

form is a data collection device used to compile statistics on the workforce employed by broadcast licensees/permittees. The report identifies each staff member by gender and race/ethnicity in each of the nine major job categories. On June 4, 2004, the FCC released the Third Report and Order and Fourth Notice of Proposed Rulemaking (3rd R&O), *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, FCC 04-103, in which it considers issues relating to the Annual Employment Report forms, including Form 395-B, "The Broadcast Station Annual Employment Report." In the 3rd R&O, the Commission is adopting revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports. Radio and television broadcasters will use Form 395-B to file annual employment reports. The intent of this 3rd R&O is to reinstate and update requirements for broadcasters and MVPDs to file annual employment reports. The intent of the Fourth Notice of Proposed Rulemaking is to provide time for MVPDs, broadcast licensees, and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rule revisions adopted in the 3rd R&O, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on or before September 30, 2004.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 04-227, FCC 04-136]

### 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

2004. 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 23, 2004, and reply comments are due on or before August 25, 2004.

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

**FOR FURTHER INFORMATION, CONTACT:**

Anne Levine, Media Bureau, (202) 418-2330, TTY (202) 418-7172 or by e-mail at [anne.levine@fcc.gov](mailto:anne.levine@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Inquiry (NOI)* in MB Docket No. 04-227, FCC 04-136, adopted June 10, 2004, and released June 17, 2004. The full text of this *NOI* 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 also be purchased from the Commission's copy contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, by e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), or via its Web site <http://www.bcpiweb.com>. Persons with disabilities who need assistance in the FCC Reference Information Center may contact Bill Cline at (202) 418-2555 TTY, or [bcline@fcc.gov](mailto:bcline@fcc.gov). To request materials in accessible formats for people with disabilities (electronic files, large print, audio format and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), 418-7365 (TTY).

#### Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry (NOI)* solicits data and information on the status of competition in the market for the delivery of video programming for our eleventh annual report (2004 Report). We request information, comments, and analyses that will allow us to compare video delivery technologies and to evaluate the status of competition on the industry groups involved and on consumers.

2. Comments submitted in this proceeding will be augmented with information from publicly available sources. We emphasize the importance of the information provided by industry participants with the best knowledge of the questions and issues raised. If we continue to find that we do not get the necessary data from industry participants, we may pursue options for a mandatory data collection process to ensure that we have appropriate information to fulfill our statutory mandate to provide Congress with an annual assessment of the status of competition in the video marketplace. The accuracy and the usefulness of the 2004 Report are directly related to the information we receive from commenters.

3. The Commission will report on the current state of competition and report on changes in the competitive environment since our 2004 Report. To the extent feasible, we request data as of June 30, 2004, to facilitate our analysis of competitive trends over time.

#### Competition in the Market for the Delivery of Video Programming

4. Video programming distributors include cable systems, direct broadcast satellite (DBS) providers, home satellite dish (HSD) providers, broadband service providers (BSPs), private cable or satellite master antenna television (PCO) systems, open video systems (OVS), multichannel multipoint distribution or wireless cable systems (wireless cable), local exchange carrier (LEC) systems, utilities, and over-the-air broadcast television stations. Video programming is also distributed on videocassettes and DVDs through retail distribution outlets and over the Internet.

5. We seek information and statistical data for each type of video programming distributor including: The number of homes capable of receiving service via each wired (*e.g.*, an incumbent cable system, BSP, OVS provider) or wireless technology (*e.g.*, DBS, wireless cable, PCO); the number of subscribers and penetration rates to different levels of service for each service (*e.g.*, basic cable service, cable programming service tier or "CPST," premium, pay-per-view, video-on-demand); channel capacities and the number, type, and identity of video programming channels offered, prices charged for various programming packages; cost of programming inputs; industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures; information on how video programming distributors compare in terms of relative size and financial

resources; data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution market; and information on the ability of, and the competitive advantages to, video distributor expansion into new markets such as local telephony, and high-speed Internet access, and the take rates for these services.

6. We also request information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services such as video-on-demand and personal video recorders. We further ask for comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets.

7. We seek comment on competition among multichannel video programming distributors (MVPDs). In particular, we are interested in data and information on the number of homes capable of choosing among MVPD services. We seek data and comment on the number of households subscribing to more than one MVPD. We also request information on the number of customers switching from one technology to another and the factors responsible for switching among MVPDs as well as the percent of those customers that drop MVPD service altogether. We further request comment on any factors that are unique to competition in multiple dwelling units (e.g., apartments).

8. In addition, we seek comments and information on the consequences for consumers of competition in the market for video programming. To what extent does competition continue to result in lower prices, more programming, better quality of service, or more advanced services, both video and non-video? We also request comment on whether there are any statutes or regulations that should be modified in light of changes in the video industry and competition over the past decade.

