

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

|                                    |   |                      |
|------------------------------------|---|----------------------|
| In the Matter of                   | ) |                      |
| Annual Assessment of the Status of | ) | MB Docket No. 17-214 |
| Competition in the Market          | ) |                      |
| for the                            | ) |                      |
| Delivery of Video Programming      | ) |                      |

**COMMENTS OF COMCAST CORPORATION AND**  
**NBCUNIVERSAL MEDIA, LLC**

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**COMMENTS OF COMCAST CORPORATION AND  
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Comcast Corporation and NBCUniversal Media, LLC (collectively, “Comcast”) hereby submit comments in response to the Public Notice in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Competition in the video marketplace has never been stronger. As facilities-based MVPDs and a dizzying array of online services compete fiercely to attract and retain viewers, consumers have more video choices than ever before. New products and services are introduced on an almost-weekly basis, innovation abounds, and there continues to be explosive growth in the amount, quality, and diversity of content available to consumers. Comcast, for example, continues to deliver innovative options for customers to access video programming – in more convenient ways than ever before. Comcast continues to invest in new innovative features on Comcast’s award-winning X1 platform, and customers can also now access YouTube and Netflix content on the platform.<sup>2</sup> And Comcast has been a leader in apps-based solutions that enable customers to access their cable service on a variety of mobile devices and PCs, and is

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<sup>1</sup> *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, Public Notice, 32 FCC Red. 6654 (2017) (“Notice”).

<sup>2</sup> See Xfinity X1 Features, <https://www.xfinity.com/learn/digital-cable-tv/x1> (last visited Oct. 10, 2017).

expanding its apps to TV-based platforms like Roku and, in coming months, to Samsung and LG smart TVs.

Indeed, today's marketplace bears no resemblance to the marketplace of 1992, when cable was the dominant provider, the Internet did not even exist, and Netflix was still years away from its initial launch as a subscription DVD-by-mail service. As the video marketplace dashes into the future, Comcast welcomes and strongly encourages the Commission's ongoing efforts to eliminate or update regulations from a bygone era that unfairly burden cable operators, broadcasters, and other traditional TV providers in this competitive marketplace and that have not kept pace with rapid technological changes in the video ecosystem.

## **II. THE VIDEO MARKETPLACE IS HIGHLY COMPETITIVE**

### **A. MVPD Competition Is Thriving and the Growth of Online Video Continues To Transform the Marketplace.**

As the Commission's annual reports have well documented, the MVPD marketplace has changed dramatically over the past two decades – with the pace of change accelerating, particularly in the last five years. Competition among MVPDs (what the *Notice* refers to as “intragroup” competition) remains fierce. Traditional cable operators' share of MVPD subscribers has dropped to approximately 53 percent – down from 98 percent in 1992 – with satellite and telco video providers now serving nearly half of MVPD subscribers.<sup>3</sup> Nearly all

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<sup>3</sup> See NCTA, Then & Now: Pay TV Competition, [https://www.ncta.com/industry-data?share\\_redirect=undefined#colorbox=node-2786](https://www.ncta.com/industry-data?share_redirect=undefined#colorbox=node-2786) (last visited Oct. 9, 2017) (showing 2016 data); Comments of NCTA, MB Docket No. 16-247, at 7 (Sept. 21, 2016) (showing 1992 data). With the closing of AT&T's acquisition of DirecTV, the combined entity is now the largest MVPD in the country, with more than 25 million subscribers. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd. 568, tbl.III.A.5 (2017) (“Eighteenth Report”).

consumers today have access to at least three competing MVPDs, and many have access to four or more, each offering hundreds of networks and tens of thousands of programs.<sup>4</sup>

The *Notice* also appropriately examines “intergroup” competition between MVPDs and OVDs given the sea change in the video marketplace. As Comcast and other commenters have emphasized in the Commission’s prior annual video competition proceedings,<sup>5</sup> the tremendous and ongoing growth in online video has delivered even more choices to consumers and radically transformed the competitive landscape – and this dynamic applies with even greater force today. Online video is now commonplace, and many consumers watch online video on a daily basis, and in some cases as a complete replacement for MVPD services. Online video accounted for a staggering 79 percent of consumer Internet traffic in the United States in 2016, and will likely account for 81 percent of such traffic by 2021.<sup>6</sup> 329 billion minutes – or approximately 625,000 *years* – of video content crossed the Internet *each month* in 2016.<sup>7</sup> Over 78 percent of American consumers subscribe to one or more streaming services, and consumers spend an average of 6.58 hours per week watching online video.<sup>8</sup> As Forbes recently put it: “Television is everywhere

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<sup>4</sup> See Eighteenth Report ¶ 21, tbl.III.A.2.

<sup>5</sup> See, e.g., Reply Comments of Comcast, MB Docket No. 16-247 (Oct. 24, 2016); Comments of NCTA, MB Docket No. 16-247 (Sept. 21, 2016); Comments of AT&T, MB Docket No. 16-247 (Sept. 21, 2016); Comments of Free State Foundation, MB Docket No. 16-247 (Sept. 21, 2016).

<sup>6</sup> See Cisco, VNI Forecast Highlights Tool, [https://www.cisco.com/c/m/en\\_us/solutions/service-provider/vni-forecast-highlights.html#](https://www.cisco.com/c/m/en_us/solutions/service-provider/vni-forecast-highlights.html#) (last visited Oct. 9, 2017) (select category “2021 Forecast Highlights” for United States and expand “Internet Video”).

<sup>7</sup> See *id.* (select category “2016 Year in Review” for United States and expand “Video Traffic”).

<sup>8</sup> Limelight, The State of Online Video 2017, at 6, 17, [http://img03.en25.com/Web/LLNW/%7B66d0e66a-ac16-4c1e-9e12-d8d845f2bddf%7D\\_State\\_of\\_Online\\_Video\\_2017.pdf](http://img03.en25.com/Web/LLNW/%7B66d0e66a-ac16-4c1e-9e12-d8d845f2bddf%7D_State_of_Online_Video_2017.pdf); see also comScore, State of OTT: An In-Depth Look at Today’s Over-the-Top Content Consumption and Device Usage, June 22, 2017, <https://www.comscore.com/Insights/Presentations-and-Whitepapers/2017/State-of-OTT> (highlighting widespread usage of online video).

these days. More channels to distribute it, more screens for watching it, more formats and many more programs to choose among. This abundance is remarkable.”<sup>9</sup>

Entry into the OVD marketplace has continued at a breakneck pace over the past year. Since last year’s video competition comments were filed, “linear” OVD services like DirecTV Now,<sup>10</sup> Google’s YouTube TV,<sup>11</sup> and Hulu’s Live TV<sup>12</sup> launched, joining existing services like Sling TV,<sup>13</sup> Sony PlayStation Vue,<sup>14</sup> and fuboTV<sup>15</sup> that provide consumers access to scores of live channels, including major cable and broadcast network content. There are low barriers to

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<sup>9</sup> Scott McDonald, *In the Era of ‘Peak TV’ Is the Fall Premiere Season Still Relevant?*, Forbes, Sept. 14, 2017, <https://www.forbes.com/sites/scottmcdonald/2017/09/14/in-the-era-of-peak-tv-is-the-fall-premiere-season-still-relevant/#26f01f986da7>.

