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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	)))	CS Docket No. 01-129

NOTICE OF INQUIRY

Adopted: June 20, 2001 **Released: June 25, 2001**

Comment Date: August 3, 2001
Reply Comment Date: September 5, 2001

By the Commission:

I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to annually report to Congress on the status of competition in the market for the delivery of video programming.[1] This *Notice of Inquiry* ("*Notice*") solicits data and information on the status of competition in the market for the delivery of video programming for our eighth annual report ("2001 Report"). The Commission will report on the current state of competition and report on changes in the competitive environment since our *2000 Report* was submitted to Congress.[2]

2. We seek information that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and its effect on the cable television industry and

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

[2] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132, Seventh Annual Report, FCC 01-1 (rel. Jan. 8, 2001) ("*2000 Report*"). *See also Reports*, 1994-1999: *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)*, CS Docket No. 94-48, First Report, 9 FCC Rcd 7442 (1994) ("*1994 Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 95-61, Second Annual Report, 11 FCC Rcd 2060 (1996) ("*1995 Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Third Annual Report, 12 FCC Rcd 4358 (1997) ("*1996 Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 97-141, Fourth Annual Report, 13 FCC Rcd 1034 (1998) ("*1997 Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 98-102, Fifth Annual Report, 13 FCC Rcd 24284 (1998) ("*1998 Report*); and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 99-230, Sixth Annual Report, 15 FCC Rcd 978 (2000) ("*1999 Report*").

consumers. We are interested in evaluating the extent to which consumers have choices among video programming distributors and delivery technologies. We seek to compare video distribution alternatives available to consumers. In particular, we seek data that will allow us to compare video programming offerings, prices for programming services and associated equipment, and any other services offered (e.g., telephony, data access) by providers of video programming service. Industry members, interested parties, and members of the public should submit information, comments, and analyses regarding competition in the market for the delivery of video programming. The accuracy and usefulness of the 2001 Report are directly related to the data and information we receive from commenters that respond to this *Notice*. Congress and the Commission rely on these *Reports* in developing regulatory policy. In order to facilitate our analysis of competitive trends over time, we request data as of June 30, 2001, and ask parties, to the extent feasible, to submit data and information that is current as of that date. Comments submitted in this proceeding will be augmented with information from publicly available sources.

II. MATTERS ON WHICH COMMENT IS REQUESTED

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

3. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite ("DBS") service, home satellite dish ("HSD") service, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution service ("MMDS"), and over-the-air broadcast television service.

4. We ask commenters to address one or more of the following questions:

- Who are the competitors in the market for the delivery of video programming? Should the Internet be considered a video delivery technology along with broadcast, cable, DBS, HSD, SMATV, OVS, and MMDS?[3]

- What have been the most significant changes or developments in the market over the past year?

- What is the current market structure (including horizontal concentration and vertical integration)?

- What effect do existing Commission regulations and other provisions of law specific to video competition have on the market?

- What are the barriers to entry and consumer choice in the market?

- What are your projections for the future development (including technical advances) in the market?

5. Congress and the Commission have sought to eliminate barriers to competitive entry and establish market conditions that promote competition to foster more and better options for consumers at reasonable prices. Beginning with the Cable Television Consumer Protection and Competition Act of

[3] *See* ¶ 42 *infra*.

1992 ("1992 Act"), Congress removed several barriers to competition.[4] The Telecommunications Act of 1996 ("1996 Act") extended the pro-competitive provisions of the 1992 Act and established a "pro-competitive de-regulatory national policy framework" for the telecommunications industry. For this year's report, we seek comment and information on the extent to which changes in the Communications Act and the Commission's rules have encouraged new competitors in the market for the delivery of video programming. We also seek comment on any remaining, or impending, statutory or regulatory barriers to new entrants in the video market.

6. One goal of the 1992 and 1996 Acts is to promote competitive choices for consumers. We have previously reported that cable television systems pass almost 97 percent of all television households and that DBS service generally covers all U.S. households.[5] To what extent do consumers have multiple options for video programming services? How many households have access to more than one multichannel video programming distributor? How many households rely on over-the-air broadcast television for one or more of their television sets? How many households do not subscribe to any MVPD? How many households rely on a combination of one or more MVPDs plus over-the-air service?

7. We seek data regarding areas where head-to-head competition exists, or is expected to exist in the near future, between cable and other video programming distributors, or among various types of video programming distributors. How has such competition affected prices, service offerings, quality of service, and other relevant factors? What regulatory changes have facilitated head-to-head competition in local markets between or among video programming distributors? What barriers still exist which inhibit further competition? In what areas do incumbent cable operators face an overbuilder? In past *Reports*, we have relied heavily on information provided to the Commission in the context of "effective competition" decisions to determine the extent of overbuilding. We seek information on existing and planned overbuilding activity, including the types of companies (e.g., open video system operator, broadband provider, telephone company) that are overbuilding, the areas served, numbers of subscribers, and comparisons between the services of the incumbent and overbuilder. In the *2000 Report*, we observed that between 1995 and year-end 1999 competing franchises have been awarded for service to 369 communities, although not all the franchised overbuilders are operational.[6] We also noted that that at least one LEC has suspended deployment of new overbuilt systems.[7] Is overbuilding increasing or decreasing? What factors affect the amount of overbuilding?

8. Are there differences in the choices available to urban as opposed to rural consumers? Are there differences in choices available in different regions of the U.S., e.g. the continental U.S. compared to Alaska, Hawaii, and Puerto Rico? To what degree do viewers or consumers consider the different types of video programming distributors to be substitutes? We request any information available on the extent to which customers have switched from one provider or technology to another one. We request that commenters provide information on those factors responsible for the switch, such as relative

[4] Pub. L. No. 102-385, 106 Stat. 1460 (1992). The 1992 legislation was intended "to encourage competition from alternative and new technologies, including competing cable systems, wireless cable, direct broadcast satellites, and satellite master antenna systems." House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 27. *See also* Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong. 1st Sess. (1991) at 18.