9. We seek data on relative prices in order to evaluate substitution between MVPD technologies (i.e., what are the prices of similar cable, DBS, and BSP services). In addition, we are interested in investigating methods for measuring and comparing prices for products that vary in quality (e.g., how to compare the price of a 50-channel package with the price of a 30-channel package).

10. We seek comment on barriers to entry and the impact of the regulatory

environment on competition, including the ability of MVPDs to gain access to programming networks, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers. Although we are primarily concerned with the effect of regulation on competition, we also request comment on other barriers to entry and competition.

11. We seek information on existing, planned, and terminated or merged programming services to assess the changes in the amount and type of video programming available that have occurred in the past year, ownership of programming networks, genre of service and transmission format (i.e., analog, standard digital (SD), or high definition (HD) format), language (e.g., English or foreign language). This year, we seek to identify the ownership of non-broadcast networks by any media entity, not just cable operators as we have done in the past. We further request information on the ability of programming networks to sell their services, especially comments on the experiences of start-up networks. We also seek information on how video programming distributors package and market their programming. To what extent do MVPDs offer service to consumers on an "a la carte" or "mini-tier" basis rather than the traditional tiering of programming services? We request comment regarding public, educational, and governmental (PEG) access and leased access channels, and the programming provided by DBS operators in compliance with their public interest obligations. We further request information regarding the accessibility of closed captioning and video description to persons with disabilities.

12. We seek information and statistics on the advanced service offerings (e.g., high-speed Internet access services, telephony, interactive television, electronic programming guides) and new ways of offering service (e.g., personal video recorders, video-on-demand, streaming video) that are being deployed by video programming distributors. We specifically seek comment on the development and deployment of electronic programming guides (EPGs), video-on-demand (VOD), and interactive television (ITV) services. We request information on the impact that the availability of non-video services offered by video programming providers has had and continues to have on the nature of competition in the video marketplace.

13. We further seek information and comment regarding issues specific to video programming distribution in rural and smaller markets. How do MVPD

choices for consumers differ in these markets compared to larger, more urban markets? What percent of cable systems in rural or smaller markets have capacity of less than 750 MHz? We request information on the programming offered in rural and smaller markets and any differences between these offerings and those available in larger markets.

14. We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market?

#### *Cable Television Service*

15. We seek to update and refine our Report on the performance of the cable television industry and request comment on the current state of competition in this segment of the market. Specifically, 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, and the various technical methods being used to increase capacity. How is bandwidth allocated among analog and digital video tiers and what factors influence that decision? To what extent is new capacity used for non-video services? Further, we request information on cable operator plans to convert their systems to all-digital transmission.

16. We also seek comment on the level of large-scale consolidation in the MVPD industry. We 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.

17. We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from one tier to another? We seek comment on relevant trends in pricing of cable tiers.

18. Commenters are asked to provide information specific to the advanced service offerings by cable operators and particularly video-on-demand, traditional circuit-switched telephone service and Internet Protocol (IP) telephony, and high-speed data access services.

19. We also seek updated information regarding the development of specifications for interoperable set-top boxes (i.e., set-top boxes that can be

moved from one cable franchise area to another and function with any given cable provider's local system). We also 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. Furthermore, we request information on how many products are currently available with plug-and-play functionality, or are soon to be available.

20. 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% of households within the United States and are subscribed to by 70% of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. We request comment and supporting data that would be useful for an accurate determination of whether the criteria have been met, and, if so, whether the Commission should promulgate additional rules to promote diversity of information sources.

21. We request comment on the "tier buy-through" option mandated by section 623(b)(8) of the Communications Act? What portion of subscribers is taking advantage of this option that permits consumers to purchase programming on a per-channel or per-program basis without subscriptions to any tier of service other than the basic tier?

22. 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 and the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements.

#### *Direct-to-Home Satellite Services*

23. For direct-to-home (DTH) satellite services (*i.e.*, DBS and large dish or HSD), we request data on the geographic locations of DBS and HSD subscribers, by state and type of area (*i.e.*, urban, suburban, rural). How have the demographics changed since DBS began operation? What percentage of new DBS subscribers are former cable subscribers or former HSD households? We request information regarding the investments that DBS operators have made or plan

to make to upgrade their plant and equipment to increase channel capacity or offer advanced services.

24. We request information on the number of markets where local-into-local television service is, 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. We also request data that will allow us to compare DBS and cable rates for programming packages and equipment. Furthermore, we ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages and programming available for HSD subscribers.

25. We seek information on the status of current and future plans of both satellite-delivered high-speed Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the overall satellite industry, including fixed satellite systems (FSS), DTH and DBS providers. To what extent do DBS operators co-market advanced services, such as DSL or voice services, with local exchange carriers (LECs)?

#### *Broadband Service Providers, Open Video System Operators, and Overbuilders*

26. We request information regarding the provision of video, voice, and data services by broadband service providers (BSPs), open video system (OVS) operators, and overbuilders. Further, we seek comment on the current and potential effect of BSPs, OVS, or overbuilders on the status of video competition, and the characteristics that exemplify BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, business model). Are there market characteristics that make certain areas more conducive to such competition than others? What are the technical and economic factors that determine whether overbuild systems are successful? Are there still significant barriers to entry?

#### *Broadcast Television Service*

27. We seek data and comment on the role of broadcast television in the market for the delivery of video programming, including information on audience shares, advertising revenues, and compensation broadcasters receive for retransmission consent. We seek to update our information on the practice of repurposing and "time shifted" programming, and ask commenters to provide examples of repurposing programming or "time shifted"

scheduling during the current television season.

28. We seek comment and data on a broad range of issues relating to the digital television (DTV) transition to examine the ways in which broadcast television stations' deployment of digital television service and the DTV programming provided by MVPDs impact competition in the video programming distribution market. We invite comment on programming content available in DTV formats, spectrum usage, over-the-air availability of DTV service and carriage of DTV programming by MVPDs, the production of DTV programming by stations and MVPDs, the equipment used to receive DTV programming, current and projected levels of consumer access to and use of DTV and related equipment, and consumer education efforts. We request information on the development of DTV, including historical, current and projected data. We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms.

#### *Wireless Cable Systems*

29. We seek information regarding the previously identified trend towards declining availability of and subscribership to MMDS-provided video, also known as wireless cable. What factors have affected the health and viability of the wireless cable industry? We seek information about the availability of advanced services, including two-way services, such as digital video, high-speed Internet access services, and telephony.

#### *Private Cable Operators*

30. We request information on the types of services offered by private cable operators, also known as satellite master antenna television ("SMATV") operators, and the price charged for those services. What factors affect the health and viability of the private cable industry? Are there competitive or legal hurdles that prevent private cable operators from working with DBS operators in MDUs?

#### *Local Exchange Carriers and Utilities*

31. We seek information regarding LECs and utility companies that provide video services. Specifically, we request information on franchised cable systems operated by LECs and DSL-based video offerings.

#### *Home Video Sales and Rentals*

32. We seek information regarding the home video sales and rental market, such as data on the number or percentage of households with

videocassette recorders, laser disc players, DVD players, and personal video recorders (PVRs). We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, video-on-demand, or near video-on-demand programming offered by MVPDs.

#### Internet Video

33. We seek information on the types of video services currently being offered over the Internet both in real-time and downloadable format. We also seek projections of whether and, if so, when Internet video will become a viable competitor in the market for the delivery of video programming. What criteria should determine whether Internet video is to be considered "broadcast quality" (e.g., frames-per-second delivered, the size of the viewing area, the relative ease of use by the consumer, consumer habit, the type of programming offered, relative availability of programming)? How does currently available real-time Internet video compare to traditional MVPD and broadcast programming? We also solicit information on the technological, legal, regulatory, and competitive factors that may promote or impede the provision of video over the Internet.

#### Foreign Markets

34. Finally, we seek information regarding the status of competition in foreign markets for the delivery of video programming that would provide insights regarding the nature of competition in the United States market. Specifically, we seek information on ongoing efforts in foreign markets to provide DSL-based video, interactive video services, "a la carte" channel options, high-speed Internet access service, and the transition to DTV. We seek information regarding any differences between the United States and other markets with respect to video programming distribution and advanced services provision that would be instructive as to the efficiency of market structures and regulations within the United States. How do regulations, or lack thereof, in foreign markets compare with regulations in the United States and how might these differences yield different competitive results?

#### Procedural Matters

##### Ex Parte

35. 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

36. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 23, 2004, and reply comments on or before August 25, 2004. 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, May 1, 1998.

37. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. 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](mailto: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. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

38. 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).

39. The Commission's contractor, Natek, 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, Office of the Secretary, Federal Communications Commission.

40. Parties also must serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160, or via its Web site at <http://www.bcpweb.com>. In addition, parties should serve one copy of each filing via email or one paper copy to Anne Levine, Media Bureau, 445 12th Street, SW., 2-C410, Washington, DC 20554. Parties should serve one copy of each filing via email or five paper copies to Linda Senecal, 445 12th Street, SW., 2-C438, Washington, DC 20554.

#### Authority

41. This NOI is issued pursuant to authority contained in sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 04-14997 Filed 6-30-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting; Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (d)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 12:10 p.m. on Monday, June 28, 2004, the Corporation's Board of Directors determined, on motion of Director James E. Gilleran (Office of Thrift Supervision), seconded by Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director Thomas J. Curry, Vice Chairman John M. Reich, and Chairman Donald E. Powell, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a report regarding certain supervisory matters.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject