

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 02-145; FCC 02-178]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming**AGENCY:** Federal Communications Commission.**ACTION:** Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing the competition report that is to be submitted to Congress in December 2002. The document will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due on or before July 29, 2002, and reply comments are due on or before August 30, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION, CONTACT: Anne Levine, Media Bureau at (202) 418-7027 or via internet at alevine@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry*, MB Docket 02-145, adopted June 13, 2002 and released June 14, 2002. The full text of this *Notice* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com or may be viewed via internet at <http://www.fcc.gov/mb/>.

Synopsis of the Notice of Inquiry

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. 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 ninth annual report ("2002 Report"). We seek to compare video distribution alternatives available to consumers, and to evaluate the extent to which consumers have choices among video programming distributors and delivery technologies and to properly define the economic market or markets where competition takes place. We expect to base our evaluation on differences in video programming offerings, prices for programming services and associated equipment, and other services offered (e.g., telephony, high-speed Internet access services). 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 the effect on the cable television industry and on consumers. The Commission will report on the current state of competition and report on changes in the competitive environment since our 2001 Report was submitted to Congress.

2. The accuracy and the usefulness of the 2002 Report are directly related to the information we receive from commenters. To the extent feasible, we request data as of June 30, 2002, to facilitate our analysis of competitive trends over time. Comments submitted in this proceeding will be augmented with information from publicly available sources and other Commission proceedings.

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") providers, home satellite dish ("HSD") providers, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution services ("MMDS"), broadband service providers ("BSPs"), and over-the-air broadcast television stations.

4. We ask commenters to provide information on the most significant changes or developments in the past year. Specifically, we seek information regarding each of the video programming distributors, including the number of homes passed, the number of subscribers, the services offered, the cost for various service options, financial information on each industry, ownership information, and data on investments in plant and facility upgrades.

5. We seek information on industry and market structure and the effect of

existing Commission regulations and other provisions of the law on competition in the video marketplace. To what extent do consumers have access to more than one video programming distributor? To what extent have customers switched from one provider or technology to another, and what factors are responsible for the switch? Where does head-to-head competition exist between cable and other video programming distributors, or among various types of video programming distributors? How has such competition affected prices, service offerings, and quality of service? We seek information on existing and planned overbuilding activity.

6. We request comment on any factors that are unique to competition in the multiple dwelling units ("MDUs") submarket. We request information for new case studies and updates on previous case studies on the effects of actual and potential competition in local markets where consumers have a choice among video programming distributors. We also seek information on what barriers to entry exist in the market?

7. We ask commenters to provide data on national and local programming services, and their ownership. We seek information on the extent to which programmers are affiliated with video programming distributors and to what extent programming distributors, both broadcast and non-broadcast programming services, are involved in the production of the programming they provide, vertically integrated or not. Further, we request data on programming services including the scope of service, launch date, identification of ownership, and number of subscribers. To what extent are video programming distributors able to acquire or license unaffiliated programming? Are there certain programming services or types of services without which competitive video service providers may find themselves unable to compete effectively. We also seek information on how video programming distributors package their programming. In addition, we seek information on the ability of programmers to sell programming.

8. Further, we request comment regarding public, educational, and governmental ("PEG") access and leased access channels and the number of channels being used for each of these purposes. We also seek information on the use of leased access channels, either on a part time or full time basis. We request comment on the effectiveness of our program access, program carriage, and channel occupancy rules. We seek

information regarding video programming providers' experiences offering closed captioning and video description.

9. We also ask for information on advanced service offerings (e.g., high-speed Internet access services, telephony, video-on-demand, high definition television, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) that are being deployed by video programming distributors. Specifically, we request information regarding the amount and type of programming being offered in high-definition television ("HDTV") format. We seek updated statistics such as the cost of such services, the subscribership to these services, and the number of homes to which each type of service is available. Further, we seek information on the impact that the availability of non-video services offered by video programming providers has on the nature of competition in the video marketplace. We request comment on the development and deployment of ITV services. We request information on the extent to which video programming distributors offer or plan to offer EPGs. To what extent are national distributors of EPGs affiliated with video programming distributors? To what extent are EPGs that are affiliated with a video programming distributor available to competitors? We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households have one or more devices? We seek information on the retail availability of navigation devices to consumers.

Cable Television

10. We plan to 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 market. We seek statistical information on the cable industry generally and specifically the financial performance of the industry, capital acquisition and disposition, rates, channel capacity, programming costs, homes passed, subscribership, viewership, new service offerings, and the investments that cable operators have made to upgrade their plant and equipment.

11. We request information on the deployment of various technical methods to increase capacity. For individual MSOs, we request data on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity

resulting from upgrades, the number of systems with digital tiers, the number of households where digital services are available, and the number of subscribers to digital services. What types of programming are available on digital tiers?

12. We seek information on cable system 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. We seek similar information for non-cable video programming providers. We also request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market.

13. We seek comment on whether cable operators are changing the way they package programming. We also 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.

14. We further request information about the availability of advanced services such as digital video, high-speed Internet access services, telephony, video-on-demand, and the amount and type of programming being offered in HDTV format. To what extent are consumers now purchasing cable modem equipment certified by CableLabs under their Certified Cable Modem Project, rather than renting from video programming distributors? We also seek the most recent information regarding the development of specifications for interoperable set-top boxes on Cable Television Laboratories, Inc.'s OpenCable process. What percentage of existing equipment is compatible with the OpenCable standards? What developments have taken place in the last year relating to the POD-Host Interface, or PHI license, that affect the deployment of navigation devices or their availability at retail stores? 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. What is the status of the testing and implementation of this standard?

15. We seek information on cable operators that currently provide or plan to provide server-based offerings. Under these systems, the programming services reside at a central location and are accessible on demand. What types of

services are offered in this manner? What are the regulatory implications of server-based services? What effect does server-provided video have on a programmer's ability to launch a new service?

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 promote diversity of information sources. Previously, we reported that the benchmark had not been met. Have there been any developments in the last year that would suggest that the criteria specified under Section 612(g) have been met? 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. We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals. Further, 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. Are there cable systems that will not meet the October 2002 deadline for the capability to allow "buy-through"?

Direct-to-Home Satellite Services

17. 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. We ask for information on subscribership on DBS and HSD services. 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). To what extent do DBS subscribers reside in areas not passed by cable systems?

18. We request information on the number of markets where local-into-

local television service is offered, or will be offered in the near future, pursuant to *Satellite Home Viewer Improvement Act of 1999* ("SHVIA"), including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages where available? In cases in which additional equipment is needed to receive a full complement of local signals, what percentage of subscribers are obtaining this additional equipment? We also request information on the impact on DBS subscribership and penetration as well as its effect on the video programming market generally. What percentage of DBS subscribers continues to subscribe to cable in order to receive local broadcast signals?

19. 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? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. To what extent do satellite operators subsidize equipment costs in order to attract subscribers? Have DBS rates for some programming packages increased over the last year? What factors affect changes in DBS prices?

20. We seek information on the status of Internet access services offered by the DBS industry. We seek information regarding other advanced services offered or co-marketed by DBS operators. To what extent are DBS operators offering programming in HDTV format? What marketing arrangements have non-DBS video programming distributors entered into to provide DBS service to their customers?

Broadcast Television

21. We seek information on the role of broadcast television in the market for the delivery of video programming. We request 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, by type of MVPD service. In addition, what percentage of households have only over-the-air broadcast television reception on all television sets?

22. 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 HDTV, the extent to which they are being used for multichannel program offerings

("multicasting"), and the extent to which they are being planned as ancillary and supplementary services such as subscription services. We also seek information on DTV carriage agreements between broadcasters and cable operators and the status of any such negotiations. In addition, we request information on the sales of DTV consumer equipment and the factors affecting consumer adoption of DTV equipment.

Wireless Cable

23. We seek information regarding the previously identified trend towards declining subscribership for MMDS-provided video. We request fact-based projections and forecasts on the future of video programming distribution via MMDS technology. What factors affect the health and viability of the MMDS industry? We seek information about the availability of advanced services such as digital video, high-speed Internet access services, and telephony. What is the current availability of two-way services such as high-speed Internet access and telephony by MMDS operators?

Satellite Master Antenna Systems

24. SMATV systems, also known as private cable operators or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. We request data for SMATV systems, 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? Are there services that SMATV operators provide their subscribers that cable, DBS, and other technologies do not? Finally, what factors affect the health and viability of the SMATV industry?

Open Video Systems

25. We request 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 and what are the arrangements among the participants in such ventures? 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? How are such service offerings packaged and at what price to consumers? What effect has the *City of Dallas, Texas v. FCC* decision had on the growth of OVS? Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

Local Exchange Carriers and Utilities

26. We seek information regarding LECs, long distance telephone companies, and utility companies that provide video services. We request information on franchised cable systems operated by LECs, both within their telephone service areas and outside those regions. To what extent are LEC video programming services being bundled with telephone, Internet, or other utility services?

Broadband Service Providers

27. We seek current information regarding the provision of video, voice, and data services by broadband service providers ("BSPs"). We request data on the geographic locations of such systems, whether they operate as franchised cable systems, the number of homes passed, and the number of subscribers they serve. 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 advanced services? We further seek comment on the current and potential effect of BSPs on the status of video competition. What are the technical and economic obstacles to the successful operation of systems of this type? Are there issues involving pole attachments, access to programming, competitors' rates, broadcast signal retransmission consent, equipment availability, access to MDU inside wiring, or local municipal regulation that affect the viability of BSPs as competitors in the market for the delivery of video programming?

Home Video Sales and Rentals

28. We seek information regarding the home video sales and rental market. We request data on the number or percentage of households with videocassette recorders, laser 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? We seek information on the development of the Internet as a means through which some video retailers are selling their videos. Further, we seek information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

Internet Video

29. Finally, we seek information on the types of video services currently being offered over the Internet and fact-based projections of 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.

Procedural Matters

Ex Parte

30. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

Filing of Comments and Reply Comments

31. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 29, 2002, and reply comments on or before August 30, 2002. 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 FR 24121 (1998).

32. 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 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, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions 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.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The Media Bureau contact for this proceeding is Anne Levine at (202) 418-7027, or at alevine@fcc.gov.

Ordering Clause

34. 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.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-17516 Filed 7-11-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to

comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate. The Elevation certificate is required by the NFIP to certify the elevations of the buildings so the policy can be properly rated. It also provides documentation to verify the community's enforcement of building ordinances, which is important to the NFIP mitigation and floodplain management activities.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Jhun de la Cruz, Insurance Examiner, Federal Insurance and Mitigation Administration, (202) 646-2650 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646-2625 or facsimile number (202) 646-3347 or e-mail muriel.anderson@fema.gov.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) regulations require the elevation or floodproofing of newly constructed structures in designated special flood hazard areas. As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt a floodplain management ordinance containing certain minimum requirements intended to reduce future flood losses. One such requirement is that the community require that residential buildings be elevated to above the base flood elevation and, to enforce this requirement, obtain the elevation of the lowest floor (including basement) of all new and substantially improved structures, and maintain a record of all such information. These data should be generated and retained as part of the community's permit issuance and building inspection processes. The Elevation Certificate is one convenient way for a community to comply with this requirement; however, it is not prescribed. The Floodproofing Certificate may similarly be used to establish the required record in those instances when floodproofing for non-residential structures is a permitted practice.