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. 12-203

NOTICE OF INQUIRY

Adopted: July 18, 2012 **Released: July 20, 2012**

Comment Date: September 10, 2012
Reply Comment Date: October 10, 2012

By the Commission: Commissioner Pai issuing a statement.

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Heading Paragraph #

I. INTRODUCTION

A. Scope of the Report

1. This Notice of Inquiry ("*Notice*") solicits data, information, and comment on the state of competition in the delivery of video programming for the Commission's Fifteenth Report ("15th Report"). We seek to update the information and metrics provided in the Fourteenth Report ("*14th Report*")[1] and report on the state of competition in the video marketplace in 2011 and 2012. Using the information collected pursuant to this *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. Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") amended the Communications Act of 1934[2] 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.[3] 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."[4]

3. 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.[5] 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").[6] Today, DBS provides video

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[1] *Annual Assessment for the Status of Competition in the Market for the Delivery of Video* Programming, MB Docket No. 07-269, Fourteenth Report, FCC 12-81 (rel. July 20, 2012) ("*14th Report*").

[2] 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460, 1494 (1992) ("The 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.").

[3] 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." 47 U.S.C. §522(20); 47 C.F.R. § 79.1(a)(1).

[4] Section 628(g) of the Communications Act of 1934, as amended, 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*"); 24 FCC Rcd 542 (2007) ("*13th Report*").

[5] 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.

[6] 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." 47 U.S.C.

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programming to over 33.9 million subscribers, and cable offers video service to approximately 58 million subscribers.[7] Major telephony providers, Verizon and AT&T, have steadily increased their respective multichannel video services since their inception in 2005 and 2006, respectively.[8] Today, these entities provide video programming to a total of approximately 8.0 million subscribers.[9] The increasing availability of video content over the Internet, made available by online video distributors ("OVDs"), further expands consumer choice.[10]

4. In the *14th Report*, we adopted a number of changes to our analytic framework in an effort to be consistent with the framework used in recent wireless and satellite competition reports.[11] Under this new framework, we placed entities into one of three strategic groups – MVPDs, broadcast television stations, and OVDs. Within each of these categories, we addressed industry structure, conduct, and performance. The *14th Report* also examined key industry inputs that may impact the market for the delivery of video programming, including the creators and aggregators of video programming,

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§ 522(13). The Media Bureau issued a Public Notice seeking comment on the interpretation of the terms "MVPD" and "channel," and whether an entity must also provide its subscribers a transmission path to qualify under the statutory definition. *Media Bureau Seeks Comment On Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" as Raised in Pending Program Access Complaint Proceeding*, MB Docket No. 12-83, Public Notice, 27 FCC Rcd 3079 (MB 2012).

[7] *Multichannel Market Trends*, SNL KAGAN, Mar. 13, 2012, at http://www.snl.com/interactivex/articles.aspx?id=14413841&KPLT=6 (visited Apr. 11, 2012).

[8] *See* Verizon Communications Inc., *Verizon FiOS TV is Here!* (press release), Sept. 22, 2005 (announcing the unveiling of FiOS TV service in Keller, TX, its first market); 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 (announcing 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 also offer video services using their broadband infrastructure. *See 14th Report* ¶ 346.

[9] AT&T Inc., *Annual Report for the Year Ended December 31, 2011*, at 38; Verizon Communications Inc., *Annual Report for the Year Ended December 31, 2011*, at 3.

[10] An "OVD" is any entity that offers video content 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 content 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, 26 FCC Rcd 4238, 4358, App. A (2011) ("*Comcast-NBCU Order"*). Consumers need a broadband connection to receive video content 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.*, *Sky Angel U.S., LLC v. Discovery Communications LLC, et al.*, Program Access Complaint (Mar. 24, 2010). Nothing in this Notice should be read to state or imply our determination on that issue. *See also 14th Report* ¶ 237.

[11] *See 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. 10-133, Fifteenth Report, 26 FCC Rcd 9664 (2011) ("*15th Mobile Wireless Report*"); *Third Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services, Report and Analysis of Competitive Market Conditions with Respect Domestic and International Satellite Communications Services*, IB Docket Nos. 09-16 and 10-99, 26 FCC Rcd 17284 (2011) ("*Third Satellite Competition Report*").

distribution strategies for video, and consumer premises equipment. In addition, we compared video programming competition in rural and urban areas for each of the three strategic groups.

5. We invite all interested parties to provide input for the 15th Report. We seek to collect data to gain further insight into such areas as the deployment of new technologies and services, as well as innovation and investment in the video marketplace. The entry of each new delivery technology provides consumers with increasing options in obtaining video content. We therefore request comment on industry structure, market conduct and performance, consumer behavior, urban-rural comparisons, and key industry inputs for video programming. To the extent possible, we request commenters to provide information and insights on competition using this framework.

6. In particular, 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 and aggregators as well as manufacturers of consumer premises equipment, including equipment that enables consumers to view programming on their television sets and 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 15th Report will depend on the quality of the data and information we receive from commenters in response to this *Notice*. We encourage thorough and substantive submissions from industry participants, 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.

B. Analytic Framework

7. Under the analytic framework adopted in the *14th Report*, first we categorize entities that deliver video programming into one of three groups: MVPDs, broadcast television stations,[12] or OVDs. Entities delivering video content are assigned to these strategic groups based on similar business models or combination strategies.[13] Second, we examine industry structure, conduct, and performance, considering factors such as:

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[12] We expect to consider broadcast television stations separately for the 15th 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).

[13] As we did for the *14th Report*, we assign entities that deliver video content to one of three groups 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 129-155 (Free Press) (1980). The three groups also may be said to represent the historical development of delivered video where consumers initially had access to over-the-air broadcast television, then a growing number of MVPDs, and most recently the Internet. Our placement of

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- *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 improvements in the quantity, quality, and delivery methods of programming to subscribers, subscriber and penetration rates, financial indicators (*e.g.*, revenue and profitability), and investment and innovation activities.

Third, we look upstream and downstream to examine the influence of industry inputs and consumer behavior on the delivery of video programming. In the *14th Report*, we discussed two key industry inputs: video content creators and aggregators and consumer premises equipment.[14]

8. We seek comment on whether the analytic framework adopted in the *14th Report* is a useful way for the Commission to evaluate and report on the status of video programming competition or whether modifications are needed for the 15th Report. Do the three strategic group classifications allow us to adequately assess the interaction across these groups? Are an entity's business incentives or competitive concerns affected by operating in more than one group? How does the placement of entities into strategic groups affect by their ability to offer multiple services (*i.e.*, video, voice and broadband)? What influence do industry structure, conduct, and performance have on one another?

C. Data

9. 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),[15] 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; data from trade associations and government entities; data from securities analysts and other research companies and consultants; company news releases and websites; corporate presentations to investors, newspaper and periodical articles; scholarly publications; vendor product releases; white papers; and various public Commission filings, decisions, reports, and data. 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 market for the delivery of video programming? Are there certain stakeholders we should reach out to in order to diversify the data and further supplement the record?

10. In previous Notices of Inquiry, we have requested data as of June 30 of the relevant year to monitor trends on an annual basis.[16] To continue our time-series analysis, we request data as of June

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delivered video providers into one of three groups is an organizational convenience to facilitate discussion. *See 14th Report* ¶ 15 n.19.

[14] 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.

[15] 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.

[16] *See, e.g.*, *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, 751, ¶ 2 (2009); *Annual Assessment of the Status of*
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30, 2011, and June 30, 2012. We also recognize that a significant amount of data and information are reported on a calendar year basis, and as such, we ask commenters to provide year-end 2011 data when readily available and relevant.

II. PROVIDERS OF DELIVERED VIDEO PROGRAMMING

11. 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 as well as information from companies in each group. In addition, we request comment from the perspective of consumers, advertisers, content aggregators, content creators, and/or consumer premises equipment manufacturers on whether and to what extent MVPDs, broadcast stations, and OVDs consider the other two groups' offerings to be complements and/or substitutes for one another.

