

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2009-0008; FRL-8402-5]

**Tribal Pesticide Program Council (TPPC); Notice of Public Meeting****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** The Tribal Pesticide Program Council (TPPC) will hold a 2-day meeting beginning on Thursday, March 12, 2009 and ending on Friday, March 13, 2009. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on March 12, 2009, from 9 a.m. to 5 p.m. and March 13, 2009 from 9 a.m. to 5 p.m. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at the Activities and Recreation Center, Ballroom A, University of California, Davis, CA (UC-Davis). For directions to, or information about, the meeting facility only, call UC-Davis at (530) 754-5306.

**FOR FURTHER INFORMATION CONTACT:** Kristen Hendricks, Field and External Affairs Division, Office of Pesticide Programs (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0308; fax number: (703) 308-1850; e-mail address: [hendricks.kristen@epa.gov](mailto:hendricks.kristen@epa.gov); or Lillian Wilmore, TPPC Administrator, 1595 Beacon St. #3, Brookline, MA 02446-4617; telephone number: (617) 232-5742; fax number: (617) 277-1656; e-mail address: [NAEcology@aol.com](mailto:NAEcology@aol.com). For information about the TPPC, please see <http://www.epa.gov/oppfed1/tribes/tppc.htm>.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be interested in this meeting if you are interested in the TPPC's information-exchange relationship with EPA regarding important issues in Indian country related to human and environmental exposure to pesticides and insight into EPA's decision-making process. All parties are invited and encouraged to participate as appropriate. Potentially affected entities

may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket ID number EPA-HQ-OPP-2009-0008. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA, 22202. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

**II. Tentative Agenda**

1. TPPC State of the Council Report.
2. Tribal reports and presentations.
3. OPP updates.
4. Updates from EPA's Office of Enforcement and Compliance Assurance.
5. Circuit rider programs.
6. EPA Region and Regional Sub-lead reports.
7. Report and discussion on the use of restricted-use pesticides in Indian Country.
8. Update on EPA OPPTS Strategic Planning.
9. Tribal Caucus (TPPC Only).

**List of Subjects**

Environmental protection, Tribes, Pesticides.

Dated: February 4, 2009.

**William R. Diamond,**

*Director, Field External Affairs Division, Office of Pesticide Programs.*

[FR Doc. E9-2761 Filed 2-10-09; 8:45 am]

**BILLING CODE 6560-50-S**

**EXPORT-IMPORT BANK OF THE UNITED STATES****Sunshine Act Meeting**

**ACTION:** Notice of a partially open meeting of the board of directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Thursday, February 12, 2009 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEMS:** Item No. 1: Resolution presented to Howard A. Schweitzer General Counsel upon his resignation.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation for Item No. 1 only.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202-565-3957).

**Kamil P. Cook,**

*Acting General Counsel.*

[FR Doc. E9-2815 Filed 2-10-09; 8:45 am]

**BILLING CODE 6690-01-M**

**FEDERAL COMMUNICATIONS COMMISSION**

[MB Docket 07-269; FCC 07-207]

**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 next competition report that is to be submitted to Congress. Comments and data submitted by parties will 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:** Interested parties may file comments on or before February 27, 2009, and reply on or before March 27, 2009.

**ADDRESSES:** You may submit comments, identified by MB 07-269, by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site*: <http://www.fcc.gov/cgb/efcs/>. Follow the instructions for submitting comments.

- *People with Disabilities*: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**  
Dana Scherer, Media Bureau at (202) 418-2330.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Inquiry (NOI)* in MB Docket No. 07-269, FCC 07-207, adopted November 27, 2007, and released January 16, 2009. The complete text of this *NOI* is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Room CY-A257, Portals II, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet site at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). The complete text of the *NOI* may also be purchased from the Commission's duplicating contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or by e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), or via its Web site <http://www.bcpiweb.com>.

### Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming. This *Notice of Inquiry (NOI)* solicits data and information for the Commission's 14th annual report. We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the marketplace between 2006 and 2007, prospects for new entrants, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.

2. We encourage thorough and substantive submissions from industry participants and state and local regulators with the best knowledge of the questions and issues raised to ensure the accuracy and usefulness of this Report. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants and will do so again if necessary. Nevertheless, we are concerned that such publicly available information may not be adequate, especially when various sources provide inconsistent data.

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

3. We ask commenters to provide data on video programming distributors, including cable systems; direct broadcast satellite (DBS) services; large home satellite dish (C-Band) providers; broadband service providers (BSPs); private cable operators (PCO), also called satellite master antenna television systems; open video systems (OVS); wireless cable systems using frequencies in the broadband radio and educational broadband services; local exchange carrier (LEC) systems; utility-operated systems; commercial mobile radio services (CMRS) and other wireless providers; and over-the-air broadcast television stations. In addition, we seek information on video programming distributed over the Internet and via Internet Protocol (IP) networks. We also seek 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. We continue to seek comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets and provide insight into factors affecting video competition. Where possible and relevant, we request data as of June 30, 2007.

4. We seek information and statistical data for each type of multichannel video programming distributor (MVPD), including:

(a) The number of homes passed by each wired technology;

(b) the number of homes capable of receiving service via each wireless technology;

(c) the number of subscribers and penetration rates for cable services, including basic cable service tier (BST), cable programming service tier (CPST), themed tiers (e.g., family tiers, foreign-language tiers), digital cable service, digital tiers, a la carte services, pay-per-view (PPV), and video-on-demand (VOD);

(d) for noncable MVPDs, the number of subscribers and penetration rates for each available programming tier, a la carte services, PPV, and VOD;

(e) how such cable penetration/subscription rate numbers were derived, and whether the party providing the data considers it a representative sample of the overall cable industry;

(f) available channel capacity of the system; the number, type, and identity of video programming channels offered, the channel capacity required for such offerings and the tier or tiers on which such programming is offered; and the channel capacity of the system used for non-video services;

(g) prices charged for various programming packages and the equipment required to receive them;

(h) industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures;

(i) information on how video programming distributors compare in terms of relative size and financial resources;

(j) data that measure the audience reach of video programming networks as well as relative control over the video distribution market; and

(k) information on video distributor expansion into new markets, such as local telephony, high-speed Internet access, wireless telephone service, the percentage of subscribers taking these services, and the competitive advantages of offering these services, as well as information on new technologies being considered, tested, or deployed by MVPDs for video, voice, and data offerings.

5. We are interested in data and information on the number of homes that have a choice of MVPD services. How many households can receive service from one or more providers (e.g., DBS, wireless cable, PCO) as well as an incumbent cable provider? How many consumers have access to wireline overbuilders? We also want to identify where wireless competition exists, where is entry likely in the near future, and where wireline competition once existed but failed. What effect has competition among MVPDs had on consumers (e.g., prices, programming choices, quality of service, and the

introduction of video and non-video advanced services)?

6. To evaluate substitution between MVPD technologies, we seek data on the relative prices of similar services offered by different types of competitors. Many cable operators offer or plan to offer bundled service packages, such as video, voice, and high-speed data, as do other MVPDs. What effect does bundling have on head-to-head competition, and what effect does it have on MVPDs that do not offer bundled services due to technical or other limitations? We are interested in investigating methods for measuring and comparing bundled service packages, such as video, voice, and high-speed data, among MVPDs.

7. Barriers to entry can be regulatory, technological, or financial in origin. We seek to understand what these barriers are and how they impede competition in the MVPD marketplace. Are there any existing Commission regulations or statutory provisions that prevent new entrants from promptly deploying their networks and offering consumers new video service options? Are there steps that Congress and the Commission may take to encourage investment in new broadband networks? We seek comment on what modifications, if any, are needed to pertinent regulations or statutes to foster competition in the deployment of broadband networks and the provision of video services.

8. We request detailed information about nonbroadcast programming networks, including ownership, the type of programming networks (*e.g.*, national, regional, local) and the genre of programming networks (*e.g.*, sports, news, children's, general entertainment, foreign language). We seek information about the proportion of national nonbroadcast networks that are vertically integrated with a cable operator. We also seek to identify programming networks affiliated with broadcast television station licensees not owned by a cable operator; and programming networks that are owned by MVPDs other than cable operators (*e.g.*, DBS operators). How does the counting of international networks affect the calculation of the proportion of networks that are vertically integrated? We note that programming networks are being offered in a variety of forms (*e.g.*, multiplexed networks, VOD, shared channels), and we seek comment on whether and how to count such programming networks for assessing trends in vertical integration. We ask commenters to provide information regarding the delivery mode (*i.e.*, satellite delivery, terrestrial delivery) of each national and regional

network as we are unaware of any comprehensive source of this information.

9. We request information on children's, locally-originated, and local news and community affairs programming distributed to consumers by broadcasters and MVPDs. To what extent is programming offered in languages other than English, nationally and locally? How is such programming packaged (*i.e.*, part of CPST, digital tier, separate tier)? We also seek comment regarding public, educational, and governmental (PEG) access, including the number of channels currently being used by cable operators for this purpose. We ask for information on the programming provided by DBS operators in compliance with their public interest obligation. We also request information on the use of leased access channels and the types of programming distributed on them, and seek comment on whether these channels provide an opportunity for independent programmers to distribute their programming.

10. We seek comment on programmers' access to MVPDs, including comment on the effectiveness of the program carriage and channel occupancy rules. We request information on the number of independent networks that launched between June 2006 and June 2007, including total subscribers; the distributors that carry them; the manner of carriage (*e.g.*, expanded basic, digital tier, themed digital tier, VOD); and their ongoing efforts to obtain further distribution by cable, DBS, and other service providers. Specifically, we request comment regarding any difficulties programming networks encounter when launching a new service and information on the kinds of carriage arrangements that are required to secure MVPD carriage.

11. We seek information on how video programming distributors package and market their programming. To what extent are MVPDs offering programming on an a la carte basis or in mixed bundles, themed tiers, and subscriber-selected tiers? We seek information on family friendly programming, including the cost and content of these packages. Are family tiers offered on a stand-alone basis or must consumers subscribe to other tiers (*e.g.*, basic service tier, digital tier) to receive them? Do subscribers need additional equipment to receive the family tier? Do MVPDs offer or plan to offer consumers more choice in channel selection, specifically a la carte or themed tiers, rather than traditional tiering of programming services?

12. We seek to assess the extent to which MVPDs have been able to acquire or license programming owned by other video distributors. Is there specific programming, national or regional/local, that is unavailable to either cable or noncable operators and, if so, why? What effect does vertical integration have on competing distributors' ability to obtain programming? Are there certain "must-have" programming services, or genres of services (*e.g.*, regional sports) without which competitive video service providers may find themselves unable to compete effectively?

13. We request comment on the effectiveness of our program access rules. What, if any, video programming services that were once delivered to MVPDs by satellite have been migrated to terrestrial delivery? Which terrestrially delivered networks are unavailable to some MVPDs under the so-called terrestrial exemption to the Commission's program access rules? To what extent are terrestrially delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? What exclusive programming arrangements exist between programmers and MVPDs? With the advent of VOD, what are the competitive implications of video programming distributors securing exclusive rights to programming for inclusion in their VOD offerings?

14. We request comment on competition issues specific to video programming distribution in rural and smaller markets, including the number of MVPDs serving small and rural markets, their subscribership, the services and video programming options they offer, the technology used to provide their services, and the cost for such video services. How does competition differ between rural and smaller markets and larger, urban areas? We seek information on alternative technologies, such as digital subscriber line (DSL) and fiber-based Internet Protocol television (IPTV) that small and rural operators are adopting. We seek information on any existing differences in program carriage agreements between larger urban systems and those in small or rural areas, including information on whether video programming buying cooperatives help small or rural operators obtain programming at discounted rates.

15. We also seek specific information regarding MVPD service available in Alaska and Hawaii. We are interested in whether, and how, cable, DBS, and other MVPD services offered in these

states differ from that provided in other states. What competitive alternatives are available to consumers in Alaska and Hawaii? How do prices for the various packages of service compare to the average national price for such MVPD services? We also seek information on any differences in the equipment needed by consumers to receive video programming service.

16. We seek comment on any factors that are unique to competition in multiple dwelling units (MDUs). How common is it for consumers to have choices among video programming services within MDUs?

17. We also invite commenters to provide information on access to programming by persons with disabilities. We seek comment on what, if any, concerns industry and the public have with meeting these increased captioning requirements for new Spanish language and "pre-rule" English language programming. We also seek information on the level and quality of captioning for non-English language programming. We seek information on the quality, accuracy, placement, technology, and any instances of missing or delayed captions, and the amount of digital programming that contains closed captions translated from analog closed captions. We seek comment on the extent to which digital programming may not be captioned and ask why this is the case. We seek information on the availability of video description services, currently provided by programmers on a voluntary basis and the amount and types of video programming that includes video descriptions and whether MVPDs generally carry video descriptions inserted by programmers.

#### Cable Television Service

18. For the 14th annual report, we seek updated information on the performance of the cable television industry. We request information regarding cable operators' continuing investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. We request information on the development of various methods or technologies to increase system capacity, such as switched digital video technology.

19. For individual cable multiple system operators (MSOs), we request information on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades (including the digital to analog compression ratio used), the number of

systems with digital tiers, the number of households where digital cable services are available, and the number of subscribers to these digital services. To what extent is new capacity used for non-video services? How have the structure and price of service tiers changed when systems become all digital? How would they change in the future as more systems become all digital? What are the implications for customer premises equipment?

20. We seek information on mergers and other cable system transactions that occurred between June 2006 and June 2007, including the names of the buyer and seller, date of the transaction, type of transaction (*i.e.*, sale or swap), name and location of the system, homes passed and number of subscribers, and the price. We request data regarding the effect of clustering (the practice whereby operators concentrate their operations in specific geographic areas) on competition in the video programming distribution market.

21. We seek information on whether and how cable operators are changing the way they package programming and the role actual or potential competition played in any such changes. Do cable operators offer, or plan to offer, digital programming genre packages or themed tiers (*e.g.*, family, sports, lifestyle themed tiers) or programming on an a la carte basis? We request data on the programming included on these tiers and their cost, including information on whether subscribers must purchase other tiers in order to subscribe to themed tiers or to purchase channels on an a la carte basis.

22. Section 612(g) of the Communications Act provides that when 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 the households, the Commission may promulgate any additional rules necessary to provide diversity of information sources. We previously concluded that the first prong of the test has been met. We request data and comment on whether both prongs of the 70/70 test have been met. That is, cable operators should submit the following information on a zip code basis: (a) total number of homes the cable operator currently passes; (b) total number of homes the cable currently passes with 36 or more activated channels; (c) total number of subscribers, including all subscribers in MDUs; and (d) total number of subscribers with 36 or more activated channels. To the extent that cable operators filed 2007 data for the purposes of complying with our 2006

Report, they need not submit this same data again. We also seek comment on whether telephone companies that provide video service and overbuilders should be included in the 70/70 calculation.

23. Under sections 614 and 615 of the Communications Act, cable operators must set aside channel capacity for carriage of local broadcast television stations. We request data on the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements and the percentage that are carried pursuant to the must carry provisions. We also seek information on the percentage of their required set-aside channels that cable operators currently are using to carry local broadcast signals. To what extent do cable operators pay cash for broadcast station carriage rights, carry nonbroadcast programming networks, provide advertising time, or otherwise compensate broadcasters? We ask commenters to address the retransmission consent process, including the effect of retransmission consent compensation on cable rates, the ability of small cable operators to secure retransmission consent on fair and reasonable terms, and the impact on MVPDs and consumers of agreements that require the carriage of nonbroadcast networks in exchange for the right to carry local broadcast stations. We seek comment on these and any other issues relating to must carry and retransmission consent that affect competition in the market for the delivery of video programming.

24. Section 612 of the Communications Act established the leased access rules, which require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator and provide standards for rates, terms and conditions for the use of leased access. We seek comment regarding leased access channels, including the number of channels currently being used by cable operators for these purposes and the types of programming offered on such channels. Are these channels accomplishing their intended purpose of providing competition to the programming channels under the control of the cable operator?

25. We also request comment on the "tier buy-through" option mandated by Section 623(b)(8) of the Communications Act, including the percentage of subscribers taking advantage of this option; the problems, if any, it creates; the manner in which cable operators make this option known to the public; and the extent to which

the option is applicable (*i.e.*, the extent to which programming is offered or purchased on a per-program or per-channel basis).

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

26. We seek information and data that explain the factors contributing to DBS's growth in the video programming market, which may help us assess whether those characteristics will continue to position DBS as cable's principal competitor. Is there evidence of meaningful price competition between DBS and cable? Do initial DBS equipment costs or other factors prevent cable subscribers from switching despite escalating monthly cable bills? Does the dynamic between the platforms change in markets where DBS offers local broadcast signals?

27. We seek updated information on the geographic characteristics of DBS subscribership and the factors that account for its relative strengths or weaknesses in different markets (*e.g.*, areas not served by a cable or other wireline provider vs. other areas). We continue to monitor technical limitations, such as line-of-sight requirements, which impede the availability of DBS to some potential subscribers, in particular MDU residents and residents in areas with natural obstructions, such as trees. How many, or what percentage of, households cannot receive DBS service because they are not within the line-of-site of the satellite signal?

28. We seek updated information on the deployment of DBS satellites as well as information regarding pending additions to DBS satellite fleets, which will result in increased channel capacity or the provision of advanced services. We request information on DBS operators' current channel capacity and how they allocate it. What technical methods are DBS providers using to increase capacity?

29. We request information on the number of markets where local-into-local television service is offered, or will be offered in the near future, including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages in markets where they are available? What is the cost to consumers of local-into-local broadcast service? What percentage of DBS subscribers also subscribe to cable in order to receive local broadcast signals? Both DIRECTV and EchoStar have launched local broadcast stations in HD in a number of markets. How many markets receive local high definition programming? We seek information on the type of equipment

necessary for DBS subscribers to receive local HD broadcasts and the cost of the service and equipment.

30. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted, which added some new provisions to the Communications and Copyright Acts pertaining to the retransmission by DBS of distant or out-of-market broadcast signals, including the option to carry broadcast stations deemed "significantly viewed" by the Commission. We request comment on the impact, if any, these provisions have had on the MVPD marketplace. With respect to the new authorization to market broadcast station signals deemed "significantly viewed," to what extent are such signals being made available to subscribers? If such signals are not being marketed, is the situation due to technical or operational considerations, problems with obtaining retransmission consents, or other reasons?

31. We request data on prices for DBS programming packages and equipment, and the subscribership of different packages of programming. Do DBS operators offer any programming on an a la carte basis and, if so, what are the prices and subscription requirements associated with such offerings? What additional charges, if any, are required to obtain foreign language or foreign originated programming? We also request information about programming packages available to C-Band subscribers, including the types of packages offered, their prices, and the amount of programming that is offered on an a la carte basis and that is free and unscrambled.

#### **Local Exchange Carriers**

32. We previously reported that LEC entry into the MVPD industry has been limited, but that developments demonstrated renewed LEC interest in providing video programming services. We seek information generally regarding LECs that provide video programming services. Are there any regulatory or statutory impediments to LEC entry into the video service market? Do LECs target specific areas or markets for deployment and what are the determinants of these decisions? How do LEC video services compare to those available from incumbent cable or satellite operators? Is there evidence of price competition between LECs, cable, and satellite operators?

33. The major incumbent local exchange carriers (ILECs) have marketing agreements with DBS providers under which they sell the DBS operator's video services along with their telephony and DSL-based

high speed Internet access service. What effect have these agreements had on LEC entry into the video industry? We also request comment on whether smaller ILECs are constructing their own all-fiber or mostly fiber networks to deliver video and advanced services to their existing voice and data customers. Are there any unique barriers to entry into smaller and rural video markets?

#### **Broadband Service Providers**

34. We request information regarding the provision of video, voice, and data services by broadband service providers (BSPs), including municipal authorities, independent entities and competitive local exchange carriers (CLECs), as well as any entity that provides broadband services. Are video programming services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percentage of, BSP subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? We seek comment on the effect that BSPs have on video competition, and the characteristics that facilitate BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, demographics, and business models). Are there still significant barriers to entry? What are the technical and economic factors that determine whether overbuild systems are successful?

#### **Open Video System Operators**

35. To what extent are new wireline entrants operating under the open video system (OVS) classification, and what factors (*e.g.*, state and local franchising requirements) cause new entrants to choose the OVS classification? How many subscribers receive video services from OVS operators and how many subscribers purchase the non-video services offered? We seek information on why new entrants have chosen the OVS classification. Do OVS operators offer video and non-video services in combination with one another and, if so, how are rates affected by the packaging of multiple services? What effect do OVS operators have on video competition?

#### **Electric and Gas Utilities**

36. We seek information regarding utility companies that provide video services or plan to deploy them. To what extent are video programming services being bundled with telephone, high-speed Internet access, or other services? How does the ability to offer

bundled services affect the relative competitive position of these utilities? Are utilities' service prices similar to cable operators' pricing of such services? If not, how do they differ?

#### **Broadcast Television Service**

37. We seek data and comment on the role of broadcast television in the market for the delivery of video programming. We seek data on broadcast network and station audience shares relative to those of nonbroadcast programming services. We also request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? What forms of compensation are broadcasters receiving for retransmission consent? In terms of additional sources of revenue, to what extent are cable and DBS operators paying cash compensation for retransmission of broadcast stations? If the compensation is not cash based, how is it accounted for?

38. We seek comment on a number of issues concerning the transition to digital television (DTV) service. We request data on the number or percentage of households relying solely on over-the-air broadcast television for programming. We solicit specific information regarding the number of households that will need digital to analog converter boxes as of February 17, 2009, because they rely on over-the-air broadcast television reception and do not have televisions with digital tuners. We also seek information on the number of MVPD households, by type of MVPD service, that rely on over-the-air reception for local broadcast service on one or more of their television sets not connected to an MVPD.

39. We request information regarding the carriage of DTV programming by MVPDs and plans to increase the amount of DTV programming carried. How many MVPD subscribers are served by systems that carry DTV programming, and how many households are subscribing to such services when offered as separate packages? We also request comment on carriage agreements between MVPDs and broadcasters. We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms.

40. We seek information on how MVPDs package and price broadcast and nonbroadcast DTV programming. What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not?

41. We request information regarding the amount and type of DTV

programming (*i.e.*, network, local, syndicated) currently offered by broadcasters and information on broadcasters' plans to increase the amount of DTV programming. To what extent are broadcasters using their DTV spectrum for SDTV, HDTV, and multicasting? To what extent are stations locally producing DTV or HDTV programming? To what extent are stations offered network HDTV programming that they are either not equipped to pass through and broadcast or do not broadcast for other reasons? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV spectrum? Are there differences in the ways that commercial and noncommercial broadcasters are using their DTV spectrum?

42. Have the Commission's programs to educate consumers about the transition to digital television resulted in greater consumer familiarity with DTV in general and HDTV specifically? We seek data regarding consumers' awareness of the DTV transition, including consumer survey results. We seek information on the consumer education efforts of government, retailers, broadcasters, video programmers and producers, and others. How successful are these consumer education efforts?

43. We seek information on the types of services and content that broadcasters are transmitting using multicasting. In addition, we seek information on whether multicasting is limited to large markets, or if stations in small- and medium-sized markets are multicasting. How much multicast programming is locally produced or locally focused? To what extent is the provision of multicast service dependent upon its carriage by cable and other MVPD operators? In how many markets are cable operators and other MVPDs carrying broadcasters' multicast programming, and which markets are they?

44. DTV also allows broadcasters to use part of their digital bandwidth for subscription multichannel video programming services and datacasting. We seek information on the types of services and content broadcasters are transmitting using multicasting. To what extent is the provision of multicast services dependent on carriage by cable and other MVPD operators?

45. We seek updated information on the adoption of the equipment needed to receive digital programming, either over the air or from an MVPD, such as the total number of digital television (DTV) displays, including HD-ready and Enhanced Definition (ED)-ready monitors, that have been shipped to retailers and how many have been sold

to consumers. We request information on how many cable set-top boxes and how many DBS receivers contain over-the-air DTV reception capabilities?

#### **Wireless Cable Systems**

46. Wireless cable operators offer limited competition to incumbent cable operators. Many licensees of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) used by wireless cable operators to provide video service have chosen to focus on the delivery of non-video broadband services, such as high-speed Internet service. Have factors such as concerns regarding access to programming, bandwidth considerations, local regulatory considerations, and bundled service offerings, led wireless cable operators to move away from video service?

#### **Private Cable Operators**

47. We request information on the types of services offered by private cable operators (PCOs), also known as satellite master antenna television (SMATV) operators. We request information on the number of PCOs in the United States, the geographic areas they serve, the identification and size of PCO companies, and the type of facilities they serve (*e.g.*, hotels, apartment buildings, mobile home parks). We seek comment on whether PCOs are using CARS (*i.e.*, cable television relay service) licenses to provide additional competition to incumbent cable operators.

#### **Commercial Mobile Radio Service Providers and Other Wireless Providers**

48. We request updated information on the availability and deployment of mobile video services, including information on programming agreements between video programming networks and other content providers and cell phone companies. Specifically, how many mobile telephone users have access to, and subscribe to, such services? What equipment is needed to receive video over cellular systems, and what is the cost of equipment and service? In which markets is service available? Do current trends in mobile video suggest that we should consider mobile telephone providers that offer video programming to be MVPDs?