[5] *2000 Report* ¶¶ 18, 138.

[6] *Id.* ¶ 37.

[7] *Id.* ¶¶ 38, 122.

prices, service offerings, availability or lack of "favorite" programming, technical problems, ease of use, or special features available with a specific technology.

9. In addition to requesting general information on the availability of consumer choices, we again plan to report on specific cases in local markets where cable operators face actual competition from new entrants.[8] As in previous *Reports*, we request information for case studies on the effects of actual and potential competition in local markets where consumers have a choice among video programming distributors. We also request updated information on video programming services in those areas included in our previous case studies to determine whether the initial effects of competition continue.

10. In order for consumers to have access to competitive alternatives for video services, video programming distributors must have access to programming and other services as well as the facilities needed to distribute these services. We seek information regarding video programming distributors' ability to acquire or license programming.[9] Is there specific programming, national or regional/local, that is unavailable to noncable operators? Is there specific programming that is not available to cable operators? We ask commenters to identify such programming and, if possible, to indicate the reason such programming is unavailable. We also note that the prohibition on exclusive contracts in the program access rules ceases to be effective on October 5, 2002, unless the Commission finds that the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.[10] The Commission is required to begin a proceeding to review these rules in 2001. We seek comments and suggestions on the methods we should use to evaluate whether this provision of the program access rules is still needed.

11. As discussed more fully below, we also recognize that new service offerings (e.g., data access, telephony, video-on-demand, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) are being deployed by a number of different video delivery technologies. Are there regulatory or statutory factors influencing the ability of providers to include these services along with more traditional television programming? We also request comment on whether the ability to offer advanced services (e.g., telephony, data access) affect competition in the video marketplace? Are there economic, technical or regulatory issues related to the offering of such ancillary service that should be addressed? What effect, if any, have recent economic developments and stock market fluctuations had on the availability of investment capital for the expansion or upgrading of existing systems and the development of new providers and offerings.

12. Video programming distributors must be able to deliver their services to consumers. In this regard, we seek comment and information regarding the ability of video programming distributors to have access to rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers.[11] We ask for comment on how access to this infrastructure, or lack of access, affects the number and types of competitive alternatives. In previous *Reports*, we considered multiple dwelling units ("MDUs") a separate submarket.[12] For the 2001 Report, we seek to update our information on video

[8] *Id.* ¶¶ 213-238. In each of these cases, the Commission determined that the statutory conditions for "effective competition" were met. *See* section 623 (k)(1), Communications Act, 47 U.S.C. § 543 (k)(1).

[9] *See also* ¶¶ 47, 50 *infra*.

[10] *See* section 628(c)(5) of the Communications Act, 47 U.S.C. § 548 (c)(5).

[11] *See Gulf Power v. Federal Communications Commission*, No. 98-6222, 208 F.3d 1263 (11th Cir. 2000).

[12] *See, e.g., 2000 Report* ¶¶ 141-150.

delivery competition for and within MDUs. Specifically, we seek comment on what factors influence MDU competition? Are these factors unique to the MDU market? How common is it for consumers to have choices among video programming services within a particular MDU? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those of non-MDU customers in the surrounding area? Are these video distributors providing nonvideo services to MDU customers? Is the use of exclusive and so-called "perpetual" video service contracts in MDUs increasing or decreasing? What effect do the inside wiring,[13] over-the-air reception device ("OTARD"),[14] and cable bulk rate[15] rules have on MDU competition?

13. As in previous *Reports*, we seek factual information and statistical data about the current status of each type of video programming distributor (e.g., cable, DBS, MMDS) and any changes that have occurred during the past year. For each video programming distribution technology, we seek data and fact-based comments on the following topics:

- The number of homes passed by wired technologies
- The number of homes capable of receiving service by wireless technologies[16]
- The number of video distribution firms in a given industry
- The number of subscribers and penetration rates[17]
- Channel capacities and the number, type, and identity of video programming channels offered
- Prices charged for the various programming packages offered
- Industry and firm financial information, such as revenues, in the aggregate and by source (e.g., programming, advertising), cash flow, and expenditures.

14. We also intend to evaluate video programming distributors in the context of an overall video programming marketplace. For this assessment, we solicit data and information that will show how broadcast television, cable television, telephone, satellite, equipment suppliers, and other competitors compare in terms of relative size and resources (e.g., revenues) and indicate the extent to which participants have the ability to enter each others' markets. We request data that measure the audience reach of large video programming distribution firms as well as their control over the video market and information on the ability of video distributors to expand into new markets, such as local telephony and

[13] *See Telecommunications Services Inside Wiring, Customer Premises Equipment*, CS Docket No. 95-184; *Cable Home Wiring*, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1998).

[14] *Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, CS Docket No. 96-83, Second Report and Order, 13 FCC Rcd 23874 (1998).

[15] 1996 Act § 301(b)(2), 47 U.S.C. § 543(d).

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

[17] To the extent available, we also seek information on the numbers of subscribers to different levels of service (*e.g.*, basic, cable programming service or "CPS," premium, pay-per-view, and near video-on-demand).

data services. Finally, we invite comment on a variety of issues associated with specific segments of the video programming distribution industry as well as any other relevant comments.

1. Cable Television

15. Last year, we reported that franchised cable operators had approximately 67.7 million subscribers and an 80 percent share of the multichannel video programming distribution market.[18] We also reported increases in cable subscribership, revenues, and viewership. Have these increases recurred this year? We seek to update and refine our report on the performance of the cable television industry and request data and comments on the current state of competition in this segment of the video programming distribution market. We invite comment and request data on cable television's financial performance, capital acquisition and disposition, system transactions, rates, channel capacity, programming costs, subscribership, viewership, and new service offerings.

16. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Based on information provided for the *2000 Report*, we reported that, while cable systems with 36 or more channels were available to more than 70 percent of the households in the U.S., only 65.5 percent of households subscribed to those systems.[19] Have there been any developments in the last year that would change this determination? With respect to channel capacity, we also request data on the distribution of cable systems and cable subscribers classified by channel capacity.[20] In addition, we note that, under sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity. To what extent are cable operators currently using all their required set-aside channels for the carriage of local broadcast signals?

17. Mergers, acquisitions, consolidations, swaps and trades, cross-ownership, and other structural developments affect distributors' delivery of video programming. We seek information on actual and announced mergers and transactions, including the names of the buyer and seller, the date of the transaction, type of transaction (i.e., sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. To the extent national concentration has increased or decreased for specific cable and other video programming providers as a result of these transactions, we ask commenters to discuss the reasons for such changes. Are such transactions and consolidations more likely to occur in certain types of markets (e.g., major television markets as opposed to smaller ones) or between specific size systems (i.e., larger as opposed to medium sized)?[21] To facilitate a comparison and

[18] *See 2000 Report* ¶ 19, Tables B-1, C-1.

[19] *Id.* ¶ 193.

[20] *See id.* Tables B-3, B-4.

[21] We note that the United States Court of Appeals for the District of Columbia Circuit recently reversed and remanded the Commission's horizontal ownership and channel occupancy limits, as well as certain aspects of the cable attribution rules. *Time Warner Entertainment Co., L.P. v. Federal Communications Commission*, 249 F.3d 1126 (D.C. Cir. 2001). We plan to seek comment on the court's remand later this year. To the extent comments filed in that proceeding address the impact of that proceeding on competition in the market for the delivery of video programming, we will include that issue in our upcoming Report to Congress.

render the most accurate picture of the video marketplace, we also request information regarding transactions (actual or announced transactions) involving noncable video programming providers.

18. For the past several years, cable operators have engaged in a strategy of buying and/or swapping cable systems with the objective of creating regional clusters of contiguous, commonly owned and operated cable systems. We request comment on the practice of clustering. As headends are eliminated and systems become technically integrated, what regulatory and technical issues arise that affect competition? What conflicts, if any, result from new ownership of franchises based on political subdivisions controlling operations based on technical integration?

19. Clustering is purported to create greater economies of scale and scope and enable cable operators to offer a wider variety of services, including telephony and Internet service, at lower prices to consumers.[22] In the Commission's *2000 Price Report*, however, we found that operators that were part of a cluster had, on average, higher prices than operators that were not part of a cluster.[23] In addition, the *2000 Price Report* found that of those operators that were part of a cluster, seven percent offer cable telephony and 48 percent offered Internet access service to their subscribers.[24] By comparison, among all systems (clustered and non-clustered), 6.5 percent offered telephony and 46.6 percent offered Internet access service to their subscribers.[25] We seek comment on these findings and request data regarding the effect of clustering by cable operators on competition in the video programming distribution market.

20. We also are interested in learning whether noncable video programming distributors (e.g., MMDS, SMATV) cluster their systems. If so, we seek to identify the companies that have decided to cluster their systems, the delivery technology used, the number of homes passed in each service area or cluster, and the number of subscribers. We also request information regarding the effect clustering in such cases has had on the services offered to consumers and the effect on the prices charged for such services?

21. We further seek comment on whether cable operators are changing the way they package programming. To what extent are cable operators restructuring their programming tiers to offer smaller basic tiers (i.e., "lifeline" tiers)? How many cable subscribers subscribe only to a lifeline tier? Are cable operators restructuring their tiers by shifting programming from the basic service tier ("BST") to cable programming service tier ("CPST") or from these tiers to digital tiers? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems? We are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition. We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services.

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[22] *See 2000 Report* ¶ 153.

[23] *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment*, MM Docket No. 92-266, Report on Cable Industry Prices, 16 FCC Rcd 4346 (2001) ("*2000 Price Report*") ¶¶ 39-43, Attachment D-1. The regression equation used estimated the average monthly rate as a function of household income, system size, competitive status, and association with an MSO cluster in order to determine the effects of clustering on rates.

[24] *2000 Price Report* ¶ 40.

[25] *Id.*

22. Finally, we note that no cable operator, other than one subject to effective competition, may require the subscription of any tier other than the basic tier as a condition of access to video programming offered on a per channel or per program basis.[26] Prior to October 5, 2002, this "buy through prohibition" does not apply to any cable system not subject to effective competition that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service. We seek information on the number of cable systems not subject to effective competition that lack addressable converters or have other technological limitations that prevent access to programming on a per channel or per program basis without subscription to tiers other than the basic tiers. How many subscribers are served by these systems? Are there cable systems that will not meet the October 2002 deadline for the capability to allow "buy-through"?

2. Direct-to-Home Satellite Services

23. We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD" or "C-Band") services.[27] Previous *Reports* have noted the continued growth of DBS subscribership and the increased proportion of video programming subscribers choosing alternatives to cable television.[28] We also observed a decline in the number of HSD subscribers. Are these trends continuing? Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? How many or what percentage of households cannot receive DBS service because they are not within the line-of-sight of the satellite signal? We seek comment on the geographic locations of DBS and HSD subscribers, by state and type of area (i.e., urban, suburban, rural). Are DBS subscribers, in general, and new DBS subscribers, in particular, more likely to reside in rural areas than urban areas? To what extent do DBS subscribers reside in areas not passed by cable systems? What percent of new DBS subscribers are former cable subscribers? What percent are former HSD households?