A. Multichannel Video Programming Distributors

1. MVPD Structure

12. MVPDs include all entities that make available for purchase multiple channels of video programming.[17] In our *14th Report*, we determined that most MVPD subscribers use cable, DBS, or telephone MVPDs for their video service.[18] Fewer than one percent of MVPD subscribers use other types of MVPDs (*e.g.*, home satellite dishes ("HSD"), open video systems ("OVS"), wireless cable systems,[19] and private cable operators ("PCOs")[20]). We also found that little reliable data is available for these other types of MVPDs.[21] We request comment on the extent to which these other types of MVPDs should be included in the 15th Report.

13. For each type of MVPD, we seek data on the number of MVPD providers, the number of homes passed, the number of subscribers for delivered video programming, the number of linear channels and amount of non-linear programming offered,[22] the ability of subscribers to watch programming on multiple devices, and 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 homes and to identify where MVPDs are engaged in head-to-head competition. In the *14th Report*, we addressed this concern in the context of estimating the number of homes with access to multiple

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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).

[17] *See supra* note 6 (defining an MVPD).

[18] *14th Report* ¶¶ 26-34.

[19] Wireless cable systems use the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") to transmit video programming to consumers.

[20] Private cable operators were formerly known as satellite master antenna ("SMATV") systems.

[21] *14th Report* ¶ 35.

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

MVPDs.[23] We therefore seek data and information on the number of homes that are passed by one MVPD, two MVPDs, and three or more MVPDs. We wish to identify those markets and geographic areas where head-to-head competition exists, where entry is likely in the near future, and where competition once existed but failed. What factors influence a subscriber's decision to switch from one type of MVPD service to another, for instance from cable MVPD service to DBS MVPD service or vice versa?

14. We request information identifying differences between cable, DBS, and telephone MVPD subscribers. Are DBS subscribers more likely to reside in rural areas or areas not served by cable systems? What percentage of homes cannot receive DBS service because they are not within the line-of-site of the satellite signal? In addition, we request updated information on the number of markets where DBS operators provide local-into-local broadcast service. Particular MVPD providers offer bundles of multiple services, including broadband, voice, and mobile wireless services. How, if at all, do these bundled offerings affect competition? For example, what affect, if any, does the inability of DBS operators to directly provide broadband, voice, and mobile wireless services along with their video service have on competition among and the financial performance of MVPDs?

15. With respect to non-contiguous states, do DBS MVPDs offer the same video packages at the same prices in Alaska and Hawaii as they offer in the 48 contiguous states? Do subscribers need different or additional equipment to receive video services in these states?

16. We seek comment on other MVPDs such as HSD[24] and PCOs.[25] Are these technologies still relevant today? If so, how are they relevant and to what extent are they available?

17. 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 the context of this proceeding. We note that, in past reports, the Commission considered certain of these providers in its analysis of video competition.[26] For the 15th Report, we request information on the extent to which mobile wireless providers continue to offer video

[23] *14th Report* ¶ 40 & Table 2.

[24] 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. *13th Report*, 24 FCC Rcd at 588-589, ¶ 93. Today, few entities offer a HSD subscription service. *14th Report* ¶ 35.

[25] 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. 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. In the *14th Report*, we found that PCOs accounted for the majority of alternative MVPD subscribers in 2011, with approximately 650,000 subscribers. This represents a decline from 900,000 subscribers in 2006. *14th Report* ¶ 35.

[26] In the past, mobile wireless service providers offered a range of video programming services to their customers. *See 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, 6203-04, ¶¶ 24-26 (2009).

programming to their customers. How has this changed during 2011 and the first half of 2012, and what are the reasons for such changes? How and to what extent do mobile wireless providers and MVPDs use wireless technologies, including Wi-Fi and wireless broadband, to provide video programming today, and what trends should we anticipate for the future? How do these services compete with or complement the traditional video programming services offered by MVPDs and by other providers of video programming?

18. *Horizontal Concentration*. In the *14th Report*, we did not directly measure horizontal concentration for video distribution. Rather, we estimated the number of homes on a nationwide basis that have access to two, three, or four MVPDs.[27] We seek comment on the value of our approach. We also seek data or comment on what information we can acquire to assist us in performing this analysis. Likewise, we invite analysis regarding the relationship between horizontal concentration and competition. To what extent does horizontal concentration affect price or quality of service?

19. In merger reviews, the Commission routinely examines horizontal concentration. It has classified MVPD service as a distinct product market and found individual homes to be the appropriate focus regarding competitive choices.[28] In the *15th Mobile Wireless Report*, the Commission applied the Herfindahl-Hirshman Index ("HHI") to shares of mobile wireless connections held by facilities-based wireless providers at the level of Economic Areas, calculating shares of connections from the providers' number of connections.[29] These Economic Areas are compiled based on census block data. For purposes of the 15th 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,[30] 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, census tracts, or cable franchise areas)?

20. *Vertical Integration*. In 1992, Congress enacted provisions related to common ownership between cable operators and video programming networks.[31] In the *14th Report*, we discussed vertical integration in terms of affiliations between programming networks and MVPDs. Specifically, we identified the number of national video programming networks affiliated with one or more MVPDs.[32] Similarly, we reported on regional programming networks affiliated with MVPDs.[33] We also

[27] *14th Report* ¶ 40.

[28] *See Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc.*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4255-57, ¶¶ 40, 42 (2011) ("*Comcast-NBCU Order*"); *Application for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors, to Time Warner Cable Inc., Assignees; Adelphia Communications Corporation, Assignors and Transferors, to Comcast Corporation, 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).

[29] *15th Mobile Wireless Report*, 26 FCC Rcd at 9708, ¶ 49.

[30] In past reports, the Commission has considered MVPDs to be a distinct product market. *See, e.g.*, *14th Report* ¶¶ 18-24; *13th Report*, 24 FCC Rcd at 545, ¶ 5.

[31] 47 U.S.C. § 533.

[32] *See 14th Report* ¶¶ 42-45. *See also 14th Report*, App. B, Table B-1.

[33] *See 14th Report*, App. C, Table C-1.

differentiated between the availability of standard definition ("SD") and high definition ("HD") versions of individual networks consistent with recent Commission decisions.[34]

21. We anticipate reporting this type of information again in the 15th Report. We therefore request data, information, and comment on vertical integration between MVPDs and video programming networks. In particular, we request information on satellite and terrestrially delivered national and regional networks.[35] 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 standards similar to those contained in our attribution rules rather than report on any known affiliations as we have done in the past?

22. *Conditions Affecting Entry and Rivalry*.[36] 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 and rivalry among MVPDs.

23. *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,[37] program carriage,[38] must carry,[39] retransmission consent,[40] franchising,[41] effective competition,[42] access to multiple dwelling units,[43] exclusivity,[44] inside wiring,[45] leased access,[46] ownership,[47] over-the-air reception devices,[48] and

[34] *See, e.g.*, *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, 785, ¶ 55 (2010) ("*2010 Program Access Order*"), *aff'd in part and vacated in part sub nom. Cablevision Systems Corp. et al. v FCC*, 649 F.3d 695 (D.C. Cir. 2011).

[35] *See generally 2010 Program Access Order*. The Commission defines satellite-delivered programming as programming delivered to MVPDs via satellite. Similarly, terrestrially delivered programming is defined as programming delivered to MVPDs via terrestrial means, such as programming transmitted to MVPDs by fiber. *See id.* at 748-49, ¶¶ 4, 5. National networks are distributed throughout the entire country (*e.g.*, CNN, Discovery Channel, and HBO); regional networks are only provided in certain geographic areas (*e.g.*, Comcast SportsNet Philadelphia and Arizona News Channel).

[36] 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.

[37] 47 U.S.C. § 548; 47 C.F.R. §§ 76.1001-04.

[38] 47 U.S.C. § 536; 47 C.F.R. §§ 76.1301-02.

[39] 47 U.S.C. §§ 534-35; 47 C.F.R. § 76.56.

[40] 47 U.S.C. § 525(b); 47 C.F.R. § 76.64.

