

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

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 16-247
Competition in the Market for the)	
Delivery of Video Programming)	

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

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Comcast Corporation and NBCUniversal Media, LLC (collectively, “Comcast”) hereby reply to comments submitted in response to the Public Notice in the above-captioned proceeding.¹ The record confirms that today’s video marketplace is more vibrant and competitive than ever, driven not only by robust competition among traditional multichannel video programming distributors (“MVPDs”), but also by the enormous growth of online video. Accordingly, Comcast urges the Commission to eliminate legacy regulations that were intended for a bygone era when cable was the dominant video provider and the Internet did not even exist. These unique regulatory burdens are entirely unnecessary and encumber only certain competitors in today’s dynamic and hyper-competitive video marketplace at a time when the need for service providers to have the flexibility and agility to innovate is more critical than ever.

¹ *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, Public Notice, 31 FCC Rcd. 8796 (2016).

I. THE RECORD MAKES CLEAR THAT THE VIDEO MARKETPLACE IS HIGHLY COMPETITIVE, AND THAT THE GROWTH OF ONLINE VIDEO CONTINUES TO TRANSFORM THE MARKETPLACE.

The comments filed in this proceeding only confirm what the Commission itself has found: “the MVPD market has undergone a fundamental transformation.”² As NCTA remarked, it is by now a “foregone conclusion” that “[v]igorous, flourishing competition continues to be the hallmark of today’s market for the delivery of video [programming].”³ Evidence of the dramatic changes in the video marketplace abounds. For over two decades, consumers nationwide have been able to choose from among several competing MVPDs,⁴ with incumbent cable operators’ share of MVPD customers steadily declining – down to 52.4% of subscribers in 4Q 2015 from 98% in 1992.⁵ And this competition has fostered an explosion in the number of programming offerings consumers have to choose from: hundreds of linear channels (in both SD and HD) to thousands of on-demand titles to millions of online video and TV Everywhere choices.⁶ Of particular note with respect to traditional programming networks, vertical integration between cable operators and national programming networks, which “was the norm when the

² Brief of Respondents at 11, *Nat’l Ass’n of Telecomms. Officers & Advisors v. FCC*, No. 15-1295 (D.C. Cir. Feb. 2, 2016) (“FCC Effective Competition Brief”); see also *Amendment to the Commission’s Rules Concerning Effective Competition, Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd. 6574 ¶ 9 (2015). In defending its *Effective Competition Order* before the D.C. Circuit, the Commission emphasized that “[t]he evidence is undisputed that MVPD competition has greatly increased nationwide” since the 1992 Cable Act was adopted. FCC Effective Competition Brief at 32.

³ NCTA Comments at 1.

⁴ Ninety-nine percent of consumers today can choose from at least three MVPDs, and many consumers have access to four or five MVPDs. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventeenth Report, 31 FCC Rcd. 4472 ¶ 20 tbl.III.A.2 (2016). 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, and DBS and telco MVPDs now serve almost half of all MVPD subscribers. See Ian Olgeirson et al., *Q2 Video Losses Mount in Seasonally Soft Quarter*, SNL Kagan, Aug. 10, 2016, <https://www.snl.com/InteractiveX/article.aspx?Id=37377257&KPLT=2>; see also NCTA Comments at 8.

⁵ See NCTA Comments at 7; see also AT&T Comments at 2; Free State Foundation Comments at 1-3.

⁶ See NCTA Comments at 10-12; see also AT&T Comments at 2-3.

Commission began conducting these annual inquiries almost a quarter century ago . . . , [has] been reduced to . . . a level that poses no competitive concerns.”⁷

Critically, the record underscores that the tremendous – and ongoing – growth in online video is further transforming the competitive landscape for the distribution for video programming. Online video distributors (“OVDs”) are providing consumers with an extensive array of new options for accessing video programming.⁸ According to one report, 59% of U.S. households have a subscription to at least one OVD service.⁹ Fifty percent of consumers stream on-demand video at least once a day, and consumers spend an average of six hours per week streaming on-demand video.¹⁰

Netflix has strengthened as a force in the video marketplace.¹¹ As shown in the graph below, Netflix has grown rapidly over the last decade. As of 3Q 2016, it now has 47.5 million

⁷ NCTA Comments at 2; *see also id.* at 12-13 (noting that the level of vertical integration is now barely 9% of all national networks).

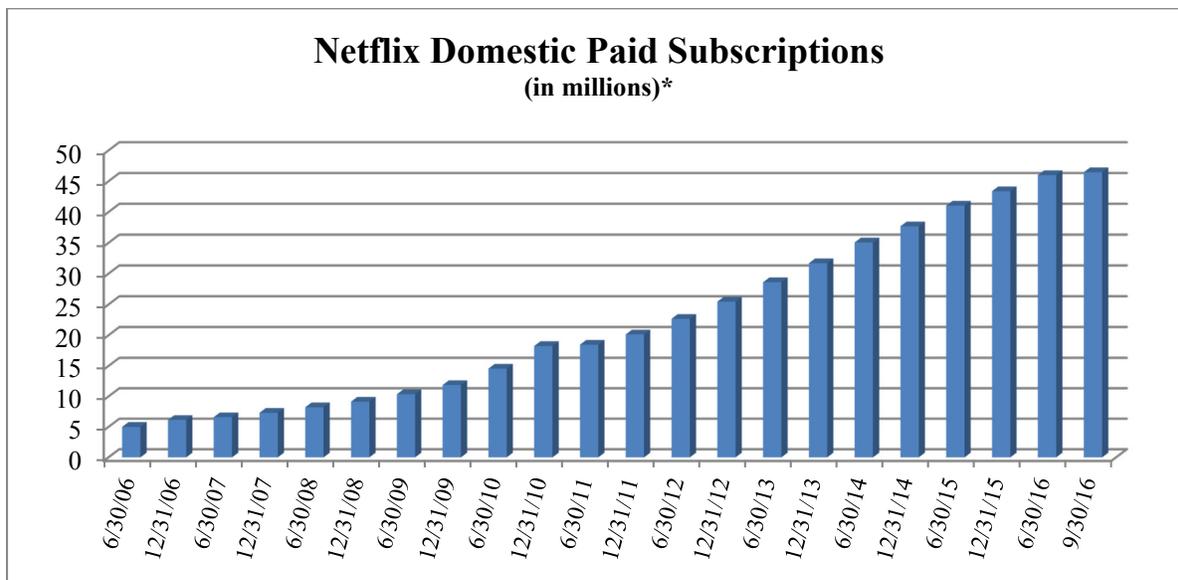
⁸ AT&T Comments at 1 (“Not only are consumers the beneficiaries of fierce competition among traditional MVPDs . . . , consumers are embracing an ever-expanding choice of over-the-top (OTT) offerings that are increasingly competing with traditional pay TV plans.”); NCTA Comments at 1-2, 10-13 (“MVPDs are no longer consumers’ only supplier of video programming other than their local over-the-air broadcast stations, nor are they the only means by which non-broadcast programming can reach viewers.”); Free State Foundation Comments at 2, 6 (“[T]he *Seventeenth Report* clearly identified the increasing popularity of [OVD] services. . . . Data and analysis in the *Seventeenth Report* revealed the potency of OVD competition with MVPD services.”).

⁹ *See* Press Release, Leichtman Research Group, Inc., 59% of U.S. Households Have an SVOD Service, July 20, 2016, <http://www.leichtmanresearch.com/press/072016release.html>. Indeed, online video accounted for a staggering 76% of consumer Internet traffic in North America in 2015, and will likely account for 85% of all U.S. Internet traffic by 2020. *See* Cisco, VNI Complete Forecast Highlights Tool, http://www.cisco.com/c/m/en_us/solutions/service-provider/vni-forecast-highlights.html# (last visited Oct. 24, 2016).

¹⁰ *See* Ericsson, TV and Media 2015, at 3 (2015), <http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-tv-media-2015.pdf>.

¹¹ *See* Kim Masters, *The Netflix Backlash: Why Hollywood Fears a Content Monopoly*, Hollywood Reporter, Sept. 14, 2016, <http://www.hollywoodreporter.com/node/928428> (“Studios and cable channels fret that the company . . . is sucking up so many eyeballs and bidding up prices for programming so high that they won’t be able to compete. And agents worry that as Netflix elbows out competing buyers, the company’s growing insistence on buying up all rights to its original programming around the world will do away with the profit participations that on breakout shows (such as *Modern Family*) provide steady income in an unsteady industry.”); Frank Rose, *We’re All Cord Cutters Now*, Wall St. J., Sept. 6, 2016, <http://www.wsj.com/articles/were-all-cord-cutters-now-1473203919> (“Amazon, Apple and Netflix have built powerful online distribution platforms that offer a vast array of choices,

total domestic streaming subscribers – almost twice the number as the largest MVPD – and over 86 million globally.¹²



*Starting with the 6/30/11 report, this number represents only the streaming subscriptions. For reports prior to that date, this number represents subscriptions to the combined DVD and streaming package.

Other established OVDs like Amazon, Hulu, and YouTube are experiencing similar success and launching innovative new service offerings. Amazon offers online video service as part of Amazon Prime to approximately 54 million U.S. Prime subscribers, and now also offers subscribers add-on à la carte subscriptions for Showtime, AMC, Starz, and other networks.¹³

Amazon also provides a standalone Prime Video subscription option for \$9 a month.¹⁴ Hulu

accommodate self-produced work, command overwhelming market share and deliver specific feedback about everything users do. Conventional media companies don't have access to most of this data, and they won't be able to compete in the environment it is creating – at least, not without radical change, both in organizational structure and in mindset.”).

¹² This includes 46.48 million paid U.S. subscribers and 83.28 million total paid subscribers. *See* Netflix, Letter to Shareholders, at 1 (Oct. 17, 2016), http://files.shareholder.com/downloads/NFLX/3085990983x0x912075/700E14FD-12BE-4C3A-9283-9A975C7FE549/FINAL_Q3_Letter.pdf.

¹³ *See* Hayley Tsukayama, *Amazon Offers Subscriptions to Showtime, Starz and More Through Its Prime Service*, Wash. Post, Dec. 8, 2015, <https://www.washingtonpost.com/news/the-switch/wp/2015/12/08/amazon-offers-subscriptions-to-showtime-starz-and-more-through-its-prime-service/>.

¹⁴ *See* Todd Spangler, *Amazon Launches Prime Video Standalone Option for \$9 Monthly*, Variety, Apr. 17, 2016, <http://variety.com/2016/digital/news/amazon-prime-video-standalone-monthly-1201755340/>.

currently has more than 11 million subscribers,¹⁵ and has confirmed plans to expand its offerings to include a live, linear over-the-top TV subscription service with a mix of live cable and broadcast options in 2017.¹⁶ YouTube has over a billion users, hosts an ever-increasing number of successful professional channels, and also launched a subscription video and music service, YouTube Red.¹⁷

And these major OVDs are just the leading edge of the ongoing explosion in online services. At least thirty-three new OVDs launched in 2015 alone (compared to only four launching in 2010), and these OVDs are also experimenting with new business models to attract customers.¹⁸ Newer OVDs, like Dish's Sling TV and Sony's PlayStation Vue, which both launched in 2015, are offering live, linear OTT programming, including some specialty tiers.¹⁹ In addition, a growing number of studios, broadcast networks, sports leagues, and programming networks are offering their own standalone video services online, such as CBS All Access, Showtime, HBO Now, BET Play, Noggin, Univision Now, and MLB.TV.²⁰

As NAB observed, the continued and dramatic rise of OVDs not only has "increased competition in the video marketplace," but also has "provided more opportunities for video

¹⁵ SNL Kagan, *The State of Online Video Delivery*, at 9 (2016), <https://ofchq.snl.com/Cache/33361219DC35958165.PDF?CachePath=%5c%5cdmzdoc1%5cwebcache%24%5c&T=&O=PDF&Y=&D=>.

¹⁶ *See Hulu to Sell Internet TV Package with Live Programming*, CBS News, May 5, 2016, <http://www.cbsnews.com/news/hulu-to-sell-internet-tv-package-with-live-programming/>.

¹⁷ *See Statistics*, YouTube, <https://www.youtube.com/yt/press/statistics.html> (last visited Oct. 24, 2016).

¹⁸ *See* Ali Choukeir, *Number of US OTT Video Services Erupts in 2015*, SNL Kagan, Nov. 23, 2015, <https://www.snl.com/InteractiveX/article.aspx?Id=34510329>. This follows 10 or more new launches in each year from 2011 to 2014. *Id.*

¹⁹ *See* Brendan Hesse, *Sling TV vs. PlayStation Vue: Which Live TV Streaming Service Should You Subscribe To?*, Digital Trends, May 15, 2016, <http://www.digitaltrends.com/home-theater/playstation-vue-vs-sling-tv/>; Sling TV add-ons, <https://www.sling.com> (last visited Oct. 24, 2016).

²⁰ 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=>.

programmers . . . to reach viewers.”²¹ The Internet has lowered the barriers to entry for programmers, allowing them to develop an audience online and to take advantage of a variety of new distribution outlets.²² As noted, many OVDs are aggregating and distributing large amounts of content from traditional sources for customers to view live and on-demand. At the same time, they are creating their own original content as well. OVDs are investing billions of dollars annually in programming to provide popular, critically-acclaimed original programming, including Netflix’s “House of Cards,” “Master of None,” “Orange Is the New Black,” and “Unbreakable Kimmy Schmidt,” as well as Amazon’s “Transparent,” among many others.²³ In 2016, Netflix and Amazon earned a combined seventy Primetime Emmy nominations and fifteen wins, and Netflix earned the most Golden Globe nominations of any programming provider.²⁴ Many of these OVD-original series are exclusive to the OVD, though some of the series have been so successful that MVPDs have licensed them later for on-demand distribution.²⁵ Comcast subscribers, for example, can purchase episodes of “Orange Is the New Black” and “House of

²¹ NAB Comments at 6.

²² *Id.*

²³ See Yvonne Villarreal, *Once an Underdog, Hulu is Becoming a Player in the Streaming World*, L.A. Times, Dec. 23, 2015, <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-hulu-lookback-20151223-story.html>; Troy Dreier, *Amazon Increasing Original Program Budget to Compete with Netflix*, StreamingMedia.com, June 18, 2015, <http://www.streamingmedia.com/Articles/News/Online-Video-News/Amazon-Increasing-Original-Program-Budget-to-Compete-With-Netflix-104718.aspx>.

²⁴ See Erik Pedersen, *Emmy Awards 2016: The Complete Winners List*, Deadline, Sept. 18, 2016, <http://deadline.com/2016/09/emmys-2016-winners-list-1201821894/>; Mike Reynolds, *Streamers Pick Up More Emmy Nods This Year*, SNL Kagan, July 14, 2016, <https://www.snl.com/interactivex/article.aspx?id=37098739&KPLT=6>. At the 2016 Golden Globes, Netflix had eight nominations – the most of any programmer. Hayley Cuccinello, *At 2016 Golden Globes, Amazon Wins Best TV Comedy, but Netflix Goes Home Empty-Handed*, Forbes, Jan. 10, 2016, <http://www.forbes.com/sites/hayleycuccinello/2016/01/10/at-2016-golden-globes-amazon-wins-best-tv-comedy-but-netflix-goes-home-empty-handed/#14fe1e14368a>.

²⁵ See Matthew Ball, *The State and Future of Netflix v. HBO in 2015*, Redef, Mar. 5, 2015, <http://redef.com/original/the-state-and-future-of-netflix-v-hbo-in-2015>.

Cards” on demand through the Xfinity TV store and watch them across multiple devices without a Netflix subscription.²⁶

The table below summarizes the dramatic growth and success of online video in the last five years alone.

	<u>Five Years Ago</u>	<u>Today</u>
OVD subscribers²⁷	24.4 million	109 million
OVD launches per year²⁸	4	33
Scripted original series on OVDs²⁹	4	44
Primetime Emmy Nominations (wins) for OVDs³⁰	0 (0)	83 (17)
Consumers streaming on-demand content at least once a day³¹	30%	50%
Hours per week spent watching streamed on-demand content³²	2.9 hours	6 hours
Online video as a percent of Internet traffic³³	41.5%	76%

²⁶ Matt Wilstein, *You Can Now Watch House of Cards Without Netflix Subscription*, Mediaite, Mar. 10, 2014, <http://www.mediaite.com/tv/you-can-now-watch-house-of-cards-without-netflix-subscription/>.

²⁷ See SNL Kagan, *The State of Online Video Delivery*, at 8 (2016), <https://ofchq.snk.com/Cache/33361219DC35958165.PDF?CachePath=%5c%5cdmzdoc1%5cwebcache%24%5c&T=&O=PDF&Y=&D> (includes projections for 2016); Toni Fitzgerald, *Pay Cable vs. SVOD: How They Stack Up*, Media Life, Jan. 18, 2016, <http://www.medialifemagazine.com/pay-cable-vs-svod-stack/>.

²⁸ See Ali Choukeir, *Number of US OTT Video Services Erupts in 2015*, SNL Kagan, Nov. 23, 2015, <https://www.snk.com/InteractiveX/article.aspx?Id=34510329>.

²⁹ See Jethro Nededog, *This Chart Shows the Number of TV Shows Hit a “Staggering” New High in 2015*, Business Insider, Dec. 16, 2015, <http://www.businessinsider.com/number-of-scripted-tv-shows-2015-12>.

³⁰ This figure includes the following OVDs: Netflix, Amazon Prime, Hulu, Funny Or Die, Crackle, YouTube, AOL, and ActingDead.com. See Press Release, Television Academy, Complete Listing of 68th Emmy Awards Winners, Sept. 18, 2016, <http://www.emmys.com/sites/default/files/Downloads/68th-emmy-winners-v1.pdf>; Mike Reynolds, *Streamers Pick Up More Emmy Nods This Year*, SNL Kagan, July 14, 2016, <https://www.snk.com/interactivex/article.aspx?id=37098739&KPLT=6>; Press Release, Television Academy, 68th Emmy Awards Nominations, July 14, 2016, <http://www.emmys.com/sites/default/files/Downloads/68th-nominations-list-v6.pdf>.

³¹ Ericsson, *TV and Media 2015*, at 3 (2015), <http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-tv-media-2015.pdf>.

³² *Id.*

³³ Data includes all of North America. See Cisco, *VNI Complete Forecast Highlights Tool*, http://www.cisco.com/c/m/en_us/solutions/service-provider/vni-forecast-highlights.html# (last visited Oct. 24, 2016); Cisco, *Visual Networking Index 10-14 (2010)*, http://large.stanford.edu/courses/2010/ph240/abdul-kaf1/docs/white_paper_c11-481360.pdf (946 PB/month Internet video traffic (video to TV and video to PC) out of a total 2,279 PB/month Internet traffic).

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.³⁴ And consumers are the ultimate beneficiaries of this fierce competition.³⁵

Comcast, for example, continues to develop new features for its next-generation cloud-based X1 entertainment operating system, and most recently began a Netflix Beta program that will integrate Netflix onto the X1 platform and will allow X1 and Netflix customers to watch their live, on-demand, and DVR'ed cable programming, as well as Netflix's online programming, all through their X1.³⁶ In addition, Comcast is expanding the range of retail devices its customers can use to access their Xfinity TV service. It launched its ground-breaking apps-based "Xfinity TV Partner Program" and is now developing an open standards-based HTML5 app for deployment on Samsung Smart TVs.³⁷ Comcast is also developing an app that

³⁴ See, e.g., Lucas Shaw & Michaela Ross, *Netflix's \$5 Billion Budget Is Setting Off an Arms Race in Cable*, Bloomberg, Mar. 2, 2016, <https://www.bloomberg.com/news/articles/2016-03-02/media-companies-try-to-spend-their-way-out-of-cable-tv-crunch> ("Before Netflix, cable companies could fill their schedules with reruns and cheaper shows and still count on viewers. But with the streaming-video giant churning out a barrage of quality entertainment, from "House of Cards" to "Jessica Jones," it's no longer enough to just offer filler. Old episodes of "Full House" still air on Viacom Inc.'s Nickelodeon, but its updated sequel, "Fuller House," is available for streaming on Netflix.").

³⁵ See AT&T Comments at 1.

³⁶ *Comcast Starts Beta Test of Netflix on X1*, Comcast Voices, Sept. 19, 2016, <http://corporate.comcast.com/comcast-voices/netflix-on-comcast-beta>.

³⁷ See Mark Hess, *Comcast Seeks TV and Other Consumer Electronics Partners to Bring Xfinity TV Cable Service to More Retail Devices*, Comcast Voices, Apr. 20, 2016, <http://corporate.comcast.com/comcast-voices/comcast-seeks-partners-to-bring-xfinity-tv-cable-service-to-more-retail-devices>; 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>.

will enable customers to access their Xfinity TV cable services on their TVs via a Roku streaming player or directly on a Roku TV.³⁸

Other MVPDs are likewise responding to this competitive dynamic in a variety of ways. They are experimenting with new service bundles,³⁹ “skinny” bundles,⁴⁰ and bundles targeted to broadband-only customers,⁴¹ deploying apps on a variety of retail devices,⁴² and taking other measures to differentiate themselves in a marketplace with an ever-growing array of video providers. Programmers, too, are investing in higher-quality programming and continuing television’s “Golden Age,” in order to attract and retain viewers.⁴³ Cable networks feature twice as many original series today than were featured in 2009.⁴⁴ As AT&T summed up the situation, today’s competitive marketplace is “a rousing success story for consumers.”⁴⁵

³⁸ See Mark Hess, *Comcast Seeks TV and Other Consumer Electronics Partners to Bring Xfinity TV Cable Service to More Retail Devices*, Comcast Voices, Apr. 20, 2016, <http://corporate.comcast.com/comcast-voices/comcast-seeks-partners-to-bring-xfinity-tv-cable-service-to-more-retail-devices>.

³⁹ For example, following its acquisition of DirecTV, AT&T began offering new satellite TV, wireless, and Internet bundles, and revived its unlimited wireless data plan for customers also subscribing to its TV service. See 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/>; Thomas Gryta, *AT&T to Offer TV and Wireless Bundle*, Wall St. J., Aug. 3, 2015, <http://www.wsj.com/articles/at-t-to-offer-tv-and-wireless-bundle-1438601334>.

⁴⁰ 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. 24, 2016). Dish recently launched a new Flex Pack skinny bundle, starting at \$39.99 per month for a core package of approximately 50 channels and the choice of one of eight themed channel packs. See Press Release, Dish, *Finally a Skinny Bundle! “Don’t Watch, Don’t Pay” with DISH’s New Flex Pack*, Aug. 4, 2016, <http://about.dish.com/press-release/programming/finally-skinny-bundle-dont-watch-dont-pay-dishs-new-flex-pack>.

⁴¹ 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. 24, 2016).

⁴² As AT&T reiterated, more than 460 million IP-enabled retail devices in the U.S. market today support one or more MVPD apps. AT&T Comments at 4. MVPD apps supported twice as many retail devices as there are leased set-top boxes. *Id.*

⁴³ See NCTA Comments at 4.

⁴⁴ See Jethro Nededog, *This Chart Shows the Number of TV Shows Hit a “Staggering” New High in 2015*, Business Insider, Dec. 16, 2015, <http://www.businessinsider.com/number-of-scripted-tv-shows-2015-12>.

⁴⁵ AT&T Comments at 1.

II. THE COMMISSION SHOULD ELIMINATE OUTDATED LEGACY REGULATIONS THAT ARE NO LONGER NECESSARY IN TODAY’S HIGHLY COMPETITIVE VIDEO MARKETPLACE.

Given that the video marketplace has been highly competitive for many years – and only becomes more so as it continues to evolve and change – Comcast agrees with other commenters that the Commission should respond by reexamining and eliminating legacy-era regulations that are far out-of-step with today’s marketplace realities.⁴⁶ As NCTA noted, when Congress enacted the 1992 Cable Act and mandated that the Commission report annually on the state of competition in the video marketplace, “Congress made clear at the outset that competition was the goal and that regulation was meant only to be a stop-gap measure until competition took hold.”⁴⁷ Today’s competitive marketplace presents “precisely the scenario – far beyond the wildest dreams of Congress and the proponents of the 1992 Act – that calls for allowing competition, rather than regulation, to govern and determine the outcomes of the video programming marketplace.”⁴⁸

The Commission took some positive steps in this direction when it largely eliminated cable rate regulation in its *Effective Competition Order*, but further action is required.⁴⁹ In particular, as commenters in this proceeding and as Comcast has previously requested, the Commission should review whether other legacy regulations should be rescinded or, at the very

⁴⁶ See NCTA Comments at 2-7; Free State Foundation at 2-3, 8-10.

⁴⁷ NCTA Comments at 3 (“The Committee believes that competition ultimately will provide the best safeguard for consumers in the video marketplace and strongly prefers competition and development of a competitive marketplace to regulation. The Committee also recognizes, however, that *until true competition develops*, some tough yet fair and flexible regulatory measures are needed.”) (quoting Report of the Committee on Energy and Commerce, H.R. Rep. 92-628, 102d Cong. 2d Sess. 30 (1992)).

⁴⁸ NCTA Comments at 5.

⁴⁹ See Free State Foundation Comments at 8-9.

least, relaxed.⁵⁰ In the current environment, regulations that apply to MVPDs alone – or only to cable operators – actually distort competition by putting a regulatory thumb on the scale to benefit unregulated competitors.⁵¹ And, as Free State Foundation explained, “[u]nnecessary, backward looking regulation offers little or no benefit to consumers. Instead, overregulation imposes costs on providers that inevitably are passed onto consumers in the form of higher prices or reduced choices.”⁵²

In no event should the Commission be responding to this changed video marketplace by “proposing and imposing *more* regulation to substitute for marketplace forces in the competitive video marketplace.”⁵³ Such attempts not only are flatly inconsistent with congressional intent and unjustified against this competitive backdrop, but also would compound the consumer harms and marketplace-distorting effects associated with existing outmoded legacy regulations.⁵⁴

III. CONCLUSION

For the foregoing reasons, the Commission must account for today’s highly competitive video marketplace and remove legacy regulations. The Commission also should refrain from adopting new MVPD-specific regulations that further distort competition and ultimately harm consumers.

⁵⁰ These could include, for example, program carriage, program access, leased access, and multiple dwelling unit-related requirements. *See id.* at 9-10; Comcast Reply Comments, MB Docket No. 15-158, at 20 (Sept. 21, 2015).

⁵¹ *See* NCTA Comments at 5.

⁵² Free State Foundation Comments at 3.

⁵³ NCTA Comments at 6.

⁵⁴ *See id.* at 3; Free State Foundation Comments at 8-15.

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