<sup>10</sup> DirecTV Now offers more than 120 live channels and 25,000 on-demand movies and shows, starting at \$35 per month, with premium channels like HBO, Cinemax, Showtime, and STARZ from \$5 per month, in addition to local CBS, ABC, Fox, and NBC channels. DirecTV Now, <https://www.directvnow.com/>. See John Archer, *AT&T Adds CBS Networks to DirecTV Now*, Forbes, Aug. 7, 2017, <https://www.forbes.com/sites/johnarcher/2017/08/07/att-adds-cbs-networks-to-directv-now/#73e945fa3d44>. Almost half a million subscribers signed up for DirecTV Now within seven months of launch. See Sarah Perez, *AT&T’s Streaming Service DirecTV Now Nears Half a Million Subscribers*, TechCrunch, July 25, 2017, <https://techcrunch.com/2017/07/25/atts-streaming-service-directv-now-nears-half-a-million-subscribers/>.

<sup>11</sup> YouTube TV offers more than 50 channels, with offers starting at \$35 per month, and offers local TV network affiliates of ABC, CBS, Fox, and NBC in almost all regions it serves. Jonathan Vanian, *YouTube’s TV Service is Now Available in These 10 New Cities*, Fortune, July 20, 2017, <http://fortune.com/2017/07/20/youtube-tv-service-google-cities/>; YouTube TV, <https://tv.youtube.com/welcome/?gaiachoice=true> (last visited Oct. 9, 2017).

<sup>12</sup> Live TV offers over 50 channels and starts at \$40 per month. It includes local affiliate programming from ABC, CBS, Fox, and NBC. See Valentina Palladino, *Hulu Debuts \$40-Per-Month Live TV Streaming Service With Over 50 Channels*, Ars Technica, May 3, 2017, <https://arstechnica.com/information-technology/2017/05/hulu-debuts-40-per-month-live-tv-streaming-service-with-over-50-channels/>; Hulu Live TV, <https://www.hulu.com/live-tv> (last visited Oct. 9, 2017).

<sup>13</sup> Sling TV has over two million subscribers and offers more than 130 channels, with offers starting at \$20/month. *Sling TV Now Has More Than 2M Subscribers, comScore says*, Fierce Cable, June 23, 2017, <http://www.fiercecable.com/cable/sling-tv-has-more-than-2m-subs-comscore-says>; Sling TV, <https://www.sling.com/> (last visited Oct. 9, 2017).

<sup>14</sup> Sony PlayStation Vue offers more than 90 channels, plus premium add-ons like Showtime and HBO, and starts at \$39.99 per month. PlayStation Vue Channels, <https://www.playstation.com/en-us/network/vue/channels/> (last visited Oct. 9, 2017).

<sup>15</sup> FuboTV initially launched in January 2015 as a soccer-focused streaming service. Earlier this year, fuboTV launched a new version of the service, which allows subscribers to watch live events from all major sports leagues and tournaments across more than 65 channels. See Jeff Baumgartner, *FuboTV Launches Beta of New, Bigger OTT-TV Service*, Multichannel News, Feb. 10, 2017, <http://www.multichannel.com/news/content/fubotv-launches-beta-new-bigger-ott-tv-service/410833>; fuboTV, <https://www.fubo.tv/welcome> (last visited Oct. 9, 2017).

entry for these providers since their services ride over the Internet, do not require the construction of last-mile distribution networks, and are also subject to little regulation.

In addition, an ever-growing number of studios, broadcast networks, sports leagues, and programming networks offer their own standalone video services online, such as CBS All Access, Showtime, HBO Now, BET Play, Starz, Noggin, Univision Now, and MLB.TV.<sup>16</sup> And Disney recently announced that it will launch two streaming services in 2018, one built around sports programming from ESPN and the other featuring Disney and Pixar movies and television shows.<sup>17</sup> These services provide access to much (and often all) of the content available through MVPDs, and in some cases provide content not available via MVPDs (including exclusive original programming or popular user-generated content). While there is some well-founded skepticism over whether obtaining programming via à la carte online services ultimately represents a good value proposition for consumers,<sup>18</sup> there can be no doubt that the current marketplace is producing an enormous amount of consumer choice and is developing rapidly on an unregulated basis.

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<sup>16</sup> SNL Kagan, *The State of Online Video Delivery*, at 4-24 (2016), <https://ofchq.snl.com/Cache/33361219DC35958165.PDF?CachePath=%5c%5cdmzdoc1%5cwebcache%24%5c&T=&O=PDF&Y=&D=>. CBS CEO Les Moonves recently noted that cord shaving benefits CBS in the form of higher margins. See John Lafayette, *Moonves: Cord-Cutting Is Positive News for Us*, *Broad. & Cable*, Sept. 14, 2017, <http://www.broadcastingcable.com/news/currency/moonves-cord-cutting-positive-news-us/168619> (“And the good news for us is if you are on a traditional MVPD, that’s great. We get paid something like \$2 plus a sub. If you go to a skinny bundle, we get something like \$4 a sub and if you go to CBS All Access we will get \$6 a sub.”).

<sup>17</sup> Brooks Barnes, *How Disney Wants to Take On Netflix With Its Own Streaming Services*, *N.Y. Times*, Aug. 8, 2017, <https://www.nytimes.com/2017/08/08/business/media/disney-streaming-service.html?mcubz=0>.

<sup>18</sup> For instance, a recent Wall Street Journal article noted that “the more entertainment companies start dividing their content into separate, and separately priced, services, the harder it could be to find what you love and the faster the costs for your household will add up.” Ben Fritz, *The Age of 1,000 Streaming Services is Upon Us – and It’s Going to Get Ugly*, *Wall St. J.*, Aug. 30, 2017, <https://www.wsj.com/articles/the-age-of-1-000-streaming-services-is-upon-us-and-its-going-to-be-ugly-1504109072>; see also Makeda Easter, *Cutting the Cord Doesn’t Necessarily Mean Cutting the Cost*, *L.A. Times*, May 20, 2017, <http://www.latimes.com/business/la-fi-tn-cord-cutting-20170520-htmlstory.html>.

Established OVDs like Amazon, Netflix, and YouTube also continue to thrive and innovate. Amazon offers online video service as part of Amazon Prime to approximately 80 million U.S. Amazon Prime subscribers (64 percent of U.S. households),<sup>19</sup> with more than 100 optional add-on à la carte subscriptions for premium networks like HBO, Showtime, and Starz, as well as specialty networks like Acorn TV, PBS Kids, and Heera.<sup>20</sup> Netflix is similarly finding new ways to grow its subscriber base and strengthen its now dominant position in the video programming marketplace. As of 2Q 2017, Netflix had 51.9 million total domestic streaming subscribers – more than the two largest MVPDs combined – and over 103.9 million globally.<sup>21</sup> T-Mobile recently announced a deal wherein T-Mobile is providing free Netflix subscriptions to new and existing T-Mobile One family plan customers.<sup>22</sup>

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<sup>19</sup> See Shep Hyken, *Sixty-Four Percent of U.S. Households Have Amazon Prime*, Forbes, June 17, 2017, <https://www.forbes.com/sites/shephyken/2017/06/17/sixty-four-percent-of-u-s-households-have-amazon-prime/#2f661aec4586>; see also Jason Del Ray & Rani Molla, Recode, *Amazon Prime is on Pace to Become More Popular than Cable TV*, July 9, 2017 (asserting that “[w]ithin a couple of years, more U.S. households could be subscribers of Amazon Prime than cable or satellite TV”).

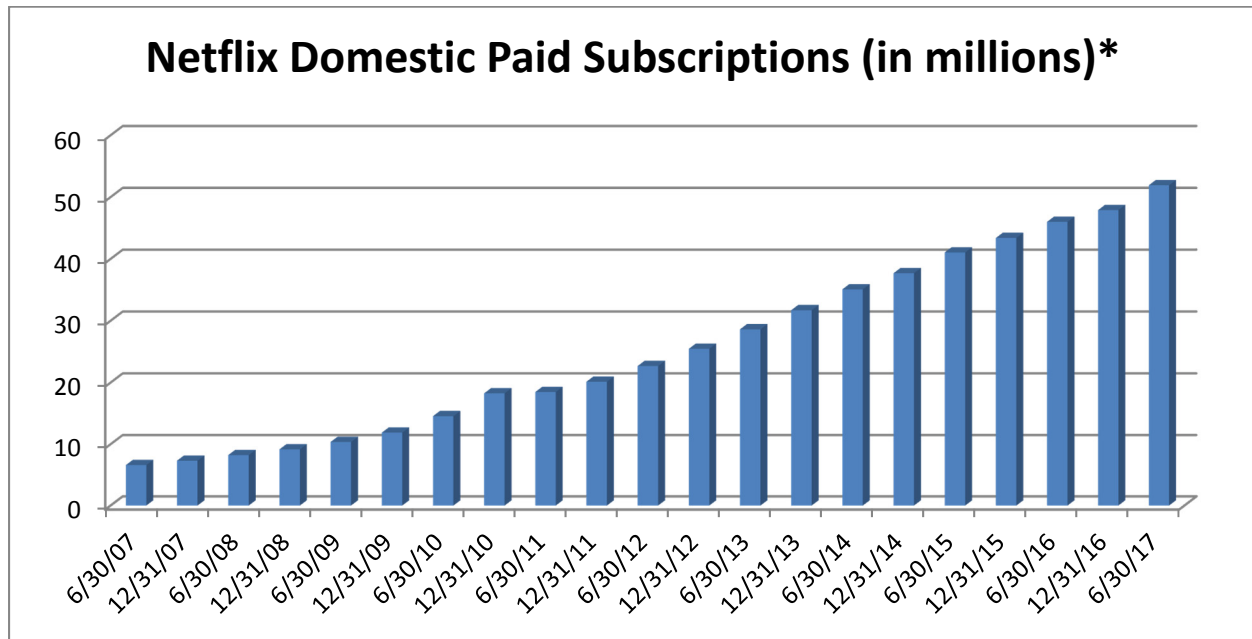
<sup>20</sup> See Amazon Video, [https://www.amazon.com/gp/video/getstarted#amazon\\_channels](https://www.amazon.com/gp/video/getstarted#amazon_channels) (last visited Oct. 9, 2017); Glenn Kenny, *Wade Into the Deep Bollywood Pool with Amazon’s Heera*, N.Y. Times, Aug. 10, 2017, <https://www.nytimes.com/2017/08/10/movies/bollywood-streaming-amazon-heera.html?mcubz=0>.

<sup>21</sup> This includes the over 50 million paid U.S. subscribers. See Netflix Inc., Quarterly Report (Form 10-Q), at 20-21 (July 19, 2017), <http://files.shareholder.com/downloads/NFLX/5095988367x0xS1065280-17-46/1065280/filing.pdf>; see also Tom Huddleston, Jr., Fortune, *Netflix Has More U.S. Subscribers Than Cable TV*, June 15, 2017 (observing that Netflix “now has more U.S. streaming subscribers (50.85 million) than the number of customers for the country’s largest cable companies”).

<sup>22</sup> See Todd Bishop, *T-Mobile to Offer Free Netflix With Wireless Family Plans in Exclusive Deal With Streaming Giant*, GeekWire, Sept. 6, 2017, <https://www.geekwire.com/2017/t-mobile-offer-free-netflix-wireless-family-plans-exclusive-deal-streaming-giant/>.



The graph below shows Netflix's growth over the last decade.



\* From 6/30/07 through 6/30/11, this figure includes subscriptions to the combined DVD and streaming package. Starting with the 12/31/11 report, this number represents only the streaming subscriptions because Netflix separated its streaming and DVD packages.

Google's YouTube continues to experience success on its "traditional" online platform, which has 1.5 billion logged-in visitors to the site each month,<sup>23</sup> while (as discussed above) also expanding its offerings to include a linear over-the-top subscription service. In addition to dedicated "channels" for well-established shows such as *The Tonight Show Starring Jimmy Fallon* (which has over 14 million subscribers) and *The Ellen Show* (over 20 million subscribers),<sup>24</sup> YouTube hosts an ever-increasing number of successful channels created by artists who have amassed large audiences through exposure on the platform, and who have

<sup>23</sup> See Lucas Matney, *YouTube has 1.5 Billion Logged-In Monthly Users Watching a Ton of Mobile Video*, TechCrunch, June 22, 2017, <https://techcrunch.com/2017/06/22/youtube-has-1-5-billion-logged-in-monthly-users-watching-a-ton-of-mobile-video/>.

<sup>24</sup> See YouTube, *The Tonight Show Starring Jimmy Fallon*, <https://www.youtube.com/user/latenight> (last visited Oct. 9, 2017); YouTube, *The Ellen Show*, <https://www.youtube.com/user/TheEllenShow> (last visited Oct. 9, 2017).

monetized that success in the form of ad revenues and network deals.<sup>25</sup> For example, after Issa Rae's show *The Misadventures of Awkward Black Girl* garnered over 20 million views on YouTube, Rae inked a deal with HBO for *Insecure*, which earned her a 2017 Golden Globes nomination for Best Actress in a TV Series – Musical or Comedy.<sup>26</sup> *Crazy Ex-Girlfriend* creator Rachel Bloom similarly rose to fame initially on YouTube, and was nominated this year for Best Actress in a TV Series – Musical or Comedy (after winning in 2016).<sup>27</sup>

## **B. The Marketplace Is Producing an Abundance of High-Quality Programming.**

Beyond lowering the barriers to entry for programmers, OVDs are also investing *billions* of dollars annually to provide original programming of their own, much of which is available exclusively on their subscription platforms. OVDs offered 93 original series in 2016 alone, up from just four in 2010.<sup>28</sup> Investment by OVDs and other tech giants in high-quality programming shows no signs of abating. Netflix announced it has a content budget of \$6 billion

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<sup>25</sup> Creators whose channels have reached more than 10,000 views can apply to the YouTube Partner Program, which allows creators to share revenues from advertisements served on their videos and from YouTube Red subscribers. YouTube, YouTube Partner Program Overview, <https://support.google.com/youtube/answer/72851?hl=en> (last visited Oct. 9, 2017); see also *These 15 YouTube Stars Make More Than Most People on TV*, TV Guide, <http://www.tvguide.com/galleries/youtube-stars-make-more-1089689/photo/c2d69c70-68c1-4ad1-9702-0cc1e709b313/> (last visited Oct. 9, 2017). In 2016, YouTube's net advertising revenues in the United States amounted to \$2.16 billion. See Statista, *Net Video Advertising Revenues of YouTube in the United States from 2015 to 2018 (in Billion U.S. Dollars)*, <https://www.statista.com/statistics/248859/youtube-us-net-video-advertising-revenues/> (last visited Oct. 9, 2017).

<sup>26</sup> Meher Tatna, *Issa Rae, Insecure – Nominee, Best Performance by an Actress in a TV Series – Musical or Comedy*, Golden Globe Awards, Jan. 6, 2017, <http://www.goldenglobes.com/articles/issa-rae-insecure-nominee-best-performance-actress-tv-series-%E2%80%93-musical-or-comedy>; *You Tube Star Issa Rae Takes Her Awkwardness to National TV*, CBS News, Oct. 5, 2016, <https://www.cbsnews.com/news/issa-rae-youtube-hbo-insecure-misadventures-of-awkward-black-girl/>.

<sup>27</sup> See Golden Globes, *Winners & Nominees 2017*, <http://www.goldenglobes.com/winners-nominees/2017/all>; Golden Globes, *Winners & Nominees 2016*, <http://www.goldenglobes.com/winners-nominees/2016/all>.

<sup>28</sup> Lesley Goldberg, *Scripted Originals Hit Record 455 in 2016, FX Study Finds*, Hollywood Reporter, Dec. 21, 2016, <http://www.hollywoodreporter.com/live-feed/scripted-originals-hit-record-455-2016-fx-study-finds-958337>.

dollars (which it expects will continue to grow),<sup>29</sup> and will produce 1,000 hours of original programming this year.<sup>30</sup> Netflix's content budget is *larger than any broadcast network* and second only to ESPN.<sup>31</sup> Hulu and Amazon have content budgets of \$2.5 billion and \$4.5 billion, respectively.<sup>32</sup> And new players are entering the race to acquire and produce original quality content as well: Facebook (which recently launched a new video service called Watch) and Apple each reportedly have content budgets of \$1 billion for the coming year.<sup>33</sup> Some of these players are also beginning to license premium sports content. For example, Amazon recently secured the rights to live stream NFL "Thursday Night Football" games, and Watch features live Major League Baseball as well as NFL highlights.<sup>34</sup>

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<sup>29</sup> Michelle Castillo, *Netflix Plans to Spend \$6 Billion on New Shows, Blowing Away All But One of Its Rivals*, CNBC, Oct. 18, 2016, <https://www.cnbc.com/2016/10/17/netflixs-6-billion-content-budget-in-2017-makes-it-one-of-the-top-spenders.html>. At a recent conference, Netflix CFO David B. Wells stated: "We've got about \$5 billion to \$6 billion of content spend, growing beyond that . . . that's going to continue to grow if we're able to continue to grow our global subscriber base like we think we can." Goldman Sachs Communacopia Conference, Tr. at 2 (Sept. 12, 2017).

<sup>30</sup> Drew Harwell, *America Has Never Had So Much TV, And Even Hollywood Is Overwhelmed*, Wash. Post, Nov. 7, 2016, <https://www.washingtonpost.com/news/the-switch/wp/2016/11/07/america-has-never-had-so-much-tv-and-even-hollywood-is-overwhelmed/>.

<sup>31</sup> See JJ Kinahan, *Netflix Earnings Preview: Subscriber Growth and Content Costs in Focus*, Forbes, Apr. 17, 2017, <https://www.forbes.com/sites/jjkinahan/2017/04/17/netflix-earnings-preview-subscriber-growth-and-content-costs-in-focus/#798e5f875b0a>. Analysts project Netflix will surpass ESPN's estimated \$7.3 billion spend in 2018. See Deana Myers, *Apple Aims to Compete with Netflix, Amazon on a \$1B Content Budget*, SNL Kagan, Aug. 16, 2017, <https://www.snl.com/web/client?auth=inherit#news/article?id=41691543&KeyProductLinkType=2> (predicting Netflix's budget to be \$8.22 billion in 2018); *Exclusive: Netflix to Overtake ESPN in 2018 With the Biggest Budget in Television*, SportsFacts, June 6, 2017, <https://sportfacts.org/exclusive-netflix-to-overtake-espn-in-2018-with-the-biggest-budget-in-television/>.

<sup>32</sup> See Todd Spangler, *Hulu to Spend \$2.5 Billion on Content in 2017*, Variety, Sept. 14, 2017, <http://variety.com/2017/digital/news/hulu-2017-content-spending-2-5-billion-1202558912/>; Alyssa Newcomb, *2017 Emmy Awards: Hulu's Big Win Spotlights Future of Digital*, NBC News, Sept. 18, 2017, <https://www.nbcnews.com/tech/tech-news/2017-emmy-awards-hulu-s-big-win-spotlights-future-digital-n801821>.

<sup>33</sup> See Todd Spangler, *Apple Sets \$1Billion Budget for Original TV Shows, Movies*, Variety, Aug. 16, 2017, <http://variety.com/2017/digital/news/apple-1-billion-original-tv-shows-movies-budget-1202529421/>; Deepa Seetharaman, *Facebook Is Willing to Spend Big in Video Push*, Wall St. J., Sept. 8, 2017, <https://www.wsj.com/articles/facebook-is-willing-to-spend-big-in-video-push-1504863181>.

<sup>34</sup> See Sarah Perez, *The NFL Partners with Facebook to Distribute Game Highlights and Recaps on the Social Network*, Sept. 26, 2017, <https://techcrunch.com/2017/09/26/the-nfl-partners-with-facebook-to-distribute-game-highlights-and-recaps-on-the-social-network/>; see also Todd Spangler, *Amazon's Big NFL Play Could Kick Off a Shake-Up in TV Sports Rights*, Variety, Sept. 26, 2017, <http://variety.com/2017/digital/news/amazon-nfl-thursday->

In addition to the exclusivity they maintain with respect to their originally produced programming, OVDs like Netflix and Amazon also typically license programming on an exclusive subscription-VOD (“SVOD”) basis that is first shown on broadcast and cable networks (or in movie theaters). These licensing models differentiate OVDs from each other and from MVPDs, which typically do not have exclusives and whose exclusive arrangements may be subject to regulation. For example:

- Netflix has secured exclusive rights to hit shows such as *Quantico* (ABC), *Better Call Saul* (AMC), *The Good Place* (NBC), *American Crime Story* (FX), and many others.<sup>35</sup>
- Amazon Prime has secured exclusive rights to *Mr. Robot* (USA), *The Americans* (FX), *Vikings* (History Channel), *Dr. Who* (BBC America), children’s shows from PBS Kids, and dozens of others.<sup>36</sup>
- Hulu has secured exclusive rights to *Empire* (Fox), *Black-ish* (ABC), a number of FX shows and miniseries (including the award-winning *Atlanta*), *Fear The Walking Dead* (AMC), and the *Seinfeld* library, among many others.<sup>37</sup>

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[night-football-sports-rights-1202570293/](https://www.latimes.com/sns-bc-fbn--nfl-amazon-20170927-story.html); Josh Dubow, *NFL’s Amazon Deal Could Be Test For More Streaming Games*, L.A. Times, Sept. 27, 2017, [http://www.latimes.com/sns-bc-fbn--nfl-amazon-20170927-story.html](https://www.latimes.com/sns-bc-fbn--nfl-amazon-20170927-story.html). Watch also features both short form and longer shows from content providers such as Vox, BuzzFeed, Discovery, A&E Networks, and ABC. See Jessica Toonkel, *Facebook’s Watch Goes Up Against YouTube for Ad Dollars*, Reuters, Aug. 31, 2017, <https://www.reuters.com/article/us-facebook-television/facebook-watches-watch-goes-up-against-youtube-for-ad-dollars-idUSKCN1BB1P9>.

<sup>35</sup> Netflix Media Center, Only On Netflix, <https://media.netflix.com/en/only-on-netflix/#/all?page=2> (last visited Oct. 9, 2017); Natalie Jarvey, *Quantico, American Crime to Stream on Netflix in Exclusive Deal*, Hollywood Reporter, Aug. 23, 2016, <http://www.hollywoodreporter.com/live-feed/quantico-american-crime-stream-netflix-921941>; Kim Masters, *The Netflix Backlash: Why Hollywood Fears a Content Monopoly*, Hollywood Reporter, Sept. 14, 2016, <http://www.hollywoodreporter.com/node/928428>. Netflix also recently reached an exclusive deal with Shonda Rhimes, creator of several hit shows including *Grey’s Anatomy*, *Scandal*, and *How to Get Away with Murder*. See Trey Williams, *Netflix wants exclusive rights to films, TV shows and the talent creating them*, Market Watch, Aug. 19, 2017, <http://www.marketwatch.com/story/netflix-wants-exclusive-rights-to-films-tv-shows-and-the-talent-creating-them-2017-08-16>.

<sup>36</sup> Amazon, *Prime Originals and Exclusives*, <https://www.amazon.com/b?node=6938769011> (last visited Oct. 9, 2017).

<sup>37</sup> See Michael Schneider, *Every Seinfeld Ever Is Coming to Hulu, As Part of the Streaming Service’s Big Spending Spree*, TV Insider, Apr. 29, 2015, <http://www.tvinsider.com/article/1579/every-seinfeld-ever-is-coming-to-hulu-as-part-of-the-streaming-services-big-spending-spree/>; Nellie Andreeva, *Hulu Nabs SVOD Rights to ABC Comedy ‘Black-Ish’*, Deadline Hollywood, Jan. 7, 2017, <http://deadline.com/2017/01/hulu-blackishb-svod-rights-abc-comedy-1201880521/>; Joe Otterson, *Donald Glover’s ‘Atlanta’ to Stream on Hulu*, Variety, May 3, 2017, <http://variety.com/2017/tv/news/atlanta-donald-glover-hulu-1202407669/>.

And some OVDs, like Netflix, reportedly even go so far as to dis-incentivize programmers that license prior seasons of popular series to the OVDs from licensing to MVPDs full current seasons of those same series for those MVPDs' on-demand platforms.<sup>38</sup> As these licensing relationships have matured and OVDs increasingly create their own content, traditional content companies have begun to reexamine whether licensing their best content to third-party SVOD services on an exclusive basis – especially those that do not yield any advertising revenue – still makes sense strategically.<sup>39</sup>

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<sup>38</sup> See Keach Hagey & Shalini Ramachandran, *Hulu Steps Up Its Fight Against Netflix*, Wall St. J., June 16, 2015, <http://www.wsj.com/articles/hulu-steps-up-its-fight-against-netflix-1434497311>; Nellie Andreeva, *In-Season Stacking Rights – The New Upfront Battleground: Pilot Season 2016*, Deadline, May 12, 2016, <http://deadline.com/2016/05/in-season-stacking-rights-upfronts-pilot-season-2016-powerless-lethal-weapon-nbc-abc-1201754408/>.

<sup>39</sup> At a recent investor call, 21st Century Fox CEO James Murdoch noted that Netflix's growing ability to enter into "monolithic, global exclusive deals" is "troublesome" to the strategy of making more content broadly available. See 21st Century Fox Inc. Earnings Call, Tr. at 9 (Aug. 9, 2017); see also Lucas Shaw, *Netflix's Biggest Critic Responds With His Own Paid Service*, Bloomberg, Sept. 25, 2017, <https://www.bloomberg.com/news/articles/2017-09-25/netflix-s-biggest-critic-responds-with-a-paid-service-of-his-own> ("FX Networks Chief Executive Officer John Landgraf created FX+ so customers could watch all his shows on demand without decamping for Hulu, Amazon and Netflix . . . [Netflix], which will spend \$7 billion on programming next year, could turn into a monopoly whose concentration of power would damage the TV business . . . 'We shouldn't be licensing exclusively,' Landgraf said in an interview."); Michelle Castillo, *Disney Will Pull Its Movies From Netflix and Start Its Own Streaming Services*, CNBC, Aug. 8, 2017, <https://www.cnbc.com/2017/08/08/disney-will-pull-its-movies-from-netflix-and-start-its-own-streaming-services.html>.

The table below illustrates the dramatic growth of online video since 2010.

|   | <b><u>2010</u></b> | <b><u>Today</u></b> |
|---|--------------------|---------------------|
| <b>SVOD subscriptions<sup>40</sup></b>  | 24.4 million       | 143.9 million       |
| <b>Scripted original series on OVDs<sup>41</sup></b>                          | 4                  | 93                  |
| <b>Primetime Emmy Nominations (wins) for OVDs<sup>42</sup></b>                | 0 (0)              | 125 (32)            |
| <b>Consumers streaming on-demand content at least once a day<sup>43</sup></b> | 30%                | 50%                 |
| <b>Online video as a percent of Internet traffic<sup>44</sup></b>             | 40%                | 67%                 |

### C. MVPDs and Programmers Are Responding to Robust Competition By Innovating and Improving Their Services.

Amidst robust competition among traditional providers and increasing competitive pressures from OVDs, MVPDs and traditional programmers must innovate and invest in cutting-edge products and services in order to attract new customers and retain existing ones. For

<sup>40</sup> Figures reflect subscriptions for Netflix, Amazon Prime, and Hulu's SVOD service. See Toni Fitzgerald, *Pay Cable vs. SVOD: How They Stack Up*, Media Life, Jan. 28, 2016, <http://www.medialifemagazine.com/pay-cable-vs-svod-stack/>; Netflix Inc., Quarterly Report (Form 10-Q), at 20-21 (July 19, 2017), <http://files.shareholder.com/downloads/NFLX/5095988367x0xS1065280-17-46/1065280/filing.pdf>; Shep Hyken, *Sixty-Four Percent of U.S. Households Have Amazon Prime*, Forbes, June 17, 2017, <https://www.forbes.com/sites/shephyken/2017/06/17/sixty-four-percent-of-u-s-households-have-amazon-prime/#2f661aec4586>; Mike Farrell, *Study: Hulu Subs More Likely to Cut Cord*, Multichannel News, June 23, 2017, <http://www.multichannel.com/news/distribution/study-hulu-subs-more-likely-cut-cord/413660>.

<sup>41</sup> See Nellie Andreeva, *FX's Peak TV Update: Scripted Original Series Grow to 454 in 2016; End Still in Sight*, Deadline, Jan. 12, 2017, <http://deadline.com/2017/01/fx-scripted-original-series-grow-2016-peak-tv-1201884048/>.

<sup>42</sup> Figures include only the following OVDs: Netflix, Amazon Prime, and Hulu. See Press Release, Television Academy, *Complete Listing of 69<sup>th</sup> Emmy Awards Winners*, Sept. 17, 2017, <http://www.emmys.com/sites/default/files/press/69th-emmy-winners-v1.pdf>; Emily Yahr & Bethonie Butler, *'Saturday Night Live' and 'Westworld' lead Emmy Nominations with 22 Nods*, Wash. Post, July 13, 2017, [https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/07/13/emmy-nominations-2017-complete-coverage/?utm\\_term=.daa7e8397ac3](https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/07/13/emmy-nominations-2017-complete-coverage/?utm_term=.daa7e8397ac3).

<sup>43</sup> These figures reflect data points from 2011 and 2015. See Ericsson, *TV and Media 2015*, at 3 (Sept. 2015), <http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-tv-media-2015.pdf>.

<sup>44</sup> Data represents global traffic. See Press Release, Cisco, *Cisco Visual Networking Index Predicts Global Annual IP Traffic to Exceed Three Zettabytes by 2021* (June 8, 2017), <https://newsroom.cisco.com/press-release-content?type=webcontent&articleId=1853168>; Cisco Virtual Networking Index (2009-2014), [http://large.stanford.edu/courses/2010/ph240/abdul-kaf1/docs/white\\_paper\\_c11-481360.pdf](http://large.stanford.edu/courses/2010/ph240/abdul-kaf1/docs/white_paper_c11-481360.pdf). As discussed *supra* Section II.A, online video's percentage of traffic in the United States today is even higher, at 79%.



example, Comcast continuously seeks ways to make it as convenient as possible for customers to access their favorite video content on the device of their choice.<sup>45</sup> Comcast recently announced the nationwide launch of YouTube on the Emmy-award winning Xfinity X1 platform, which allows viewers to access YouTube videos on their Comcast X1 set-top box, alongside the live, on-demand, DVR, and other web programming that is already included with the Xfinity TV subscription.<sup>46</sup> This follows last year's launch of Netflix on millions of X1 devices across the country.<sup>47</sup> Comcast also is in the process of integrating Sling TV onto the X1 platform.<sup>48</sup>

Apps are also revolutionizing the way Comcast and other video providers deliver content to their customers. As the Government Accountability Office concluded in a recent report, "the market has evolved in recent years and provided consumers with expanded choices for video services and for devices to access such services."<sup>49</sup> Comcast has been at the forefront of these

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<sup>45</sup> See Mike Farrell, *Smooth Operator*, Multichannel News, Sept. 25, 2017, <http://www.multichannel.com/smooth-operator/415464> (describing Comcast's "continued focus on innovation" as "a key part of Comcast's success," and noting that Comcast strives to "provide elegant, easy solutions to customer problems even before subscribers know they are problems. For example, as the TV audience became more and more fragmented and finding shows grew more difficult, X1 provided a user interface that made it easier to navigate through the thousands of linear and on-demand content choices. Later, X1 added a voice remote, which made navigation even easier.").

<sup>46</sup> Press Release, Comcast Corp., *Comcast Debuts Integrated YouTube App on Xfinity X1* (Sept. 12, 2017), <http://corporate.comcast.com/news-information/news-feed/x1-youtube-app>.

<sup>47</sup> Press Release, Comcast Corp., *Comcast to Launch Netflix on X1 to Customers Nationwide* (Nov. 4, 2016), <http://corporate.comcast.com/news-information/news-feed/comcast-to-launch-netflix-on-x1-to-millions-of-customers-nationwide>.

<sup>48</sup> Press Release, Comcast Corp., *Comcast Boosts Multicultural Programming with the Launch of Sling TV on X1* (Nov. 22, 2016), <http://corporate.comcast.com/news-information/news-feed/sling-tv-to-launch-on-comcast-x1-platform>. Comcast continues its commitment to offering customers high quality, diverse programming. Comcast offered more than 16,000 hours of diverse on-demand and online programming in 2016 (a 1,905 percent increase in on-demand hours and a 1,462 percent increase in online hours since year-end 2010) and continues to expand the quality and quantity of diverse programming available on its Xfinity platforms. See 3BL Media, *Comcast NBCUniversal Publishes 2017 D&I Report*, July 14, 2017, <http://3blmedia.com/News/Comcast-NBCUniversal-Publishes-2017-DI-Report>; 2017 Diversity & Inclusion Report, Comcast, at 17, 19, <http://diversity.comcast.com/>.

<sup>49</sup> Government Accountability Office, Report to Congressional Requesters, Video Programming – FCC Should Conduct Additional Analysis to Evaluate Need for Set-Top Box Regulation, at 21 (Sept. 2017), <https://www.gao.gov/assets/690/687512.pdf>.

market-driven efforts. Like other MVPDs and OVDs, Comcast utilizes apps-based solutions to enable customers to access their video programming on mobile devices and PCs without the need for a Comcast-supplied set-top box. Since January 2016, Comcast's Stream TV app has been downloaded over 13 million times to iOS and Android mobile devices. Customers can also access their cable service on their PCs via the Stream TV portal.

Comcast is expanding this apps-based experience to TV-based video platforms as well. Earlier this year, Comcast launched the Xfinity app for Roku, which gives customers access to their Xfinity TV cable services – including linear, VOD, and cloud DVR programming – on their TVs via a Roku streaming player or directly on a Roku TV using an Xfinity app.<sup>50</sup> And, as part of its Xfinity TV Partner Program, Comcast has been working with Samsung and LG to make a standards-based HTML5/EME<sup>51</sup> app available on their smart TVs, with the goal of adding more partners over time.<sup>52</sup>

For Internet customers interested in subscribing to a skinny add-on cable package, Comcast just launched Xfinity Instant TV. The service provides an easy-to-use way for consumers to stream local broadcast and other basic channels to their computers, Rokus, and mobile devices without any Comcast-supplied set-top box. Beyond these options for accessing

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<sup>50</sup> Andrew Ferrone, *Xfinity TV App for Select Roku Devices Begins Beta Trial*, Roku Blog, Sept. 11, 2017, <https://blog.roku.com/xfinity-tv-app-for-select-roku-devices-begins-beta-trial>.

<sup>51</sup> The World Wide Web Consortium (W3C) recently published EME as a recommended standard, and noted that the standard “offers a better user experience [and] bring[s] greater interoperability, privacy, security and accessibility to viewing encrypted video on the Web.” See Press Release, W3C, *W3C Publishes Encrypted Media Extensions (EME) as a W3C Recommendation* (Sept. 18, 2017), <http://www.w3.org/2017/09/pressrelease-eme-recommendation.html.en>.

<sup>52</sup> See Press Release, Comcast Corp., *Comcast Launches Xfinity TV Partner Program; Samsung First TV Partner to Join* (Apr. 20, 2016), <http://corporate.comcast.com/news-information/news-feed/comcast-launches-xfinity-tv-partner-program-samsung-first-tv-partner-to-join>; Press Release, Comcast Corp., *Comcast and LG Partner to Provide Xfinity Customers Access To Their Xfinity TV Subscription on LG TVs* (Sept. 25, 2017), <http://corporate.comcast.com/news-information/news-feed/comcast-and-lg-partner-to-provide-xfinity-customers-access-to-their-xfinity-tv-subscription-on-lg-tvs>.



cable service, Comcast also provides access to its own “TV Everywhere” Internet-based content on iOS and Android devices and PCs, and authenticates Internet-based apps from over 100 programming networks, such as HBO GO and Showtime Anytime, across more than 20 device platforms.

Other MVPDs are likewise responding to this highly competitive environment by innovating and delivering higher quality services to customers. They are developing new service bundles,<sup>53</sup> “skinny” bundles,<sup>54</sup> and bundles targeted to broadband-only customers,<sup>55</sup> deploying apps on a variety of retail devices,<sup>56</sup> and taking other measures to differentiate themselves in a marketplace with an ever-growing array of video providers and content options. Programmers are similarly responding to competition by increasing their investment in high-quality programming and developing new offerings. FX, for example, launched an upgraded subscription service featuring commercial-free viewing for current seasons of every FX and FXX

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<sup>53</sup> For example, AT&T now offers a DirecTV Now and AT&T wireless plan bundle, in addition to the new satellite TV, wireless, and Internet bundles it began offering following its acquisition of DirecTV. See Sarah Perez, *AT&T Makes DirecTV Now A \$10 Add-On to Its Unlimited Choice Plan*, June 2, 2017, <https://techcrunch.com/2017/06/02/att-makes-directv-now-a-10-add-on-to-its-unlimited-choice-plan/>; Carrie Mihalcik, *AT&T Tries to Sweeten DirecTV Bundles*, CNET, Apr. 11, 2016, <https://www.cnet.com/news/at-t-tries-to-sweeten-directv-bundles/>; DirecTV Now, <https://www.directvnow.com/> (last visited Oct. 9, 2017).

<sup>54</sup> Verizon’s “skinny” pay TV bundle, Custom TV, for example, starts at \$64.99 per month for standalone, or \$79.99 per month for a triple-play package, with three genre-specific packages available for an extra \$6 per month each. See *Fios Custom TV*, Verizon, <http://verizonspecials.com/verizon-fios-tv/custom> (last visited Oct. 9, 2017). Dish’s Flex Pack skinny bundle starts at \$34.99 per month for a core package of approximately 50 channels and the choice of one of nine themed channel packs, plus optional premium a la carte add-on channels. See *Dish, Flex Pack*, <https://www.mydish.com/flex-pack> (last visited Oct. 9, 2017).

<sup>55</sup> Charter’s Spectrum TV IP cable service is available to broadband-only customers in select areas for \$29.99 per month. See *Spectrum TV from Charter*, Charter, <https://www.charter.com/browse/content/tv> (last visited Oct. 9, 2017). Charter has also been trialing Spectrum TV Stream, a sports-free IP-delivered bundle starting at \$19.95 per month. See Jeff Baumgartner, *Charter Tests Sports-Free Skinny Bundle*, Multichannel News, June 29, 2017, <http://www.multichannel.com/news/content/charter-tests-sports-free-skinny-bundle/413783>.

<sup>56</sup> More than 460 million IP-enabled retail devices in the U.S. market today support one or more MVPD apps. NCTA, *The Future of TV is Apps*, <https://www.ncta.com/positions/the-future-of-tv-is-apps> (last visited Oct. 9, 2017).

original series and every season of many current and legacy library titles of FX originals.<sup>57</sup>

Cable networks offered nearly *five times* more original series in 2016 than in 2002.<sup>58</sup> In total, there were a record 455 scripted series across broadcast networks, cable networks, and OVD services in 2016, up from 182 in 2002,<sup>59</sup> and that number is expected to exceed 500 this year.<sup>60</sup>

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In light of the foregoing, the Commission should conclude in its report to Congress that the MVPD and broader video marketplace are robustly competitive and that consumers, as the main beneficiaries of this dynamic marketplace, have more distribution, programming, and device options than ever before.

### **III. THE COMMISSION SHOULD ELIMINATE OUTDATED LEGACY REGULATIONS THAT ARE NO LONGER NECESSARY IN TODAY'S HIGHLY COMPETITIVE VIDEO MARKETPLACE**

Despite the dramatic and ongoing changes in the marketplace over the past 25 years, the cable industry remains subject to numerous outdated regulations that impose unnecessary and inequitable costs and burdens on providers that are inevitably passed onto consumers. In today's highly competitive marketplace, regulations that apply to MVPDs alone – or only to cable

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<sup>57</sup> See Press Release, Comcast Corp., *FX Networks Partners With Comcast to Launch a New Television Service on September 5th* (Aug. 7, 2017), <http://corporate.comcast.com/news-information/news-feed/fx-networks-new-service>.

<sup>58</sup> See Lesley Goldberg, *Scripted Originals Hit Record 455 in 2016, FX Study Finds*, Hollywood Reporter, Dec. 21, 2016, <http://www.hollywoodreporter.com/live-feed/scripted-originals-hit-record-455-2016-fx-study-finds-958337>.

<sup>59</sup> See Lesley Goldberg, *Scripted Originals Hit Record 455 in 2016, FX Study Finds*, Hollywood Reporter, Dec. 21, 2016, <http://www.hollywoodreporter.com/live-feed/scripted-originals-hit-record-455-2016-fx-study-finds-958337>. For its part, NBCUniversal received 86 Emmy nominations and 16 wins at this year's Emmy for popular shows like *This Is Us* and *Hairspray Live!* See Press Release, Comcast Corp., *Emmys 2017: NBCUniversal Receives 86 Nominations* (July 13, 2017), <http://corporate.comcast.com/news-information/news-feed/emmys-2017-nbcuniversal-receives-86-nominations>; Press Release, NBCUniversal, *NBCUniversal Wins 16 Emmy Awards* (Sept. 18, 2017), <http://www.nbcuniversal.com/article/nbcuniversal-wins-16-emmy-awards>.

<sup>60</sup> See Scott McDonald, *In the Era of 'Peak TV' Is the Fall Premiere Season Still Relevant?*, Forbes, Sept. 14, 2017, <https://www.forbes.com/sites/scottmcdonald/2017/09/14/in-the-era-of-peak-tv-is-the-fall-premiere-season-still-relevant/#26f01f986da7>.

operators – distort competition by benefiting unregulated competitors, which (as demonstrated above) are hardly in need of any advantages in competing to provide programming to consumers. The same can be said for many of the decades-old regulations that apply to the broadcast industry. Comcast commends the Commission for opening the Media Modernization Initiative proceeding to examine and eliminate legacy regulations that have outlived their utility or require updating in light of marketplace changes,<sup>61</sup> and encourages the Commission to act promptly on proposals made in that proceeding.

For example, as NCTA and other commenters pointed out, cable operators remain subject to a blizzard of costly and burdensome notice obligations,<sup>62</sup> many of which require operators to deliver notices via snail mail. Needless to say, in a world where consumers typically use e-mail and other electronic means to communicate, such horse-and-buggy era regulations make no sense. Comcast strongly urges the Commission to minimize the number of required notices and permit cable operators to use electronic means to correspond with customers and provide notices.<sup>63</sup> The number of required notices to cable customers has proliferated over the years, and allowing operators to use mainstream technology to communicate with customers would be more efficient and effective in many instances.<sup>64</sup>

Likewise, given the dynamic growth of content and distribution platforms in today's marketplace, the Commission should reexamine legacy regulations adopted when cable was

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<sup>61</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd. 4406 (2017).

<sup>62</sup> See, e.g., Comments of NCTA, MB Docket No. 17-105, at 4-11 (July 5, 2017); Comments of ACA, MB Docket No. 17-105, at 18-26 (July 5, 2017).

<sup>63</sup> See Comments of NCTA, MB Docket No. 17-105, at 4-11 (July 5, 2017).

<sup>64</sup> See *id.*

considered a monopoly bottleneck for video distribution.<sup>65</sup> That world is long gone. As detailed above, MVPD competition continues to mount, and OVDs are massive players in the video ecosystem that are increasingly viewed by certain consumers as substitutes for traditional pay TV services. Yet while cable operators are subject to a raft of legacy regulations that constrain investment and innovation – everything from program access, program carriage, and leased access rules, to various reporting and technical regulations – OVDs face almost no Commission regulations. Comcast welcomes Chairman Pai’s commitment to address at least one outdated regulation per month, and urges that particularly costly and burdensome regulations, such as those relating to notices, be moved to the top of the list for reform and removal.

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<sup>65</sup> See *id.* at 11-20.

#### IV. CONCLUSION

For the foregoing reasons, the Commission should conclude in its video competition report that today's MVPD and broader video marketplace is highly competitive and act promptly to eliminate or update antiquated and costly legacy regulations that harm competition and innovation and do not serve consumers.

Respectfully submitted,

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