24. We request data that will allow us to compare DBS and cable rates for programming packages and equipment. What is the typical cost of DBS equipment and installation? Recent reports indicate that DBS operators are initiating equipment leasing programs.[29] We request information regarding these leasing options, including the monthly rates charged for leasing equipment. How do these prices compare to those of cable? To what extent do satellite operators subsidize equipment costs in order to attract subscribers? Do satellite operators recoup such costs through their programming rates? We also ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages in order to compare the per channel programming price between DBS and cable. We observe that DBS rates for some programming packages have increased over the last year. What factors affect changes in DBS prices?

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[26] 47 U.S.C. § 76.921. *See also* 47 U.S.C. § 543(b)(8).

[27] DTH services use satellites to deliver video programming directly to subscribers. HSD users employ relatively large dishes (4-8 foot) to receive programming. DBS uses relatively small receiving dishes (18-24 inches). In earlier *Reports*, we included medium power satellite services that use 36-40 inch dishes in our definition of DBS. *See, e.g.*, *1995 Report*, 11 FCC Rcd at 2080-2084 ¶¶ 48-52; *1998 Report*, 13 FCC Rcd at 24323 ¶ 61. Medium power satellite service ceased in 2000. *See 2000 Report* ¶ 60.

[28] *Id.* ¶¶ 8, 61, Table C-1.

[29] *See EchoStar Starts Pushing New Digital VCR*, Satellite Business News FAX Update, April 18, 2001, at 1; *see also DirecTV Plans New Promotions*, *id.* at 2.

25. As reported in the *2000 Report*, some of the increase in DBS's share of MVPD subscribers has been attributed to the carriage of local broadcast stations ("local-into-local service") by DBS operators pursuant to the Satellite Home Viewer Improvement Act of 1999 ("SHVIA").[30] We request updated information on the number of markets where local-into-local service is offered, or will be offered in the near future, including the number and affiliation of the stations carried. What percent of DBS subscribers are opting for local programming packages where available? We also request information on the impact of SHVIA on DBS subscribership and penetration as well as its effect on the video programming market generally. What percentage of DBS subscribers continues to receive local broadcast signals over-the-air? What percentage of DBS subscribers continues to subscribe to cable for such service?

26. In the *2000 Report*, we observed that, rather than offering their own services, some video programming distributors have become marketers of DBS service.[31] What marketing arrangements have these distributors entered into to provide DBS service to their customers? Is the entity providing the service as part of a joint venture? We request information on video distributors that now market DBS service, including the delivery technology used and whether operators combine DBS programming with other services. We note that consideration is being given to a terrestrial radio service that would share the DBS spectrum and provide additional video competition.[32] We seek comment on the potential effect of authorizing this service on the video marketplace.

3. Broadcast Television

27. In this *Notice*, we seek information on the role of broadcast television in market for the delivery of video programming. We previously reported that broadcast television serves as a programming source for MVPDs as well as a distribution medium for some consumers. We request information regarding the extent to which broadcast television competes as a distribution medium with multichannel video programmers for audiences and for advertising revenue. In the last report, we found that 84 percent of all television households subscribe to MVPD service.[33] However, it appears that at least some MVPD subscribers continue to receive their local broadcast stations over-the-air on one or more television sets in their homes. We seek information on the number and percentage of MVPD subscribers who rely on off-air reception for local broadcast service on one or more television sets. We would also like to classify these households by their choice of MVPD service. In addition, what percentage of households have only over-the-air broadcast television reception on all the television sets in their homes?

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[30] SHVIA was enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.), Pub.L.No. 106-113, 113 Stat. 1501, Appendix I (1999). *See also 2000 Report* ¶¶ 68-71.

[31] *See, e.g., 2000 Report* ¶¶ 93, 121.

[32] *See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHZ Band*, ET Docket No. 98-206, 16 FCC Rcd 4096 (2001).

[33] *2000 Report* Table C-1.

28. Broadcasters are in the process of rolling out digital television ("DTV"). Currently, there are 200 television stations broadcasting over-the-air in digital format.[34] While the Commission undertakes a review of the digital television rollout every two years, its focus is on the technical buildout of systems rather than the role of DTV in markets for the delivery of video programming that is our focus.[35] The Commission is currently considering issues relating to the carriage of DTV stations by cable operators.[36] In the *Report and Order*, *inter alia*, the Commission provided a framework for private resolution of such signal carriage issues through retransmission consent agreements, or, in the case of noncommercial stations, through voluntary arrangements. In this regard, we seek information and comment on DTV carriage agreements between broadcasters and cable operators and the status of such negotiations.

29. We request information regarding the amount and type of programming (e.g., network, local, syndicated) being broadcast on digital channels, including the extent to which DTV channels are being used for high definition television ("HDTV") and the extent to which they are being used for multichannel program offerings ("multicasting"), including standard definition television ("SDTV"). In addition, we request information on the sales of DTV consumer equipment and factors affecting consumer adoption of DTV equipment.[37] Specifically, we seek information on sales to consumers of equipment that can receive and display video programming in digital format. How many such devices sold to consumers can receive and display such programming when connected to a cable system or to a satellite service? How many such devices sold to consumers can receive and display digital signals when broadcast over-the-air? How many such devices sold to consumers are so-called "DTV ready" without tuners to receive digital programming over-the-air or via cable or satellite?

4. Wireless Cable

30. In the *2000 Report*, we reported an almost 15 percent decline in MMDS video subscribers.[38] The decline in subscribership is a trend that has continued from previous years. We observed that the MMDS industry provides competition to the cable industry for MVPD service only in limited areas and that the industry is transitioning from offering video programming to offering data service.[39] What effect will this transition have on the status of MMDS as a competitor in the market for

[34] There are a number of other DTV stations on the air periodically under experimental or special temporary authorities ("STAs") with less than fully authorized facilities.

[35] *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

[36] *See Carriage of Digital Television Broadcast Signals, Amendment to Part 76 of the Commission's Rules, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, CS Docket Nos. 98-120, 00-96, 00-2, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001).

[37] On September 15, 2000, the Commission released a Report and Order resolving certain outstanding issues regarding the compatibility of cable television systems, digital television receivers, set-top boxes, and other equipment used by consumers to receive and enjoy programming and other services available over cable television systems. *Compatibility Between Cable Systems And Consumer Electronics Equipment,* PP Docket No. 00-67, Report and Order, 15 FCC Rcd 17568 (2000).

[38] *2000 Report* Table C-1.

[39] *Id.* ¶ 87.

the delivery of video programming and consumer choice? Will MMDS continue to provide video programming service in particular geographic areas (e.g., rural areas) or to types of subscribers (e.g., MDU residents) for the foreseeable future? We request fact-based projections and forecasts on the future of video programming distribution via MMDS technology.

5. Satellite Master Antenna Systems.

31. Video distribution facilities that use closed transmission paths without using any public right-of-way, known as SMATV or private cable systems, primarily serve MDUs, such as apartment buildings. The *2000 Report* noted that SMATV subscribership has remained relatively unchanged in recent years based on the comments of the National Cable Television Association. We recognize that our estimate of SMATV subscribership may be inexact since the SMATV industry consists of hundreds of small and medium size firms. In order to provide the most accurate and reliable estimate of SMATV subscribership, we request data for SMATV markets, including subscribership levels, service areas, and the identities of the largest operators. We also request information on the types of services offered by SMATV providers and the price charged for those services. How do the programming packages offered and the price of SMATV service compare to those of incumbent cable operators? Finally, are there services that SMATV operators provide their subscribers that cable, DBS, and other technologies do not?

6. Open Video Systems.

32. Congress established open video systems as one means for local exchange carriers ("LECs") to enter the video marketplace. The OVS rules, however, do not preclude non-LECs from becoming OVS operators and there are OVS operators who are not LECs.

33. We request data and information on the status of OVS. Specifically, we seek information on the operation of open video systems, including the number of homes passed, the number of subscribers, and the types of services being offered by OVS operators. How are video services provided by OVS operators packaged and what is the typical cost for monthly service? To what extent are open video systems joint ventures between video service providers and other entities (e.g., utility companies, Internet service providers) and what are the arrangements among the participants in such ventures? An OVS operator must make channel capacity available for use by unaffiliated programmers. Are unaffiliated programmers seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis? To what extent are OVS operators offering voice and data services along with video services? How are such service offerings packaged and at what price to consumers?

34. Under the *City of Dallas, Texas v. FCC* decision, local governments have the ability to impose franchise requirements on OVS operators.[40] What effect has this decision on the growth of OVS? Have video providers switched from the OVS model to the traditional cable model in light of this decision? Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

7. Local Exchange Carriers and Utilities

35. For the 2001 Report, we request information regarding LECs, long distance telephone companies, and utility companies that provide video services. In the *2000 Report*, we found that the rate

[40] *City of Dallas, Texas v. FCC*, Case No. 96-60502, 165 F.3d 341 (5th Cir. January 19, 1999).

of entry by LECs appeared to be slowing even by the most aggressive telephone companies, and several LECs have reduced or eliminated their MVPD efforts.[41] With respect to LECs, we request information about the current status of their activities and any changes that have occurred since the *2000 Report.*

36. In addition, we request updated information on franchised cable systems operated by LECs, both within their telephone services areas and outside those regions. To what extent are these LEC cable systems overbuilds of incumbent cable systems' service areas? In addition, we are interested in whether video programming services are being bundled with telephone, Internet, or other utility services? If so, how does the ability to offer bundled services affect the relative competitive position of these entities?

8. Broadband Providers

37. In previous *Reports*, we mentioned several broadband providers (e.g., RCN, Knology) in the context of overbuilding.[42] Broadband providers are newer firms that are building state-of-the-art facilities-based networks to provide video, voice and data services over a single network. We note that some broadband providers offer video services as franchised cable operators and some have obtained OVS certification. We seek information regarding broadband providers that have entered the video marketplace. We request data on the geographic locations of such systems, whether they operate as franchised cable systems or some other model, the number of homes passed, and the number of subscribers. We ask commenters to provide information regarding the video service packages that are offered and the rates charged for the various packages. Are video services offered in combination with telephone and data access services and, if so, how are rates affected by the packaging (i.e., bundling) of multiple services? How many or what percent of broadband subscribers subscribe to video service alone, video and telephony, video and data access, or all three services? We further seek comment on the current and potential effect of broadband providers on the status of competition in the video marketplace. What are the technical and economic obstacles to the successful operation of systems of this type? Are there issues involving matters, such as pole attachments, access to programming, competitors uniform rates, broadcast signal retransmission consents, equipment availability, or local municipal regulation, that warrant special focus in terms of the applicable Federal regulations?

9. Home Video Sales and Rentals

38. In past *Reports*, the Commission has considered home video sales and rentals as part of the video marketplace because they offer services similar to premium and pay-per-view programming services.[43] The home video marketplace includes videocassettes, DVDs, and laser discs. In the most recent *Reports*, we also have addressed personal video recorders ("PVRs"), which use a hard drive instead of videotape to record programming and are capable of sophisticated time shifting. PVRs operate as a kind of hybrid electronic program guide and videocassette recorder ("VCR") and may also be used in conjunction with subscription services that allow consumers to create personalized viewing menus. For the 2001 Report, we seek information and updated statistics regarding the home video sales and rental market. We request data on the number or percentage of households with videocassette recorders, laser

[41] *2000 Report* ¶ 120.