[41] 47 U.S.C. § 541; 47 C.F.R. § 76.41.

[42] 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(b).

[43] 47 C.F.R. § 76.2000.

[44] 47 C.F.R. §§ 76.92, 76.101, 76.111.

[45] 47 U.S.C. § 544(i); 47 C.F.R. §§ 76.801-06.

[46] 47 U.S.C. § 532; 47 C.F.R. § 76.701.

[47] 47 U.S.C. § 533(f); 47 C.F.R. §§ 76.501, 76.503-04.

[48] 47 U.S.C. § 303 note; 47 C.F.R. § 1.4000.

public interest programming.[49] We seek comment on the impact of these regulations and other Commission rules on entry and rivalry among MVPDs. Are MVPDs identifying the costs attributed to any of these regulations (*e.g.*, retransmission consent) on the bills of their subscribers?

24. We also request data on the number of channels MVPDs dedicate on their respective systems to must-carry; public, educational, and governmental ("PEG"); and leased access programming. On which tier are these channels placed and is extra equipment required to view them? Are there more or fewer PEG and leased access channels carried on MVPD systems than were carried as of June 2010? What data sources exist to track the availability of PEG and leased access programming? We recognize that the regulations applicable to cable operators may differ from the regulations applicable to DBS systems and other MVPD operators. How do regulatory disparities affect MVPD rivalry? We also solicit comment on specific actions the Commission can take to facilitate MVPD entry and rivalry with the intent to increase consumer choice in the delivery of video programming. In addition, we request comment on any state or local regulations that affect entry and rivalry among MVPDs.

25. *Non-Regulatory Conditions Affecting Entry and Rivalry*. We seek information and comment on non-regulatory conditions affecting MVPD entry and rivalry, including the availability of programming. Do these conditions include 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 home considering switching to the new MVPD entrant? What other non-regulatory conditions influence MVPD entry and rivalry?

2. MVPD Conduct

26. *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, the programming they offer consumers, and how they package the programming (*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 (digital video recorder), video-on-demand ("VOD"), online video programming to PCs and mobile devices, 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.

27. 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? Do cable, DBS, and telephone MVPDs offer comparable video services? Does DBS "local-into-local" delivery of broadcast television signals make it a closer substitute for cable than it would be otherwise? We note that content creators have negotiated "TV Everywhere" agreements[50] in

[49] A franchising authority may require a cable operator to use channel capacity for public, educational, or governmental (PEG) use. 47 U.S.C. §§ 531, 541(a)(4)(B). DBS operators are required to reserve 4 percent of their channel capacity for noncommercial programming of an educational or informational nature. 47 U.S.C. § 335(b)(1)(A); 47 C.F.R. § 25.701(f).

[50] "TV Everywhere" is an initiative, which allows subscribers of certain MVPD services to access MVPD video programming on stationary and mobile Internet-connected devices including: televisions, computers, tablets, and smartphones. MVPDs market their TV Everywhere initiatives under a variety of brand names (*e.g.*, Comcast's Xfinity, and TWC TV^{TM}).

which MVPD subscribers receive access to programming via VOD, online, and mobile wireless devices.[51] To what extent do MVPDs view VOD and TV Everywhere service offerings, both online and on mobile wireless devices, as ways to retain existing subscribers and attract new ones? How extensively do MVPDs offer specialized services to consumers (*e.g.*, multi-room DVR service, more channels, more HD, video content online, access to content on mobile devices, and/or a variety of bundles[52])? How do MVPDs advertise their services to existing and potential subscribers? What delivered video services do they feature in their advertising?

28. We also seek information regarding the pricing behavior of MVPDs. How does the price MVPDs pay for programming, including sports programming, impact the prices they charge to consumers?[53] Are the prices of MVPD video packages and services easily identifiable and well-explained on consumers' monthly bill and/or MVPDs' web sites and other promotional materials? To what extent do providers of MVPD service reduce prices or offer promotion pricing to attract new subscribers and/or retain existing subscribers? Do providers negotiate with individual subscribers over prices before and after introductory periods? Do homes 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.*, packages that combine video, voice, equipment, and/or Internet service) affect the price charged for video services? To what extent have MVPDs been raising prices?

29. We are interested in learning whether an increase in the number of MVPD rivals affects pricing strategies. Do MVPDs charge lower prices (or use different pricing strategies) to homes that have access to multiple MVPDs? 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).[54] We seek price data for MVPDs not included in the Annual Cable Price Survey, such as the monthly rate for both the lowest programming package and any equipment needed to access the video service. What additional data sources on MVPD prices are available for our 15th Report?

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[51] SNL Kagan, *Economics of Mobile Programming*, 2011 Edition, at 7.

[52] Many MVPDs offer video, high-speed Internet, and wireline and/or wireless telephone services in bundles of two, three, or four services to consumers at discounted introductory prices and/or savings on the long-term price of each service compared to the price of buying each service separately.

[53] MVPDs are experimenting with low-cost programming packages in a limited number of markets. For example Cox Communications offers an economy package for $35 a month that includes several basic cable networks, but excludes ESPN and regional sports networks ("RSNs"). Comcast and Time Warner Cable have also tested and offered similar tiers. Colin Dixon, *Prices Up, Subscribers Down: Can Value Packages Save Cable?*, THE DIFFUSION GROUP, at http://tdgresearch.com/blogs/ottmonitor/archive/2012/01/27/prices-up-subscribers-down-can-value-packages-save-cable.aspx (visited May 22, 2012). DISH Network, which positions itself as a low-cost MVPD (in contrast to sports-centric DIRECTV, which offers exclusive NFL Sunday Ticket programming), has reportedly considered dropping ESPN if it does not agree to be distributed on a separate sports tier, to keep prices in check for subscribers who are non-sports fans. In New York, DISH Network has dropped RSNs SportsNet New York, YES, and MSG Plus. DISH Network CEO Charlie Ergen has stated that if only 15 percent of subscribers in a market actually watch sports programming, it may be a good idea for one of the MVPDs not to carry RSNs. Derek Baine, *Dish to Dump ESPN?*, SNL KAGAN, Sept. 13, 2011, at 11

[54] Section 623(k) of the Communications Act, as amended by the 1992 Cable Act, 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, e.g.*, *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266, Report on Cable Industry Prices, 27 FCC Rcd 2427 (MB 2012).

30. We also seek information on the competitive strategies of MVPDs in providing VOD and TV Everywhere programming on fixed and mobile devices. In particular, we are interested in learning what competitive issues MVPDs encounter when acquiring content for VOD and TV Everywhere from content creators and aggregators. Does the horizontal or vertical integration of content creators or aggregators, particularly companies that own broadcast television stations as well as broadcast and cable networks and studios, impact the ability of MVPDs to acquire rights to programming or the price of the programming? How does the size of an MVPD impact its bargaining power in such negotiations?

31. We seek data and comment on the provision of local news and sports by MVPDs as a competitive strategy in the delivery of video programming. 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 sports, as well as other local programming?

32. *Conduct Resulting from Horizontal and Vertical Mergers*. As discussed above, we seek data, information, and comment on trends in horizontal and vertical mergers and acquisitions.[55] Has any MVPD acquired sufficient market power to impair competition? If so, how has competition been impaired? What consumer benefits, if any, have recent horizontal and vertical mergers achieved?[56] 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

33. We seek comment on the information and time-series data we should collect for the analysis of various MVPD performance metrics. In the *14th Report*, we considered performance metrics such as subscribership and penetration rates, financial performance, and investment and innovation.[57] We expect to continue to report on these metrics in the 15th Report. Are there other metrics that would enhance our analysis of MVPD performance? To the extent commenters suggest other metrics, we request data for their use in preparation of the 15th Report.