49. We seek information on video distribution from other wireless devices that are not CMRS providers and on the viewing equipment, including iPods and personal digital assistants (PDAs), used to receive such programming. We seek information on the manner in which video content is delivered to these devices (*e.g.*, broadcast vs. Internet

downloading). We seek information on how programmers are re-purposing traditional broadcast and nonbroadcast programming for viewing on these devices, and whether programmers are creating content specifically for these new devices.

50. We also request comment on alternative wireless distribution methods and technologies and the extent to which providers have adopted or are considering adopting them. We seek comment on the extent to which new technologies, such as WiMAX, are used to provide services that compete with those offered by traditional video providers, as well as information on the deployment of municipal Wi-Fi networks.

#### Web-Based Internet Video

51. We request information on the types of video services offered over the Internet in both real time and downloadable formats, and request comment on the quality of web-based video relative to traditional video program distribution. We also ask commenters to provide projections of whether web-based video will become a viable competitor in the marketplace for the delivery of video programming and, if so, when such competition is likely to emerge. Further, we seek information on the extent to which Internet video distribution also has become a means by which some new programming networks are developing audience interest in their programming absent agreements with one of the major MVPDs for distribution of their programming over cable or DBS.

#### Advanced Services

52. We seek information on the advanced services offered by all MVPDs, *e.g.*, VOD, digital video recorders (DVRs), high-speed Internet access, telephony, and HDTV. We request subscribership statistics; cost data; and information on the type of equipment that is required for each type of service offered. We request information on how MVPDs bundle these services and how this affects competition.

53. For example, we seek information on the programming that is available through video-on-demand. Is there programming that is produced especially for VOD? How much VOD content is local? What amount of VOD content is exclusive to any one video distributor?

54. We seek information on DVR services provided by MVPDs. What percentage of subscribers has access to operator-supplied DVRs, and how many subscribe to the service? How many use a DVR not supplied by an MVPD? We

seek information on the characteristics of the DVRs offered (*e.g.*, single or dual tuner, storage capacity). Do DBS providers still use DVRs to approximate VOD service? What percentage of the DVR set-top boxes are leased as opposed to purchased? Do MVPDs plan to offer a network-based or centralized DVR-like service?

55. We seek information about high-speed Internet access service offered by MVPDs. What percentage of MVPD Internet access service subscribers also are video subscribers? How is the service priced, and do video subscribers receive discounts? What is the status of DBS high-speed Internet access (*e.g.*, telephone return path, two-way satellite delivered)? Are MVPDs giving subscribers a choice of Internet service providers? Has any MVPD blocked access to certain kinds of Internet content or applications?

56. Finally, we seek information on the latest developments regarding Voice over Internet Protocol (VoIP) telephony. Is it marketed as part of a bundle of services? Are discounts offered to video subscribers? To what extent are MVPDs phasing out switched circuit telephony?

#### Technical Issues

57. Technological developments have important consequences for the state of video competition. We seek comment and data on a range of developments related to consumer equipment, navigation devices, the Open Cable Application Platform (OCAP), PacketCable, CableCARDS, advanced compression techniques, technical standards, and home networking.

58. We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households currently have analog television sets that are connected to an external set-top box that allows for the provision of various MVPD services? How many of these set-top boxes only provide analog services and how many provide different types of digital service, (*i.e.*, decode and display HD signals)? How many of these MVPD set-top boxes also contain cable modems, IP telephony interfaces, DVR capabilities, or home networking capabilities, and how are they priced? How many set-top boxes are capable of providing video programming on a la carte basis and is any MVPD offering this service?

59. We also seek information on the retail availability of navigation devices to consumers. How many such devices have been sold? What are the obstacles to equipment manufacturers and others for obtaining approval to attach devices

to MVPD systems? How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market? We request information on the development and deployment of electronic programming guides (EPGs), including the number and type of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute EPGs. We also request information on how many products are currently available with plug-and-play functionality, or are soon to be available.

60. We seek updated information on developments regarding CableLabs' Open Cable Application Platform (OCAP) middleware solution. Which manufacturers are incorporating OCAP into their products? How many OCAP-compliant products have been deployed, and how many are in use today? What types of applications exist for OCAP? Do smaller cable systems have plans to deploy these devices and, if so, how will they do it? We seek information on the results of OCAP device trials by MSOs in select markets, and whether they are expected to lead to commercial deployments and, if so, when. We request information on industry developments to facilitate bidirectional services and interactive television (ITV) applications and services. We also request updated information on the state of the agreement between the Consumer Electronics Association and the National Cable & Telecommunications Association to incorporate support for OCAP in interactive Digital Cable Ready (iDCR) devices, and whether any technical issues remain.

61. We solicit updated information on PacketCable, the specification standard for the delivery of advanced real-time multimedia services over two-way cable plant. We also seek updated information on CableCARDS, including the number operators have placed in service, the manner in which subscribers may obtain a CableCARD, whether operators require professional installation of the card, and any monthly subscription charges or one-time fees associated with installing or authorizing the CableCARD. Have MVPDs or consumers encountered problems with CableCARDS, and how have they been resolved? We seek information on the status of operators' efforts to develop multistream and two-way CableCARDS, and the impact this development will likely have on the competitive marketplace for digital cable-ready receivers, including DVRs.

62. We request updated information on the development and deployment of any downloadable conditional access systems. We seek comment on what content protection technologies are now available, how they work, and what legal or marketplace impediments have affected the roll-out of such tools. We seek comment on what security measures are in use and the effect of the choice of such security measures on competition. We also invite comment on how the Commission can encourage the development of digital rights management technology that will promote consumer uses of, and access to, high value digital content.

63. Broadcasters continue to improve their service and offerings through enhancements to digital Vestigial Sideband Broadcasting (VSB), called Enhanced VSB (E-VSB) and Advanced VSB (A-VSB). E-VSB was approved by the American Television Standards Committee in July 2004, as an amendment to the standard that allows broadcasters to choose between bit rates and added robustness without impeding HDTV. Possible uses of the technology include applications such as robust data broadcasting to desktops, transmissions of file-based information to handheld receivers, and "fallback" audio. However, E-VSB adoption has been slow due to a lack of demand and a lack of E-VSB enabled receivers. A-VSB is another amendment being proposed to the ATSC for mobile video applications. ATSC has accepted the proposal of A-VSB, but it has not yet reached the "candidate standard" stage, which involves more exacting technical review. We request information on these and other technological advances in digital broadcasting.

64. We seek information on the effect that technical rules and standards have on the market for video programming services. Are there specific actions with respect to the establishment of technical rules and standards that the Commission may take to foster greater competition among video service providers? Do current technical rules and standards related to the provision of video services, such as the "plug-and-play" standards, provide a level playing field among competitors in the video delivery marketplace?

#### Foreign Markets

65. We seek information or case studies that address the status of competition in foreign markets for the delivery of video programming because developments in other countries can lend insight into the nature of competition in the United States. Specifically, we seek information

regarding the differences between the U.S. market and foreign markets, including differences in pricing; packaging (e.g., a la carte offerings); deployment of VoIP; the DTV transition; and competition among MVPDs or over-the-air service. We seek input from distributors operating both in the United States and abroad. How do different regulatory approaches affect their business models? Commenters also should identify any country in particular that the Commission should examine.

#### Procedural Matters

66. *Authority.* 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).

67. *Ex Parte Rules.* There are no *ex parte* or *disclosure* requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

68. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *NOI*, MB Docket No. 07-269, on or before February 27, 2009, and reply comments on or before March 27, 2009. Comments may be filed using: (a) the Commission's Electronic Comment Filing System (ECFS), (b) the Federal Government's eRulemaking Portal, or (c) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.Commission.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and

four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor 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, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

- In addition, parties must serve the following with either an electronic copy via e-mail or a paper copy of each pleading: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail at <http://www.bcpweb.com>; (2) Marcia Glauber, Media Bureau, 445 12th Street, SW., Room 2-C264, [Marcia.Glauber@fcc.gov](mailto:Marcia.Glauber@fcc.gov); and (3) Dana Scherer, Media Bureau, 445 12th Street, SW., Room 2-C222, [Dana.Scherer@fcc.gov](mailto:Dana.Scherer@fcc.gov).

People with Disabilities: Contact the Commission to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at [Commission504@Commission.gov](mailto:Commission504@Commission.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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