[42] *Id.* ¶ 38. *See also, e.g.*, National Cable Television Association Comments for *2000 Report* at 15-23, American Broadband, Inc., Comments for *2000 Report* at 1-3.

[43] *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, MM Docket No. 89-600, Report, 5 FCC Rcd 4962 (1990) at 5019-20, ¶¶ 109-110.

disc players, DVD players, and PVRs. We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental. How does the cost of renting a video or DVD movie compare to the cost of a pay-per-view, video-on-demand, or near video-on-demand movie from a video programming distributor? In the *2000 Report*, we observed that some video retailers sell their videos through the Internet and others are developing reservation systems using the Internet.[44] We also noted that TiVo and ReplayTV, the two companies offering PVR services, had joined with MVPDs, equipment manufacturers, advertisers, and programmers to incorporate PVR technology into set-top boxes and to develop programming specifically for PVRs.[45] We seek updated information on development in each of these areas.

B. Convergence of Services and Technologies

1. Convergence of Service Offerings

39. The 1996 Act removed barriers to LEC entry into the video marketplace in order to facilitate competition between incumbent cable operators and telephone companies. At the time of the 1996 Act, it was expected that LECs would compete in the video delivery market and that cable operators would provide local telephone exchange service. In the *2000 Report*, as in previous years, we found that the expected technological convergence had not yet occurred. While we found that the rate of entry of LECs into the video marketplace had slowed, we also observed that only a limited number of cable operators have begun to offer telephone service. We request updated information on the status of LEC video services and cable telephony. To what extent are cable operators offering traditional circuit-switched telephone service and what is the status of the development and deployment of Internet Protocol ("IP") telephony?

40. In recent *Reports*, we observed that the most significant convergence of service offerings has been the pairing of Internet service with video services by a wide range of companies throughout the communications industries.[46] We are interested in the non-video services offered by video programming providers to consumers because they influence the nature of competition. Essential to this convergence is the widespread deployment of modems by cable operators. The cable industry has developed a certification process intended to provide manufacturers with a set of standards that will enable the production of interoperable cable modems.[47] Telephone companies are offering data service through the use of digital subscriber line ("DSL") technologies. Digital technologies make it possible for MMDS operators to offer two-way services, such as high-speed Internet access and telephony. In addition, the DBS industry has been developing both satellite-delivered Internet access with a telephone return path as well as two-way satellite data services. We request information on the current state of high-speed data offerings by each delivery technology and comparable statistics on the availability of such service, the cost of such service, the number of homes to which the service is available, and the number of subscribers of these services. We also seek comment on the current and future effect of video programming distributors providing Internet and other data services to their subscribers. What are the advantages or disadvantages of each delivery technology?

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[44] *2000 Report* ¶ 117.

[45] *Id.* ¶ 118.

[46] *Id.* ¶¶ 10-11.

[47] *Id.* ¶ 211 (CableLabs Certified Cable Modem Project formerly known as Data Over Cable Interface Specification or DOCSIS).

What effect, if any, does the provision of these ancillary services have on competition in the video marketplace?

41. To the extent that video programming distributors are offering video and nonvideo services together (i.e., bundled services), how are the combined services offered and priced? Does the ability to offer bundled services affect the relative competitive position of a video programming distributor? If so, how? For each entity providing services bundled with a video service, we seek a description of the nonvideo services provided, information on whether the multiple services are provided using, in whole or in part, the same equipment or facilities, and the number of homes passed by and subscribers to each service as of June 30, 2001. We also request information on whether firms are entering into marketing agreements whereby one entity provides multiple services (i.e., video, voice, and data) to consumers in a "seamless" manner, although the products originate from several firms (a cable company, a telephone company, and Internet service provider or ISP).

2. Convergence of Television and the Internet

42. A number of recent developments point to the convergence of television and the Internet. In recent *Reports*, we addressed Internet video, i.e., real-time and downloadable video accessible over the Internet.[48] We noted that, despite increased levels of deployment and use of Internet video, the medium still did not appear to be a direct competitor to traditional video services. We seek comment and fact-based projections as to if, and when, Internet video will become a viable competitor in the market for the delivery of video programming. We also solicit information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet. What technical parameters must be established and what technical, economic, or regulatory barriers exist to prevent Internet delivered video becoming an effective competitor to the more established distribution systems?

43. In the *2000 Report*, we observed that interactive television ("ITV") services were beginning to be offered through cable, satellite, and terrestrial technologies.[49] ITV combines television with many of the functions of the personal computer ("PC"). It provides or has the potential to provide a wide range of services, including video-on-demand ("VOD"), e-mail, TV-based commerce ("e-commerce"), Internet access, PVR functionality, program related-content, and electronic couponing. Viewers gain access to ITV functions through digital set-top boxes, which resemble mini-PCs, dedicated browsing devices (e.g., WebTV), remote controls, or PCs, depending on the technology deploying the service. We seek comment on the development and deployment of these services, specifically the types of services being offered and the technologies used to provide them to consumers. We request information on services currently available and planned services. What are the differences between the services offered by cable operators, DBS operators, broadcasters, and others? What effect does the availability of ITV services have on competition in the video marketplace?

44. An electronic programming guide ("EPG") is a software-based service or device offered by cable operators and other video programming distributors to consumers to navigate, organize, and differentiate video program offerings.[50] EPGs are sometimes considered an ITV service. What is the relationship between EPGs and ITV and other new technologies and services? For this year's report, we

[48] *2000 Report* ¶¶ 107-113.