34. *Quantity and Delivery Methods*. We seek data, information, and comment on trends in the number of linear video channels as well as VOD and TV Everywhere video content offered by MVPDs to fixed and mobile devices. Has the number of linear channels and/or the number of VOD and TV Everywhere 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 and TV Everywhere offerings. Are there geographic differences with respect to programming choices? How is the deployment of next-generation MVPD technologies[58] affecting the amount of programming MVPDs offer subscribers on a linear and non-linear basis? What effect has the entry of additional MVPDs had on programming choices and improvements in the delivery of video programming? What impact has the growth in OVD services had on MVPD services, in particular the deployment of VOD and TV Everywhere services?[59] What are the subscription levels for DVR and HD services? How many VOD titles are viewed per system?

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[55] *See supra* Section II.A.1 (discussing MVPD market structure, specifically horizontal concentration and vertical integration).

[56] *See, e.g.*, *Comcast-NBCU Order*.

[57] *14th Report* ¶¶ 134-54.

[58] For example, some MVPDs have started to deploy multi-room DVR and home network solutions as well as cloud-based user interfaces in an effort to offer their subscribers flexibility in viewing and greater access to video programming. *See 14th Report* ¶¶ 390-91.

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

35. *Subscribership and Penetration Rates*. We seek data and information regarding the number of homes passed nationally, the number of subscribers, and the resulting penetration rate for MVPD service.[60] We also request data regarding trends in the number of new homes that subscribe to MVPD services. In addition, we solicit 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.[61] What percentage of customers subscribe to these video packages and other delivered video programming services? How does subscription and penetration data vary by geographic region for MVPDs? What is the level of "churn" (*i.e.*, consumer switching among MVPDs) and is it increasing or decreasing?

36. *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. We are interested in the performance of the MVPD industry as a whole as well as the performance of individual MVPDs. What is the average revenue per MVPD subscriber?[62] 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? What are the major sources of costs for MVPDs, including programming costs? What is the impact of such costs on MVPDs? 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 and high-speed Internet services, along with video service often offered on a bundled basis. We also note that MVPDs may cross-subsidize services.[63] 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.

37. *Investment and Innovation*. We ask commenters to provide information concerning MVPDs' investments in the market for video programming, including investment levels over time, investment per subscriber, investment as a percentage of revenue, and capital expenditures by individual MVPDs. Does investment vary by geographic region or between national and regional providers? What innovative services or technologies are MVPDs currently deploying? What is driving this deployment? In addition, we seek comment on how investment and innovation affect competition among MVPDs and other providers of delivered video programming. Have OVDs spurred investment and innovation by MVPDs? To what extent do content aggregators and creators as well as manufacturers of consumer premises equipment influence MVPD investment and innovation?

38. We also request information on the pace at which MVPDs are deploying, or have plans to deploy, new technologies, including transitioning from analog, or hybrid analog/digital, to all-digital distribution, adding IP-delivered video programming, deploying more efficient video encoding technologies (*e.g.*, MPEG-4), deploying enhanced transmission technologies (*e.g.*, DOCSIS 3.0) and

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[60] We define penetration as the number of subscribers to an MVPD service expressed as a percentage of the number of homes that have access to the MVPD.

[61] *See Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Notice of Proposed Rulemaking, 26 FCC Rcd 1508, 1536-38, ¶¶ 77-88 (2011) ("*Form 477 Modernization NPRM*").

[62] *See id.* at 1535, ¶¶ 71-73.

[63] *See 14th Report* ¶¶ 110, 116, 131-32.

expanding 3-D services. To the extent that MVPDs are migrating to digital or otherwise repurposing spectrum, we seek comment on what new or additional services are they providing to consumers (*e.g.*, more HD channels, broadband, VOD, etc.).

B. Broadcast Television Stations

1. Broadcast Television Structure

39. 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 homes receive broadcast television stations over-the-air on television sets that they have chosen not to connect to MVPD service.[64] 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,[65] and purchases data from BIA/Kelsey[66] and The Nielsen Company.[67] We seek additional data concerning the number of households that rely on over-the-air broadcast television service, either exclusively or supplemented with OVD service, rather than receiving broadcast programming from an MVPD. In addition to the number of homes relying on over-the-air broadcast service, we request information regarding any demographic and geographic characteristics of such households. We also seek data on the percentage of households that own television sets, *i.e.*, the total number of television households.[68] We also seek data regarding the number of households with DVRs and HD sets. How many households routinely view broadcast programming over-the-air in addition to subscribing to an MVPD?

40. *Horizontal Concentration*. We are interested in tracking common ownership of broadcast stations nationally and 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.[69] The Commission already collects data that we can use to assess the horizontal structure of broadcast television stations, including the number of stations in each DMA and the ownership of each station.[70] Is

[64] *Id.* ¶ 155.

[65] 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.

[66] *See* BIA/Kelsey, Broadcast Media Resources, http://www.biakelsey.com/Research-and-Forecasts/Broadcast-Media-Resources/ (visited May 22, 2012).

[67] 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, http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/nielsen-2012-local-DMA-TV-penetration.pdf (visited May 22, 2012).

[68] The *14th Report* indicates that the number of television households in the United States increased each year from 2006-2010, but began to decline in 2011. *14th Report*, Table 15.

[69] 47 C.F.R. § 73.3555.

[70] *See 14th Report* ¶¶ 166-170.

there other available data that may better inform our assessment of horizontal concentration in the broadcast station industry?

41. *Vertical Integration*. The Commission has collected data that we can use to analyze trends in vertical integration, including data on the number of broadcast stations owned by or affiliated with video content creators and aggregators.[71] For the 15th Report, we seek to report on the vertical integration of broadcast television stations with broadcast networks and cable networks as we have done in the past. As such, we seek data on the vertical structure of the broadcast television industry. How many broadcast television stations, nationally and within each DMA, are vertically integrated with a broadcast network or a cable network? What, if any, trends exist with respect to the vertical integration between television stations and broadcast networks or cable networks? How does the vertical integration of television stations with broadcast networks, cable networks, and studios affect their ability to negotiate with MVPDs and OVDs for carriage rights? We also seek comment on ways to improve our analysis of vertical integration.

42. We also request data, information, and comment on the impact of horizontal and vertical combinations on the competitive condition of broadcast television stations with respect to the delivery of video programming. Does group ownership of broadcast stations within a DMA and/or across DMAs affect advertising revenue? Does group ownership within a DMA or across DMAs affect the price paid for video content? Are broadcast television stations that are vertically integrated with broadcast television networks better able to compete in the delivery of video programming? Do joint sales agreements ("JSAs"),[72] local marketing agreements ("LMAs"),[73] and shared services agreements ("SSAs")[74] impact the provision of programming to the public? Do these types of sharing arrangements affect the competitiveness of independent stations?

43. *Conditions Affecting Entry and Rivalry*. The Commission's spectrum allocation and licensing policies affect the structure of broadcast television by limiting the number of stations located in a given geographic area.[75] Other Commission rules limit the number of broadcast television stations an entity can own in a DMA as well as limit the national audience reach of commonly owned broadcast television stations.[76] Congress recently enacted legislation that provides for voluntary participation of broadcast station licensees in "reverse auctions" in which they may offer to relinquish some or all of their licensed spectrum usage rights in exchange for a share of the proceeds from a "forward auction" of

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[71] *See 14th Report*, Apps. B & C, Tables B-2 & C-2. *See also supra* Section II.A.1 (discussing MVPD vertical integration).

[72] A JSA is "an agreement with a licensee of a 'brokered station' that authorizes a 'broker' to sell advertising time for the 'brokered station.'" 47 C.F.R. § 73.3555, Note 2(k).

[73] An LMA or time brokerage agreement refers to "the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." 47 C.F.R. § 73.3555, Note 2(j).

[74] A shared services agreement is an agreement to coordinate programming and/or operations between broadcast stations. *See, e.g.*, *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2731, ¶ 23 n.74 (2011).

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

[76] 47 C.F.R. § 73.3555. 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.

licenses for the use of any reallocated TV broadcast spectrum.[77] In the *14th Report*, we noted that these statutory and regulatory actions may affect the entry and rivalry of broadcasters.[78] We seek data, information, and comment on the impact of these requirements on entry and rivalry in the broadcast television industry. Are there other regulations that affect entry and rivalry of broadcast television stations? We ask commenters to provide data and examples for each regulation that affects entry and rivalry.

44. We seek information and comment on non-regulatory conditions affecting entry and rivalry, including access to capital and programming. 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 and to what extent? Which broadcast station licensees have entered or exited the broadcast televisions industry and why?

2. Broadcast Television Conduct

45. *Price Rivalry.* Because broadcast television stations do not charge consumers directly for the delivery of their signals, they do not compete on price in the traditional sense. Broadcast television is free to consumers who receive it over-the-air. Nevertheless, since about 90 percent of all television households receive broadcast stations from an MVPD, most consumers pay for broadcast stations as part of their MVPD service.[79] In the case of cable, broadcast television stations are part of the basic service package, which is generally a low price offering.[80] What price do MVPDs charge to consumers to receive broadcast television stations on their basic tier of service?

46. Commercial broadcast television stations earn revenue from advertising.[81] 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 those changes brought on by the economic downturn. In particular, we seek data on trends in prices for spot and local advertising on broadcast television stations. How does revenue from political advertising affect broadcasters' business strategies? To what extent has offering video content online increased the advertising revenue of broadcast stations?

47. Some commercial broadcast television stations also earn revenue in the form of retransmission consent fees from MVPDs in return for carriage of their stations.[82] We seek information regarding the types and characteristics of stations seeking retransmission consent fees. We also request comment on the types and characteristics of stations choosing MVPD carriage under the must-carry regime. In addition, we request information regarding any business strategies aimed at increasing revenue

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[77] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6401-05, 126 Stat. 156, 222-30 (2012).

[78] *See 14th Report* ¶¶ 177-80.

[79] Nielsen, TELEVISION AUDIENCE 2010 & 2011, 2011, at 6. *See also 14th Report*, Table 15.

[80] 47 U.S.C. §§ 534(b)(7); 543(b)(7), 47 C.F.R. § 76.901(a).

[81] On-air advertising is the largest source of revenue for television stations even though the share of total revenue derived from on-air advertising is declining. Advertising represented 96 percent of the broadcast television station industry net revenues in 2006 and 91 percent of industry net revenues in 2010. *See 14th Report* ¶ 216.

[82] *See 14th Report* ¶¶ 222-25 (indicating that broadcast stations, like cable networks, are negotiating per subscriber fees from MVPDs in exchange for carriage rights).

from retransmission consent fees. What prices (per subscriber) are broadcast stations receiving from MVPDs for retransmission consent?

48. *Non-Price Rivalry*. Broadcast stations compete with each other for viewers and advertisers on two major non-price criteria – programming and the ability to view such programming in multiple formats. As a result of the digital transition, each broadcast television station has been allotted 6 MHz of spectrum permitting multiple linear program streams, HD broadcasts, and/or the delivery of programming to mobile devices.[83] We seek data, information, and comment on the use of multiple 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? Does the ability to offer multiple programming streams since the digital transition enhance the ability of broadcasters to attract viewers to over-the-air video service and to compete against MVPDs? We also seek data, information, and comment on the number of broadcast television channels available in each DMA, counting both primary stations and additional multicast programming streams. Has the amount of programming increased since the digital transition?

49. Are broadcasters using HD programming as a strategy to attract viewers? How many broadcast television stations offer video content in HD? What percentage of their programming is in HD? Has this percentage increased over time? What effect does the ability to offer video programming in HD have on broadcast stations' ability to compete against other broadcasters and attract viewers? Are broadcasters using their ability to deliver programming to mobile devices as a competitive strategy? How many broadcasters are currently delivering programming to mobile devices?[84] Do broadcasters have business plans to use some of their digital capacity for a subscription service or to lease a portion of their digital spectrum capacity to others for a subscription service?[85]

50. Broadcasters remain important providers of local news.[86] We seek data and comment on the provision of local news as a competitive strategy in the delivery of video programming and the geographic availability of local news programming. We also request comment on the strategies and partnerships broadcasters are using 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?

51. For many years, broadcast television networks have used their local broadcast television affiliated stations as their primary distributor of programming. We solicit comment on whether and how broadcast television stations position themselves to remain the primary distributor of broadcast television

[83] *Id.* ¶ 157.

[84] *See id.* ¶¶ 203-05. *See also* Mobile Content Venture, http://www.dyle.tv/mcv/overview/ (visited May 22, 2012); Mobile500 Alliance, http://www.mobile500alliance.com/ (visited May 22, 2012).

[85] Previously, the Commission 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. *13th Report*, 24 FCC Rcd at 598-99, ¶ 115.

[86] A 2011 survey found that local television remains the most popular source of news and information, but that local stations continue to face challenges in their attempts to grow online and mobile audiences. Deborah Potter et al., Pew Research Center's Project for Excellence in Journalism, *Local TV: Audience Rise After Years of Decline*, State of the News Media 2012, at http://stateofthemedia.org/2012/local-tv-audience-rise-after-years-of-decline/ (visited May 22, 2012) ("*Pew State of the News Media Report*"). Local news also continues to be major policy goal of the Commission's media ownership rules. *See 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17492, ¶ 6 (2011).

network programming. To what extent is local broadcast programming available online, either on their own websites or through licensing agreements with OVD aggregators, such as Hulu and iTunes? What effect does the availability of broadcast programming online have on broadcast stations?[87] Are there benefits to broadcasters of making video content available online and on devices other than a television set? If so, what are those benefits?

52. Finally, what competitive strategies do broadcast television stations use to distinguish themselves from other broadcast television stations? For example, are broadcasters investing in local programming, other than news, to enhance the competitive position of their stations? We also seek data, information, and comment on the additional business strategies broadcast television stations use in competing against each other.

3. Broadcast Television Performance

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

54. *Viewership*. We seek data, information, and comment on the viewership of broadcast television stations both from over-the-air reception and MVPD carriage. What is the trend in total viewership in total household terms? What is the trend in the share of the total audience that broadcast television stations receive either over-the-air or via MVPD carriage relative to the share received by cable networks carried by MVPDs? How many households view broadcast television stations online rather than over-the-air?

55. *Financial Performance*. We seek data on broadcast television station revenues, cash flows, and profit margins. We are interested in the performance of the broadcast television industry as a whole as well as the performance of broadcast television stations, on average.

56. In the *14th Report*, we provided information regarding the major sources of revenue for broadcast stations – advertising, network compensation, retransmission consent, and ancillary DTV revenues.[88] We seek data on each of these revenue sources. What percentage of total revenue is derived from each of these sources? How are these revenue sources and their relative shares of total revenue changing? Are there changes to the network/affiliate relationships that affect broadcast stations' revenues? We specifically seek information regarding the extent to which network affiliated broadcast stations now pay "reverse compensation" to their networks and/or share retransmission consent revenues with the network.[89] We realize that some broadcast stations are integrated with other businesses but we are primarily interested in financial data related directly to the video programming of broadcast television stations, such as the local and national advertising revenue, retransmission consent fees, and revenue from stations' websites.

57. We also seek data regarding the profitability of broadcast television stations. In the *14th Report*, we assessed profitability by examining both financial reports and data on a station-level and

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[87] *See 14th Report* ¶ 203.

[88] *See id.* ¶¶ 216-220 (advertising revenue); ¶ 221 (network compensation); ¶¶ 222-225 (retransmission consent fees); and ¶ 226 (ancillary DTV revenues).

[89] In the *14th Report,* we noted that broadcast networks have begun to require affiliates to make cash payments to them and/or require affiliates to share a portion of their retransmission consent revenues. *See id.* ¶¶ 221, 223.

company-level basis.[90] What metrics and data should we use in the 15th Report to measure profitability (*e.g.*, return on invested capital and operating margins)? What are the major expenses for broadcast television stations? We are particularly interested in the impact of programming costs on broadcast television stations. Has the financial performance of broadcast stations improved given the broader distribution of broadcast stations' video programming through nonlinear formats, such as OVDs, VOD, and TV Everywhere services? Are there any other quantitative or qualitative metrics that would add to our analysis of broadcast television stations' financial performance?

58. *Investment and Innovation*. We seek comment on how investment in digital television affects competition among broadcast television stations and in the larger market for the delivery of video programming. We request data on broadcast television stations' investment in digital television and innovative technologies for distributing traditional programming, as well as on the financial returns of these investments. What has investment in digital television done to enhance the competitive position of broadcast television stations in the delivery of video programming? Are there geographic differences in the amount of investment?

C. Online Video Distributors

1. OVD Structure

59. OVDs are entities that distribute video content over the Internet to consumers.[91] To receive video content 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. We therefore have significant information regarding the structure, conduct, and performance of the broadband markets, including the number and size of participants, the number of homes 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.[92] With respect to the delivery of video content by OVDs, we seek comment on the best available sources of information to enable us to analyze OVDs.[93] The *14th Report* surveyed some of the major players in the OVD marketplace, but lacked data and information covering the OVD industry as a whole. To the extent they are available, we ask commenters to provide data and information regarding the OVD marketplace for the 15th Report.

60. The OVD marketplace has grown substantially over the last few years. Today, OVDs include programmers and content producers/owners (*e.g.*, broadcast and cable networks, sports leagues, and movie studios), video sharing sites and social network services (*e.g.*, YouTube and Facebook), and affiliates of manufacturers, retailers, and other businesses (*e.g.*, Amazon.com and Wal-Mart's Vudu service).[94] We request data, information, and comment on the number, size, and types of OVDs. Are

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[90] *Id.* ¶ 230.

[91] *See supra* note 10 (defining an OVD).

[92] *See* FCC Form 477 Broadband Data; *15th Mobile Wireless Report*; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008 (2011). *See also Form 477 Modernization NPRM*.

[93] *See also 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, 26 FCC Rcd 14091, 14112, ¶ 52 (2011).

[94] *14th Report* ¶¶ 244-57. *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, 17978, ¶ 132 n.421 (2010).

OVDs typically affiliated with other businesses or are they stand-alone entities? To what extent do individual OVDs compete with other OVDs? What data sources are available to analyze the structure of the OVD marketplace? What entities do OVDs view as direct competitors? For instance, do OVDs compete with MVPDs and/or broadcast television stations? Is OVD service a substitute or complement for MVPD service? What data are available and what metrics should we use to analyze the extent to which OVDs' services are a substitute or complement to MVPD service?

61. We request input about issues relating to horizontal concentration and vertical integration in the OVD marketplace. In the *14th Report*, we noted that it is difficult to measure horizontal concentration in the OVDs market due to continual entry and exit of industry participants, inability to access necessary data, and lack of established metrics to measure OVD performance. Are there any new data sources available that would help the Commission undertake a horizontal concentration analysis in the 15th Report? What methodologies might the Commission employ? What metrics could the Commission use?

62. We also seek comment and data that would permit us to assess vertical integration in the OVD marketplace. We note that many OVDs are vertically integrated with other businesses.[95] How do these relationships affect competition in OVD marketplace? For example, do affiliations between OVDs and content owners impact the availability of specific online content via multiple OVDs? Do affiliations between OVDs and equipment retailers and/or manufacturers have an impact on the ability of consumers to access OVD content via multiple devices, including mobile devices?

63. We further request comment on conditions that affect entry into the OVD marketplace and rivalry among OVDs. What legal and regulatory barriers to entry do OVDs face? What non-regulatory barriers exist? For example, OVDs often depend on unaffiliated ISPs to deliver content to their customers. What affect does the need to rely on third parties to deliver their video content to consumers have on the ability of entities to enter and compete in the OVD marketplace? What percentage of a typical ISP's traffic is due to OVD content? Do difficulties in acquiring content rights, or the costs of acquiring such rights, act as a significant barrier to entry? Does the increasing cost of programming content have the potential to drive OVDs out of business? What other non-regulatory barriers to entry are there? What are the trends in recent OVD entry or exit, and what specific factors contribute to OVD entry or exit?

2. OVD Conduct

64. What business models and competitive strategies do OVDs use to compete in the delivery of video content? What are the key differences among the business models and strategies in terms of services offered to consumers? Some OVDs provide content to users for free, while others charge users a fee to access content. Some OVDs charge a monthly fee, while others charge separately for each television program or movie. We seek comment on the factors that affect an OVDs choice of business models. Are OVDs increasingly inclined to charge consumers for access to their content? To what extent do OVDs rely on advertising, subscription fees, per-program fees, or other sources of revenue? Are OVDs implementing additional revenue strategies? We also seek information on the prices OVDs charge for access to video content over the Internet. What prices are consumers currently paying for OVD service? Have these prices changed over the last few years, and if so, why? In addition, we request information on whether OVDs are implementing business models that are not free, subscription, or

[95] For example, Hulu is an OVD owned by News Corporation, NBCUniversal, The Walt Disney Company, and Providence Equity Partners. The four largest professional sports leagues – Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League – also provide a significant portion of their programming online through paid subscription services. *See 14th Report* ¶¶ 246-47.

transaction based. For example, to what extent are OVDs entering partnerships with MVPDs or other entities to provide bundled, exclusive, or otherwise enhanced access to the OVD service for subscribers of MVPDs or other entities?

65. In the last few years, OVDs have made an increasing amount of video content available to consumers over the Internet. What are the types of business arrangements OVDs use to acquire distribution rights for content? What strategies are OVDs implementing to obtain video content for their libraries? How does the decision to charge customers affect an OVD's ability to deliver additional content to consumers? To what extent are producers and owners of highly desirable content willing to make that content available to consumers online? What other factors have an impact on the ability of OVDs to secure the rights to compelling content?

66. OVDs increasingly make their video content available to subscribers via multiple devices, including mobile devices such as smartphones and tablets.[96] To what extent must OVDs make content available via multiple devices, including mobile devices, in order to compete in the OVD marketplace? What costs or difficulties do OVDs face when attempting to make content available via multiple devices?

67. How is OVD service advertised? What media do OVDs use to advertise their service? Do OVDs highlight the availability of increasing amounts of online video content to attract more viewers and/or subscribers? Do OVDs use the ability to access content via multiple devices, including mobile devices, as a means to attract and retain subscribers? What other factors do OVDs stress in advertisements?

68. Currently, most OVD services allow viewers to search for content (*e.g.*, video clips, episodes of TV shows, or movies) within the OVD's library and to view such content whenever the customer wishes.[97] To what extent have OVDs begun to produce or acquire original content? What are the costs of producing or acquiring such content and does such content attract additional viewers? Are those OVDs offering original content more competitive with MVPDs and broadcasters? Are OVDs providing live and local content as a means to attract viewers (*e.g.*, local news and sporting events)? What additional strategies are OVDs using to differentiate themselves from competitors? To what extent do OVDs provide data on content availability to third parties for inclusion in their content directories?

3. OVD Performance

69. We seek input concerning OVD viewership, revenue, investment, and profitability. In order to measure viewership, we seek information concerning the type of video content available online, particularly television programs, movies, and sports, as well as the extent to which consumers are viewing such content. How many consumers viewed content online as of June 30, 2011 and June 30, 2012? We also seek other metrics that might be used to measure OVD viewership, such as hits/views, subscribership numbers, and consumer purchase transactions. Have these numbers increased over the last few years, and if so, why? 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? How have the windowing strategies[98] of video content aggregators and creators impacted OVDs? How have OVDs increased the quantity and improved the delivery of their video content since the *14th Report*? Is the OVD

[96] *14th Report* ¶ 237.

[97] *Id.* ¶¶ 244-57.

[98] *See infra* ¶ 76 & note 111.

market affected by the ability of MVPDs to increase their capacity to offer video content using digital and IP-based technologies?

70. The *14th Report* identified several possible revenue sources for OVDs, including fees from consumers; in-video advertising; display advertising around the video; product placement; and advergaming.[99] We seek updated revenue data for these sources, as well as any other revenue sources available to OVDs. What revenue sources are the most lucrative for OVDs?

71. We also request information and comment on investments and innovations in the OVD marketplace. What types of entities are investing in new and existing OVDs? What financial returns do OVDs earn on their investments? What types of investments are OVDs making to enhance their growth? Are OVDs increasingly entering into joint ventures or partnerships to increase investment opportunities? What innovative services or technologies are OVDs currently deploying? How should we measure profitability for OVDs given that many operate within multimedia conglomerates or other large, diversified businesses? Are there additional performance metrics we should consider for OVDs? We seek comment on suggested ways to measure OVD performance and relevant data that will allow us to perform such analysis.

III. RURAL VERSUS URBAN COMPARISON

72. Section 628(a) of the Communications Act sets as a goal increasing the availability of 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 markets.[101] 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 Report*, the Commission opted to use its definition of the term "rural," which it defines as a county with a population density of 100 persons or fewer per square mile.[104] Is this a satisfactory definition for the purpose of measuring the availability of and competition among providers of video programming? Are there other alternatives we should consider based on zip codes,

[99] *See 14th Report* ¶¶ 327-33. Advergaming, a type of niche marketing, is the practice of inserting paid advertisements in a video game.

[100] 47 U.S.C. § 548(a), (g).

[101] *See, e.g.*, *14th Report* ¶¶ 343-58; *13th Report*, 24 FCC Rcd at 579-580, ¶¶ 72-73.

[102] 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. *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, 14835-36, ¶ 112 (2003) ("*Eighth Wireless Competition Report*"). *See also 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, 17 FCC Rcd 12985, 13022 (2002) ("*Seventh Wireless Competition Report*").

[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 C.F.R. § 22.909. *See also Eighth Wireless Competition Report*, 18 FCC Rcd at 14836, ¶ 113; *Seventh Wireless Competition Report*, 17 FCC Rcd at 13022.

[104] *14th Report* ¶ 344.

census tracts, or some other geographic unit to compare competition among video programming distributors in rural and urban areas?[105]

73. We seek data, information, and comment to assess whether there are differences in the delivery of video programming between rural and urban areas, and the factors that account for any differences. Are there differences between the quantity and types of video programming offered to rural consumers versus urban consumers? How does competition between MVPDs, broadcast stations, and OVDs differ in rural and urban areas? Are there demographic, geographic, and economic factors driving competitive differences in rural and urban markets? Which, if any, delivered video programming services are most often lacking in rural areas? We recognize that most homes have access to two DBS services – DIRECTV and DISH Network – that provide national service. How many homes in rural and urban areas lack access to a cable system or another wireline MVPD? Is the percentage of these homes greater in rural areas? How does access to broadcast television stations differ between rural and urban areas? Are there any distinctions between rural and urban areas in the reliance of over-the-air broadcast signals? Do rural areas have less access to high-speed Internet service and, therefore, less access to OVD services relative to urban areas? How has the growth of online video increased the buildout of broadband in rural areas?

74. We also request information, data, and comment regarding the differences in the prices of delivered video service in rural areas relative to urban areas. Are MVPDs operating in rural areas charged similar rates for content as MVPDs in urban areas? How do the retransmission rates in rural areas compare to those in urban areas? When MVPD service is available in rural areas, are prices higher or quality lower relative to urban markets?[106] Are there examples of rural areas that receive delivered video programming service similar in price and quality to those found in urban areas?

IV. KEY INDUSTRY INPUTS

A. Video Content Creators and Aggregators

75. Creators of video programming are major production studios and independent production companies.[107] Video content aggregators are entities that combine video content into packages of video programming for distribution.[108] Video content aggregators include broadcast networks (*e.g.*, ABC), cable networks (*e.g.*, ABC Family), and broadcast stations (*e.g.*, WJLA-TV, Washington, DC). Many of the large entertainment conglomerates include subsidiaries that are both video content creators and aggregators.[109] We request data, information, and comment that will help us analyze the number and size

[105] *See supra* Section II.A.1. For example, USDA's Economic Research Service Rural-Urban Commuting Area ("RUCA") codes use census tracts rather than counties. *See* Rural Health Research Center, Rural-Urban Commuting Codes, http://depts.washington.edu/uwruca/ (visited May 22, 2012).

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

[107] Large firms that create content include Disney, News Corp., NBC Universal, Time Warner Inc., CBS, Viacom and Discovery. *See 14th Report* ¶ 360. In addition to creating television content, many of these companies produce theatrical movies and retain ultimate distribution rights. *Id.* Independent content creators include companies, such as The Weinstein Company, the producer of movies such as *The Artist* and *The King's Speech*. *See* The Weinstein Company, *About Us*, http://weinsteinco.com/about-us/ (visited May 22, 2012).

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

[109] *14th Report* ¶ 360. 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

(continued....)

of content creators and aggregators and the relationships between the content creators and aggregators and the firms that distribute video content. Do independent production entities face any barriers in obtaining carriage on all or some delivery systems (including broadcast, MVPDs. and OVDs)? In addition, we are interested in information regarding entities, local and national, creating news, public interest programming and/or sports and the relationships between the content creators and those that deliver video programming.[110] We are also interested in trends in vertical integration among studios and networks. What effect, if any, does vertical integration have on their willingness and ability to make programming available to MVPDs, broadcast television stations, or OVDs on a linear and nonlinear basis? Are there any differences for MVPDs, broadcasters, or OVDs with respect to their relationships with independent content creators in comparison to vertically integrated content creators? If so, what is the impact of these differences?

76. We also seek data, information, and comment on the business strategies of content creators and aggregators regarding the selling and licensing of video content and the effect on video distribution. In recent years, some content owners have altered their business strategies with respect to the type of video content created, the timing of release of specific video content through the various delivery windows ("windowing"),[111] and the prices charged for content in each window. How have these changes affected competition between distributors of video programming or the growth of OVDs? Have there been significant changes in the bargaining power between content owners and distributors of video programming since the *14th Report*? How have changes in content creation altered investment in the distribution of video programming? How do the windowing strategies of video content owners affect the distribution of video programming through VOD and over the Internet? How do the business models of OVDs (*i.e.*, electronic sell-through,[112] advertising-supported, and/or subscription-based models) alter the windowing strategies of content aggregators and creators? Have business strategies changed for creators of news programming, especially local news programming? Do the delivery strategies for the creators of sports programming differ from other video content creators? Have the business strategies of sports leagues evolved and, if so, how? Has the entry or growth of new video content aggregators lead to an expanded number of MVPD channel offerings or additional programming on broadcast television stations using multiple digital streams? Are new entrants or established video content aggregators driving the creation of additional programming networks and/or packages?

B. Consumer Premises Equipment

77. Consumer premises equipment traditionally refers to devices that enable consumers to watch video content from MVPDs and broadcast stations on televisions. Such devices include

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Walt Disney Company, *Corporate Information: Company Overview*, http://corporate.disney.go.com/corporate/overview.html (visited May 22, 2012).

110 We note that a significant portion of news programming is produced at the local and regional level and, with respect to sports, each league negotiates rights differently. We also recognize that sports programming differs from other television programming because audience and advertiser interest is more predicable, and live sports programming has little value beyond the initial telecast. These factors, among others, have led to the rising cost of sports programming. *See 14th Report* ¶¶ 198, 372-75. *See also supra* note 86.

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. *14th Report* ¶¶ 365, 368, 370.

112 Electronic sell-through is the business model where a consumer pays a one-time fee to download a television show, movie, or other media to be stored locally on a hard drive. *14th Report* ¶ 290.

televisions, antennas, cable and satellite set-top boxes, 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 permit video content delivered by MVPDs and OVDs to be viewed on a television, as well as allow video content delivered by broadcast television stations and MVPDs to be viewed on personal computers or mobile devices.

78. Recently, the term "consumer premises equipment" has come to include devices, such as "connected-TVs," that receive video content directly from the Internet.[113] Similarly, in addition to enabling users to watch videos on computers, several set-top boxes (*e.g.*, Roku, Boxee, and Apple TV) deliver online video directly to viewers' televisions.[114] With connected-TVs, game consoles (*e.g.*, Microsoft's Xbox[115] and Sony's PlayStation), or Blu-Ray players, consumers can also watch certain television programs, movies, and sporting events online.[116] DVR manufacturer TiVo enables consumers to purchase movies and television programs from online stores, stream movies and content from subscription services like Hulu Plus and Netflix, and, in certain areas, access cable-provided video-on-demand.[117] Likewise, mobile devices, such as Apple's iPad, enable consumers to watch some television programs and movies using broadband wireless connections. These and other devices allow consumers to purchase and download online video content.

79. In the 15[th] Report, we plan to discuss the devices that facilitate the delivery of video programming and their effect on competition in the delivery of video programming.[118] We recognize the costs of consumer premises equipment may hinder competition by, among other things, raising consumers' switching costs. We therefore request information on developments relating to consumer premises equipment and the services providing options to consumers for viewing video programming. In particular, 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 or for use with OVD services. What are the challenges that manufacturers face in investing and innovating in consumer equipment? What are the different types of consumer premises equipment – both MVPD supplied and non-MVPD supplied – used to access video content and the capabilities thereof? What prices do MVPDs typically pay for those devices? To what extent do MVPDs offer different equipment options at different price points on their systems, and what is the overall lease cost of such equipment to subscribers?[119] To the extent that consumers can purchase comparable devices, what price would a consumer pay for such a device?

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[113] *See id.* ¶ 399.

[114] *See id.*

[115] *See* Frank X. Shaw, *Xbox: Now That's Entertainment*, THE OFFICIAL MICROSOFT® BLOG, May 31, 2011, at http://blogs.technet.com/b/microsoft_blog/archive/2011/05/31/xbox-now-that-s-entertainment.aspx (visited May 22, 2012) ("Xbox is the gateway to games, music, movies and TV shows – in short, it is central to entertainment.").

[116] *See* John P. Falcone, *Which streaming media device is right for you?*, CNET NEWS, Mar. 26, 2012, at http://news.cnet.com/8301-17938_105-20025670-1/which-streaming-media-device-is-right-for-you/ (visited May 22, 2012).

[117] Harry McCracken, *TiVo Gets Comcast's Xfinity on Demand*, TIME, Apr. 9, 2012, at http://techland.time.com/2012/04/09/tivo-gets-comasts-xfinity-on-demand/ (visited May 22, 2012).

[118] 47 U.S.C. § 549(a). *See also 14[th] Report* ¶ 393.

[119] We understand that set-top box functionalities can vary widely. We invite comment on the functions and services that MVPDs use to differentiate the prices that they charge to consumers.

80. We also seek information and comment on how competition among MVPDs affects the deployment of new CPE and delivery technologies to improve the subscriber experience, such as through improved search and navigation capabilities. In particular, we seek information on the extent to which MVPDs are using managed IP clouds to deliver network-based DVRs, interactive programming guides, IP video streaming, VOD and other interactive applications. In addition, we request information regarding the impact of digital rights management technology and conditional access technology (and associated patent or content licensing terms) on the availability of video programming to consumers. What are the adoption trends among consumers for these types of equipment? To what extent are CPE manufacturers partnering with OVDs, MVPDs, content aggregators, and content creators to offer linear or non-linear video programming to consumer devices?

81. We understand that there are certain things MVPDs must coordinate with electronics manufacturers (*e.g.*, DRM,[120] codecs,[121] and connectors[122]) in order to deliver video programming to consumers. We seek comment on other technical specifications that MVPDs, content owners, and consumer electronics manufacturers coordinate. How do these parties agree on the devices that are used? How much interaction is there between MVPDs delivering video programming and manufacturers of consumer premises equipment, especially manufacturers of cable and DBS set-top boxes and devices enabling consumers to view online video on their televisions?

V. CONSUMER BEHAVIOR

82. We seek information about how trends in consumer behavior affect the products and services of providers of delivered video programming. For instance, 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. Video content available online is increasing,[123] and reports indicate that an increasing number of consumers are viewing videos online.[124] To what extent are consumers becoming "cord avoiders"[125] and dropping MVPD service in favor of OVDs or a combination of OVDs and over-the-air television? Are consumers reducing their MVPD subscriptions by, for example, substituting Netflix for premium channels or VOD services? Do consumers view OVD services

[120] Digital Rights Management ("DRM") systems encrypt content with software before delivering it down to an authorized consumer's device for descrambling. *See* Mike Robuck, *The Fragmented World of DRM*, CED MAGAZINE, Mar. 2, 2012, at http://www.cedmagazine.com/articles/2012/03/the-fragmented-world-of-drm (visited May 22, 2012).

[121] Codec is short for coder-decoder or compressor-decompressor. Codecs are software that take digital media data and either compress them (for transport and storage) or decompress them (for viewing or transcoding). With smaller file sizes and lower bit rates, digital media content can be streamed over a network more quickly and easily. *See* Loyd Chase, *All About Video Codecs and Containers*, PCWORLD, Dec. 14, 2010, at http://www.pcworld.com/article/213612/all_about_video_codecs_and_containers (visited May 22, 2012).

[122] Connectors are the part of a cable that plugs into a port or interface to link networks or devices together. Connectors attach to set top boxes, televisions, computers, etc. *See* HDTV Magazine, *Set Top Box Interconnections*, http://www.hdtvprimer.com/ISSUES/STBs.html (visited May 22, 2012).

[123] *14th Report* ¶ 242.

[124] *See id.* ¶¶ 319-24 & Table 23.

[125] The term "cord-avoiders" refers to individuals or households using OVD alternatives (such as Hulu and Netflix) to avoid paying for MVPD service. In some cases the choice to do so is related to recent economic difficulties. *See* Dan Hirschhorn, *'Cord-Avoiders' to Reduce Cable and Satellite TV Rolls in 2012, Analysts Say*, ADVERTISING AGE, Nov. 28, 2011, at http://adage.com/article/mediaworks/cable-satellite-tv-subscriber-rolls-shrink-2012/231216/ (visited May 22, 2012).

separately or in conjunction with over-the-air broadcast television service as a potential substitute for MVPD service? What impact do "cord-nevers"[126] have on the market for delivered video programming?

83. Video distributors advertise their services on television, in newspapers, and through mailings, as well as 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 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, program packages, and customer service)?

VI. PROCEDURAL MATTERS

84. *Authority*. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i), 154(j), 403, and 548(g).

85. *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).

86. *Comment Information*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, 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 the Commission's Electronic Comment Filing System (ECFS). *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. 12-203.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy 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. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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

[126] The term "cord-nevers" refers to individuals who have never subscribed to an MVPD service. They are typically young adults and students. *See* Bernard Gershon, *TV's Scariest Generation: The Cable Nevers*, ADVERTISING AGE, Dec. 2, 2011, at http://adage.com/article/digitalnext/tv-s-scariest-generation-cable-nevers/231330/ (visited May 22, 2012).

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

87. *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).

88. For further information about this Notice of Inquiry, please contact Johanna Thomas at (202) 418-7551, johanna.thomas@fcc.gov, or Marcia Glauberman at (202) 418-7046, marcia.glauberman@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
COMMISSIONER AJIT PAI

Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 12-203

I would like to thank the Media Bureau staff for all of their work producing this comprehensive report, which demonstrates in detail that the video marketplace is more competitive than it ever has been. Over the four years covered by the report, the range of MVPD options expanded, broadcasters increased their number of multicast streams, distribution of video content over the Internet exploded, and the variety of devices capable of displaying video programming grew dramatically. This is all good news, because competition within and among market segments (broadcasters, MVPDs, and online video distributors) benefits consumers.

Given the fast pace of change within the industry, it is vital that the Commission comply with its statutory mandate to "annually report to Congress on the status of competition in the market for the delivery of video programming." 47 U.S.C. § 548(g). Our record on this score is a matter of public record and need not be repeated here. I am hopeful, however, that we are back on track and that we will release our next report in 2013.