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

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

New England Sports Network ("NESN") submits this filing to amplify certain opening comments submitted in response to the Media Bureau's *Public Notice* in this matter.[1] NESN was launched in 1984 as one of the first regional sports networks ("RSNs") in the country. Today, NESN is a pre-eminent and independent RSN that provides live coverage of the games of the National Hockey League's Boston Bruins and Major League Baseball's Boston Red Sox. In addition, NESN produces and televises other programming to provide subscribers with content that entertains and informs.

In the run-up to the Seventeenth Video Competition Report, NESN last year filed comments in which it urged the Commission to recognize that "online video distribution, as a technology, is currently a full substitute for broadcast, cable, and satellite technology."[2] Ultimately, the Seventeenth Report would quote NESN's comments for that proposition,

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[1] *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, Public Notice, MB Docket No. 16-247, DA 16-896 (MB rel. Aug. 5, 2016) ("*Public Notice*").

[2] Comments of NESN at 4-5, MB Docket No. 15-158 (FCC filed Aug. 21, 2015).

concluding that it is now "becoming less difficult . . . to use a combination of OVDs and broadcast services to replicate the programming packages and products of an MVPD."[3]

A different passage in the Seventeenth Report, however, quoted NESN's comments as support for a proposition about using "non-television platforms" (the Report's term for devices like computers, laptops, tablets, and smartphones) as a way of watching video. The Report concluded that "non-television platforms are not currently seen as a replacement for television viewing."[4] The sole support cited for that proposition was a quotation from NESN's comments.[5]

In its comments, however, NESN stated flat-out that "tablets and other non-TV devices" do "constitute a substitute and replacement for traditional TV sets."[6] The Report quoted from NESN's comments a sentence stating that "[d]evices like tablets merely improve consumers' experience by providing an additional screen and allowing for mobility."[7] That sentence by its terms states that mobile devices constitute substitutes for TV sets — albeit, in some settings and for some uses, *superior* substitutes.[8]

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[3] Annual Assessment for the Status of Competition in the Market for the Delivery of Video Programming, *Seventeenth Report*, 31 FCC Rcd 4472, ¶ 71 & n.207 (2016) ("*Seventeenth Report*"). Because that is clearly correct, the Eighteenth Report should expressly recognize that online video distribution, as a technology, is currently a full substitute for broadcast, cable, and satellite technology.

[4] *Id.* ¶ 217.

[5] *Id.* ¶ 217 n.753.

[6] NESN Comments at 4-5.

[7] *Seventeenth Report* ¶ 217 n.753 (quoting NESN Comments at 4).

[8] The sentence was a part of NESN's argument that widespread viewing of online video on mobile devices does not indicate that online video is not a substitute for broadcast, cable, and satellite. NESN pointed out that all online video can be viewed on regular TV screens with (say) the aid of AppleTV-like boxes and that, insofar consumers choose to watch online video on mobile devices instead, that is because consumers in many instances prefer mobile devices over traditional TV sets, as mobile devices "provid[e] an additional screen and allow[e] for mobility." NESN Comments at 4.

Accordingly, it appears that the best way to read the Report's statement (that "non-television platforms are not currently seen as a replacement for television viewing") is as indicating only that such platforms do not currently constitute a *full and complete* replacement for television viewing — in that the emergence of non-television platforms will not soon cause consumers to stop watching regular TV sets altogether. As the Report put it in the next sentence, "televisions will likely remain a mainstay in consumers' homes for years to come."[9]

On the other hand, it is unlikely that the Report meant to deny that, in many settings, non-television platforms do substitute for TV sets — in that, in many instances, consumers watch video on non-TV devices that, if there had been no such devices, they would have watched on regular TV sets instead. If the Report had meant to deny that proposition, it would not have cited as sole support a source (NESN's comments) stating the precise opposite. Moreover, the Report itself recognizes that mobile devices have ever larger screens,[10] have ever better resolution,[11] and can be used to view ever more content.[12] It also acknowledges that "consumers continue to increase the time they spend viewing [video] on non-television platforms."[13] That non-television

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[9] *Id.*

[10] *See Seventeenth Report* ¶ 225 ("the average screen size of new models of smartphones continued to increase significantly, making those phones more practical for watching high-resolution video").

[11] *Id.* ("Broadband connected devices, such as laptops, netbooks, smartphones, and tablets, typically have high-resolution screens for consumers to watch video.").

[12] *Id.* ("MVPDs continue to make their video content accessible over a host of portable devices through the mobile IP marketplace.").

[13] *Id.* ¶ 217.

platforms substitute for TV sets is also fully borne out by the opening comments in this proceeding.[14]

For the reasons set forth above, we request that the Commission explicitly recognize that, in many settings, non-television platforms now constitute a substitute or replacement for regular TV sets.

Respectfully submitted,

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[14] *See*, *e.g.*, NAB Comments at 8 ("The Internet, mobile devices and applications are profoundly and undeniably impacting video competition and news consumption. These devices and applications serve both as substitutes and supplements for consumers' traditional media consumption."); NCTA Comments at 2 ("The Internet, IP technology and Wi-Fi enable cable customers to watch the programming to which they subscribe live, recorded or on demand on a variety of retail devices — their phones, tablets, laptops and personal computers — inside and outside their homes. But they — and anyone else with a wired or wireless Internet connection — can also watch the vast array of program networks and other video content available online on those same devices, or even on their television sets.").