[49] *Id.* ¶¶ 54, *See also Nondiscrimination in the Distribution of Interactive Television Services Over Cable*, CS Docket No. 01-7, Notice of Inquiry, FCC Rcd 1321 (2001).

[50] *2000 Report* ¶¶ 201-202.

request updated information on the extent to which video programming distributors offer or plan to offer EPGs to their subscribers and the technologies used to distribute EPGs. We ask commenters to provide data on the number and different types of available EPGs and to indicate whether they are nationally or locally produced. If an EPG is nationally distributed, can it be customized for local program offerings? To what extent are national distributors of EPGs affiliated with video programming distributors? To what extent do video programming subscribers have access to EPGs that are unaffiliated with their video provider but are still able function properly with the video programming service or the OpenCable standard?[51] To what extent are EPGs that are affiliated with a video programming distributor available to competitors? In addition, to what extent are EPGs supported by advertising, subscriber fees, or a combination of both?

45. These new technologies, Internet video and ITV, seem to be changing the way consumers receive and view video programming. What impact will these new services and technologies have on traditional video programming distribution and viewing? We seek information regarding the evolving business models being developed and deployed to bring these services to consumers. How are video programming distributors responding to this change? How is the business model for video distribution changing, particularly in terms of revenue sources and the role of advertising? To what extent will these new services be supported by advertising, per service subscription fees, or per use fees? We ask for comment on the potential effect of these new technologies on competition in the video marketplace in the near future, in the "middle future" and in the long run.

C. Programming Issues

46. For the 2001 Report, we seek information that will allow us to update our information on existing and planned programming services, with particular focus on those programming services that are affiliated with video programming distributors. As in previous *Reports*, we plan to identify national programming services and assess the extent to which video programming services are affiliated with cable MSOs. Previously, we have relied heavily on publicly available information and data from a variety of sources to compile our profile of video programming practices and ownership. For this year's report, in order to get the most accurate picture of MSO ownership in national video programming services, we ask video distributors to supply us directly with the following information:

- Name of programming service
- Type of programming service (e.g., national, regional, sports, news)
- Launch date
- Percentage of MSO ownership
- Number of subscribers.

47. We also request data on the extent to which there are programming networks affiliated with noncable video programming distributors and whether such programming networks are available to competitors, including cable operators, on reasonable and nondiscriminatory terms. Are noncable video distributors producing their own programming or securing exclusive rights to certain programming

[51] *See* ¶ 56 *infra* regarding the OpenCable standard.

services? What are the costs of producing or securing such programming and have noncable video distributors encountered any difficulty in doing so? We also request comment on whether there are certain programming services (i.e., "marquee" program services) or types of services (e.g., movie, sports, or news channels) without which competitive video service providers may find themselves unable to effectively compete. If so, which services or classes of services are involved and to what extent are there substitutable services?

48. We request information on recently launched programming and planned programming launches. We seek ownership information for each new and planned programming service. We also ask commenters to provide the actual launch date for new services and the currently scheduled launch date for planned services. We request comment regarding any difficulties programmers encounter when launching a new service. To what extent does the success of a new programming service depend on the tier of service on which it is placed? To what extent does the success of a new programming service depend on its being associated with one of the largest cable system operators? To what extent does the success of a new programming service depend on its being associated with the brand name of an existing channel? To what extent does existing channel capacity limit carriage of new programming services?

49. In addition, we are interested in how video programming distributors package their programming. To what extent do distributors offer or plan to offer consumers discrete programming choices (i.e., service on an "a la carte" or individual channel, or "mini-tier" basis) rather than programming service packages (i.e., tiers of programming services). What are the requirements that permit a video programming distributor to offer a more customized service? Are there economic, legal, or other impediments to offering programming services in this manner?

50. We further solicit information regarding local and regional channels, including sports channels, news channels foreign language, or culture channels. We ask commenters to identify such programming services by name and programming type and to provide current figures for the number of subscribers or market share. To what extent do local cable operators or broadcasters own or have some involvement in providing local or regional channels? What technologies are used to distribute these channels? Are additional local and regional services being added due to increased system analog or digital capacity, or are they displacing other existing video services? How has regional clustering among MSOs contributed to the feasibility of regional MSO affiliated programming services? Are local and regional programming services available to unaffiliated video programming distributors and all delivery technologies?

51. We also seek information and comment regarding public, educational, and governmental ("PEG") access and leased access channels. We specifically request data on the number of channels being used for each of these purposes and the types of programming offered on such channels. What percent of cable systems allocate channels for PEG access and leased access? How many channels are set aside for these purposes? We also seek information on the use of leased access channels, either on a part time or full time basis. Has the Commission's 1997 Order amending the leased access rules had any impact on the development of leased access?[52] Do these channels provide any competition to the programming channels under the control of the cable operator? In November 1998, the Commission adopted rules to implement Section 335 of the Communications Act concerning public interest

[52] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Leased Commercial Access*, CS Docket No. 96-60, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd 5267 (1997).

programming obligations for DBS providers.[53] The rules require DBS licensees to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature." Commenters are asked to provide information regarding the current or planned use of these channels.

52. As in previous *Reports*, we will continue to report on the effectiveness of our program access,[54] program carriage and channel occupancy rules that govern the relationships between cable operators and programming providers.[55] We request comment on whether the coverage of the program access rules is appropriate. To what extent has video programming once delivered by satellite been migrated to terrestrial delivery? We seek the identity of any such services. Are there any cases of video programming distributors being denied programming when a satellite-delivered service becomes terrestrially-delivered, or being denied programming by non-vertically integrated programmers? In addition, to what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with a programming distributor (e.g., cable operator) available to other video programming distributors (e.g., another cable operator or delivery technology)? How do exclusive programming arrangements between incumbent cable operators and unaffiliated programmers affect noncable video programming distributors? How do exclusive programming arrangements between incumbent cable operators and programmers that deliver programming terrestrially affect noncable video programming distributors?

D. Technical Advances

53. Cable operators and other video programming distributors continue to develop and deploy advanced technologies, especially digital compression techniques, to increase their capacities and to enhance the capabilities of their transmission systems. These technologies allow MVPDs to deliver additional video services and options (e.g., data access, telephony) to their subscribers. We request information on the various aspects of these technical advances and how they affect competition in the markets for video programming.

1. System Upgrades

54. For the 2001 Report, we request information regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services, such as high-speed, switched, broadband telecommunications capability.[56] We seek information on whether these investments are continuing at the same pace as in previous years and what role, if any, the ability to provide advanced broadband services plays in attracting and retaining subscribers to cable firms. We previously observed that cable operators are upgrading their systems for bandwidth expansion though a number of technical methods, including upgrading existing

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[53] *See Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254 (1998).

[54] The program access rules also apply to OVS operators and common carriers in the same manner as they apply to cable operators. 47 C.F.R. §§ 76.1004, 76.1507.

[55] *1998 Report*, 13 FCC Rcd at 24389-24390 ¶¶ 191-194.

[56] *See* 47 U.S.C. § 706(b) 157 nt. *See also 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*, CC Docket No. 98-146, Second Report, 15 FCC Rcd 20913 (2000).

amplifiers and increasing their bandwidth carrying capacity. We request information on the deployment of the various methods to increase capacity. We also ask commenters to provide information regarding upgrades undertaken by other video programming distributors, such as the use of improved digital compression techniques.

55. We further request information regarding MSOs that have created digital tiers. Are such upgrades being undertaken nationwide or only in specific geographic areas? Do system or MSO characteristics affect whether upgrades are being deployed? How have cable systems increased their channel capacities by using digital tiers?[57] What types of programming are available on digital tiers? Are these tiers used for new programming, digital clones of existing analog services, or digital hybrids modeled after an existing analog service with increased capabilities? For individual MSOs, we request data on:

- Number of systems upgraded
- Analog channel capacity resulting from upgrades
- Digital channel capacity resulting from upgrades
- Number of systems with digital tiers
- Number of households where digital services are available
- Number of subscribers to digital services.

2. Consumer Equipment

56. As digital services and other new technologies are deployed by video programming distributors, changes in consumer premises equipment design, function, and availability may affect consumer choice and competition between firms in the video programming market.[58] Along with cable modems, cable operators also are deploying set-top boxes, integrated receiver/decoders, and navigation devices or receivers that facilitate or differentiate video distributors' service offerings. How many households have one or more set-top boxes (i.e., navigation devices) for subscription services, compared with cable subscribers without such devices? How many households have such devices with digital capability? We also seek comment on the compatibility and availability of customer premises equipment used to provide video programming and other services. Specifically, we ask commenters to provide information regarding the development of specifications for interoperable set-top boxes, including the

[57] The Commission is currently conducting a survey to collect information about cable system channel capacity in conjunction with its consideration of carriage requirements for DTV broadcast signals. *See Carriage of Digital Television Broadcast Signals, Amendment to Part 76 of the Commission's Rules, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Rules to Satellite Retransmission of Broadcast Signals*, CS Docket Nos. 98-120, 00-96, 00-2, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001).

[58] *See Compatibility Between Cable Systems And Consumer Electronics Equipment*, PP Docket No. 00-67, Report and Order, 15 FCC Rcd 17568 (2000).

most recent information on Cable Television Laboratories, Inc.'s OpenCable process.[59] We also seek information on the retail availability of navigation devices to consumers.[60] What types of devices are available at retail? We seek information on retail prices and capabilities of such devices. What percentage of devices that are available at retail provide services in addition to connections to MVPDs for one-way receipt of video programming (e.g., what percent can be used for Interactive purposes or Internet access)? Is existing equipment compatible with the OpenCable? In the *2000 Report*, we noted that, on December 15, 2000, CableLabs submitted a final version of an industry agreement regarding copy protection measures in host devices, referred to as the POD-Host Interface, or PHI license.[61] Have there been any developments in the last year relating to this license that affect the deployment of navigation devices?

57. Cable subscribers use cable modems to access high-speed data servces and interactive televison, including the Internet, Internet Protocol ("IP") telephony, video conferencing and telecommuting. We seek current information on cable modem deployment. To what extent are consumers now purchasing equipment, including equipment certified by CableLabs under their Certified Cable Modem Project, rather than renting from video programming distributors?[62] Finally, we solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant.[63] What is the status of the testing and implementation of this standard?

III. PROCEDURAL MATTERS

58. 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. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before August 3, 2001, and reply comments on or before September 5, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

59. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be

[59] *2000 Report* ¶ 210. The OpenCable standard is the result of an initiative being managed through Cable Television Laboratories, Inc. ("CableLabs"), a research and development consortium of cable operators. The standard is made up of technical specifications that will facilitate interoperability among digital navigation devices manufactured by multiple vendors. According to CableLabs, it has opened its specifications to several vendors rather than designating a single proprietary solution, with the goal of introducing digital cable ready television sets and other navigation devices into retail distribution. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775 (1998) ("*Navigation Devices Order*").

[60] Under the Commission's navigation rules, video programming distributors are required to separate security functions from non-security functions by July 1, 2000, and make modular security components available by that date. *See Navigation Devices Order*, 13 FCC Rcd 14775.

[61] *2000 Report* ¶ 209.

[62] *Id.* ¶ 211.

[63] *Id.* ¶ 212.

filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

60. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Marcia Glauberman at (202) 418-7200, TTY (202) 418-7172, or at mglauber@fcc.gov.

61. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary