i.e., non-nodal counties. *Eighth Wireless Competition Report*, 18 FCC Rcd 14814-14815, ¶ 62.

[103] For administrative convenience, the Commission defined markets for the licensing of cellular systems in terms of Metropolitan Statistical Areas (MSAs) and Rural Service Areas ("RSAs"). MSAs are 306 areas defined by the Office of Management and Budget, as modified by the Commission. RSAs are 428 areas, other than MSAs, established by the Commission. 47 CFR § 22.909. *See also Eighth Wireless Competition Report*, 18 FCC Rcd 14837, ¶ 113; *Seventh Wireless Competition Report*, 17 FCC Rcd 13022.

[104] *See 14th Mobile Wireless Report,* 25 FCC Rcd at 11611, ¶ 351.

[105] *See* Sec. II.A.1. MVPD Structure *supra*. For example, USDA's Economic Research Service Rural-Urban Commuting Area (RUCA) codes use census tracts rather than counties. Cromartie & Shawn Bucholtz, Economic Research Service, U.S. Department of Agriculture, *Defining the "Rural" in Rural America*, AMBER WAVES 30 *available at* http://www.ers.usda.gov/AmberWaves/June08/Features/RuralAmerica.htm.

[106] The Cable Price Survey Report provides information about cable rates nationally and does not provide a comparison of rates in urban areas versus rural areas.

areas that receive delivered video programming service similar in price and quality to those found in urban areas?

B. Alaska and Hawaii

59. In the *13th Report*, we discussed unique issues faced by DBS subscribers in Alaska and Hawaii.[107] For example, we discussed the size and number of DBS dishes needed to receive DBS programming and the use of independent dealers, rather than national retail chains, to purchase DBS service. We seek information and comment regarding MVPD and OVD service in Alaska and Hawaii. We are interested in how the availability of MVPD and OVD services in these states differs from those that are available in the other states. Do consumers in Alaska and Hawaii have the same or similar access to MVPD, broadcast, and OVD services as consumers in the other 48 states? Are prices for subscription to MVPDs higher than those found in other states? Is the same quantity of video programming available and is it offered in programming packages similar to the services in other states? We request updated information on the delivery of video programming to consumers in Alaska and Hawaii relative to that provided in other states.

IV. KEY INDUSTRY INPUTS

A. Video Content Creators

60. Creators of video programming include major studios that are subsidiaries of entertainment conglomerates and independent production companies.[108] Many of the large firms that create content also own broadcast and/or cable networks.[109] Because MVPDs and broadcast television stations increasingly negotiate directly with content creators for non-linear forms of content distribution, including VOD and online video distribution, we plan to look more closely at content creators in our *14th Report*. We request data, information, and comment that will help us analyze the number and size of content creators and the evolving relationship between content creators and the firms that distribute video content. Are there barriers for independent production entities to access the audiences of all delivery systems (including broadcast and online) – not just MVPDs? In addition, we are interested in information regarding entities, local and national, that create news, public interest programming and/or sports and the relationships between the content creators and those that deliver video programming.[110]

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[107] *13th Report*, 24 FCC Rcd at 663-665, ¶¶ 257-260.

[108] Large firms that create content include CBS Corporation, NBC Universal, News Corporation, Disney Corporation, Sony Corporation, and Viacom. See Jonathan A. Knee, Bruce C. Greenwald, and Ava Seave, THE CURSE OF THE MEDIA MOGUL 164, Table 9.1 (2009). In addition to creating television content, many of these companies produce theatrical movies that become video programming in a subsequent distribution window. *Id*. *See also* Harold L. Vogel, Entertainment Industry Economics, 7th Edition at 88 (2007) (" . . . since the 1980s, the total fees from licensing of films for use in ancillary markets (network and syndicated television, pay cable, and home video) have collectively far overshadowed revenues derived from theatrical releases."). Independent content creators include companies, such as Lionsgate, the producer of *Mad Men*. Lionsgate, *Investors: About Lionsgate*, http://investors.lionsgate.com (visited Jan. 27, 2011).

[109] For example, Disney and its affiliated companies include movie and television production studios, as well as the ABC television network and several cable networks, including ESPN and ABC Family. The Walt Disney Company, *Corporate Information: Company Overview*, http://corporate.disney.go.com/corporate/overview.html (visited Jan. 14, 2011).

[110] We note that, a significant portion of news programming is produced at the local and regional level, and that with respect to sports, each league negotiates rights differently. See HAROLD VOGEL, ENTERTAINMENT INDUSTRY ECONOMICS, 422-434 (2007) and Rich Thomaselli, *As College Football's TV Landscape Changes, Brands Still Find*

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61. We seek data, information, and comment on the business strategies of content creators regarding the selling and licensing of video content and the effect on video distribution. How have changes in the creation of content affected the distribution of video programming? Have changes in content creation increased investment in the distribution of video programming? Have changes in the business strategies of content creators regarding the type of video content created, the timing of release of specific video content through the various delivery systems (*i.e.*, the order of delivery technologies used to distribute the programming, a process also called windowing),[111] and the prices charged for content in each window affected competition between distributors of video programming? Have there been significant changes in the bargaining power between content creators and distributors of video programming? How do the windowing strategies of video content creators affect the distribution of video programming through VOD and over the Internet? Have business strategies changed for creators of news programming, especially local news programming? Are there specific strategies that affect the delivery of sports programming that differ from those of creators of other types of video content? We seek data, information, and comment to analyze each of these issues.

B. Video Content Aggregators

62. Video content aggregators are entities that combine video content into packages of video programming for distribution.[112] Video content aggregators include broadcast networks (*e.g.*, ABC) and cable networks (*e.g.*, ABC Family), which package video content produced in-house or by outside producers into regularly scheduled programming. Video content aggregators also include broadcast stations (*e.g.*, WJLA-TV, Washington, DC) which combine in-house productions with individual programs acquired from syndicators, and, in the case of network affiliates, programming supplied by a network for distribution to consumers. The Commission has tracked the number and ownership of cable and broadcast networks in previous reports, in part because Section 628 of the Act prohibits MVPDs from unduly or improperly influencing a cable network in which it has an attributable interest in its negotiations with competing, unaffiliated MVPDs.[113]

63. We plan to continue to look at traditional video programming and seek data, information, and comment regarding the impact of changes in the aggregation of content on the delivery of video programming. Have changes in the business models of content aggregators affected competition among distributors of video programming? Have there been significant changes in the bargaining power between content aggregators and distributors of video programming? Has entry by new video content aggregators

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Marketing Opportunities, ADVERTISING AGE, July 26, 2010, http://adage.com/sportsmarketing10/article?article_id=145068.

[111] In addition to distributing movies in theaters, producers sell rights to distribute them on DVDs, on demand, pay television services (*e.g.*, HBO and Showtime), broadcast networks, and cable television networks. Likewise, television production companies have traditionally adhered to prescribed time gaps between the initial broadcast and cable distribution of a program series, DVDs, and syndication. Doug Heise, *Accelerating Pace of Online Innovation Threatens Traditional Hollywood Distribution Windows*, Panvidea, Aug. 26, 2010 at http://www.panvidea.com/category/blog/ (visited Jan. 14, 2011). *See also* Eirk Gruenwedel, *Bewkes: Netflix Bad for Repurposed Programming*, HOME MEDIA MAGAZINE, Dec. 6, 2010 at http://www.homemediamagazine.com/warner/bewkes-netflix-bad-repurposed-programming-21331 (visited Jan. 14, 2011).

[112] We note that some OVDs distribute video programming aggregated by other entities and that some OVDs aggregate the programming they distribute.

[113] *See* 47 U.S.C. § 548. A "video programming vendor" is any "person engaged in the production, creation, or wholesale distribution of video programming for sale." *See also supra* ¶¶ 18-19 (vertical integration).

or increased programming channels offered by existing content aggregators lead to an expanded number of channels offered by MVPDs or additional programming offered by broadcast television stations on their multiple digital streams? Have changes in the business models of content aggregators affected the growth of OVDs? Are existing video content aggregators creating additional programming networks and packages, or are new aggregators creating video programming packages? What factors do video content aggregators, including broadcast networks, cable networks, and broadcast stations, consider when deciding the terms of distributing their content?

C. Consumer Premises Equipment

64. Consumer premises equipment traditionally refers to devices that enable consumers to watch video content from MVPDs and broadcast stations on televisions. Such devices include televisions, antennas, cable and satellite set-top boxes, VHS and DVD players, and recording equipment (*e.g.*, DVRs). Today, however, consumer premises equipment also includes devices (*e.g.*, video game consoles, and media streaming devices) that enable video content delivered by OVDs to be viewed on a television.[114] It also includes devices that enable video content delivered by broadcast television stations and MVPDs to be viewed on a personal computer or handheld device.

65. Recently, the term "consumer premises equipment" has come to include devices, such as "connected-TVs," that receive video content directly from the Internet.[115] For example, in addition to enabling users to watch videos on their computers, several browsers and set-top boxes (*e.g.*, Roku, Boxee, Kylo, and Apple TV) deliver online video directly to viewers' televisions.[116] With an Internet-enabled television set, game console (*e.g.*, Microsoft's Xbox[117] and Sony's PlayStation), or Blu-Ray player, consumers can watch certain television programs, movies, and sporting events online. Many consumer electronics manufacturers have partnerships with Netflix to enable streaming of movies and television shows to subscribers of the NetFlix service.[118] DVR manufacturer TiVo enables consumers to purchase movies and television programs from online stores. Likewise, mobile devices such as Apple's iPad enable consumers to watch some television programs and movies using broadband wireless connections.

66. In the *14th Report*, we plan to discuss the devices – current and forthcoming – that facilitate the delivery of video programming and examine how these inputs affect competition in the delivery of video programming.[119] We request information on developments relating to consumer

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[114] For purposes of this *Further Notice*, we consider consumer premises equipment used in conjunction with MVPD service as a separate input, consistent with the Commission's navigation device proceedings, although we recognize that some operators consider such equipment an integral part of their service. *See*, *e.g.*, AT&T Comments, MB Docket No. 10-91, CS Docket No. 97-80 and PP Docket No. 00-67 (filed July 13, 2010), at 18, and Verizon Comments, MB Docket No. 10-91, CS Docket No. 97-80 and PP Docket No. 00-67 (filed July 13, 2010) at 8.

[115] For example, we note that Time Warner Cable and Comcast recently announced plans to bring MVPD programming to Samsung's Internet "connected-TVs" and tablets without the need for a set-top box. *See* Consumer Electronics Association, *Major Products Innovation and Keynotes from Verizon, Audi and Samsung Kick Off 2011 International CES* (press release), Jan. 7, 2011.

[116] *See* Michael Learmonth, "Thinking Outside the Box: Web TVs Skirt Cable Giants," ADVERTISING AGE, Jan. 18, 2010. *See also,* the Diffusion Group, "Over-the-Top, Cord-Cutting, and the Consumer," MARKET DBRIEF, 2009 available at http://tdgresearch.com/media/p/522.aspx (visited Dec. 16, 2010).

[117] Brian Stelter, "For Xbox, Focus Shifts from Game to Video," *The New York Times*, Jan. 19, 2010.

[118] For a complete list of devices supported by NetFlix, *see Stream Movies & TV Online, Watch Online Movies, Netflix Ready Device*, http://www.netflix.com/NetflixReadyDevices?Inktrk=nmh_nrd (visited Feb. 7, 2011).

[119] *See, e.g., Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility between Cable Systems and Consumer Electronics*

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premises equipment and services that provide options to consumers for viewing video programming. Further, we seek information on the retail market for set-top boxes, including set-top boxes that do not use CableCARDs such as those sold at retail for use with DBS services. What are the challenges that manufacturers face in investing and innovating in consumer equipment? Can consumers easily compare prices to lease smart video devices from their MVPDs and/or purchase them in retail outlets? Therefore, we request information regarding the different types of consumer premises equipment – both MVPD supplied and non-MVPD supplied – used to access video content and the capabilities thereof. We also seek information and comment on how competition among video programming distributors is affected by developments related to consumer premises equipment, such as electronic programming guides, two-way functionality, and CableCARDs that permit the reception of secured programming services without a leased set-top box, and developments in the regulatory environment for consumer premises equipment.[120] We also request information regarding digital rights management technology and issues that affect the availability of video programming to consumers.

67. We are also interested in MVPDs that purchase consumer equipment from consumer electronics manufacturers as inputs for the delivery of video programming. Because technical specifications differ among distributors of delivered video programming, electronics manufacturers must coordinate with firms that deliver video programming to ensure equipment compatibility. We seek information to analyze the relationships between MVPDs that deliver video programming and manufacturers of consumer premises equipment, especially cable and DBS set-top boxes and devices that enable consumers to move video delivered over the Internet to televisions.

V. CONSUMER BEHAVIOR

68. We seek information about how trends in consumer behavior affect the products and services of providers of delivered video programming. We seek data on trends that compare consumer viewing of regularly scheduled video programming with viewing of time-shifted programming using DVRs, VOD content, and OVD content. Recent reports indicate that an increasing number of consumers are viewing videos online.[121] In the Comcast-NBC Universal transaction, we found that if viewers are able to watch television and other programming online, when they want, that OVD service will compete against Comcast's DVR and on demand services, and thereby affect the number of people who subscribe to its traditional MVPD service.[122] In the Comcast-NBC Universal transaction, we also found that while most consumers view OVD service today as a complement rather than a substitute for MVPD service,

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Equipment, 25 FCC Rcd 4275 (2010) ("AllVid NOI"). To effectuate the intent of Congress as set forth in Section 629 of the Communications Act, the AllVid NOI sought comment on steps to foster a retail market for devices that access all MVPDs by requiring MVPDs to support a standardized interface by which retail devices can communicate with the MVPD. *Id*. *See* 47 U.S.C. § 549(a). *See also* FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 52 (2010).

[120] *See 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, PP Docket No. 00-67, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657 (2010).

[121] ComScore estimates that in November 2007, 138 million Americans, representing about 75 percent of U.S. Internet users, watched a video online, averaging 3.25 hours during the month. ComScore, Inc., *Google Sites' Share of Online Video Market Expands to 31 Percent in November 2007, According to ComScore Video Metrix* (press release) Jan. 17, 2008. ComScore estimates that three years later, this number increased to 172 million Americans, representing 84 percent of Internet users, averaging 14.7 hours during November 2010. ComScore, Inc., *ComScore Releases November 2010 U.S. Online Video Rankings* (press release) Dec. 16, 2010.

[122] *Comcast-NBCU Order* at ¶ 82.

Comcast has an incentive and ability to diminish the potential competitive threat from these new services.[123] Do these assertions apply equally to the incentives and ability of other MVPDs? Are consumers who are not "cutting" the MVPD cord "shaving" their subscriptions by, for example, substituting Netflix for premium channels or VOD services? Do consumers view OVD service in conjunction with over-the-air broadcast television service as a potential substitute for MVPD service?

69. Video distributors advertise their services on television, in newspapers, through mailings, and offer Internet sites where potential consumers can find information about services, equipment, prices, and the cost of installation. We seek data, information, and comment on the development of consumer information sources for delivered video programming services and equipment. Do consumers have sufficient information to compare the prices, services, and equipment that video distributors offer? What do consumers consider most important when choosing a provider? What do consumers say are the main reasons for switching providers (*e.g.*, price, quantity, quality)?

VI. PROCEDURAL MATTERS

70. *Authority*. This *Further 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).

71. *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).

72. *Comment Information*. Interested parties may file comments and reply comments 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). All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 07-269.

- 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.
- 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
  - 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.

[123] *Comcast-NBCU Order* at ¶ 9. *See also Open Internet Report and Order*, 25 FCC Rcd at 17916-18, ¶ 22, n.54.

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

73. *Accessibility Information*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

74. For further information about this Further Notice of Inquiry, please contact Marcia Glauberman at (202) 418-7046, marcia.glauberman@fcc.gov, or Dan Bring at (202) 418-2164, danny.bring@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary