



February 27, 2015

Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Promoting Innovation and Competition in the) MB Docket No. 14-261
Provision of Multichannel Video Programming)
Distribution Services)

NOTICE OF PROPOSED RULEMAKING

Adopted: December 17, 2014

Released: December 19, 2014

Comments of BiggyTV, LLC.,
Pursuant to the NOTICE OF RULEMAKING In the Matter of Promoting
Innovation and Competition in the Provision of Multichannel Video
Programming Distribution Services

Comments of BiggyTV, LLC., Pursuant to Appendix B of FCC 14-210 NPFM
Initial Regulatory Flexibility Act Analysis (“IRFA”)

To: Honorable Thomas E. Wheeler, Chairman
Federal Communications Commission
via electronic filing to: <http://fjallfoss.fcc.gov/ecfs2/>

To: Chief Counsel for Advocacy of the Small Business Administration (“SBA”)

From: Kyle Borg, President, BiggyTV, LLC. (“BTV”)



It is a great honor to provide comments to the Federal Communications Commission (“FCC”) Notice of Proposed Rulemaking (“NPRM”) regarding Multichannel Video Programming Distributor (“MVPD”). My startup BiggyTV has spent a significant amount of time creating a company that is in alignment with the NPRM for MVPDs and provides a foundation for innovation, allowing content producers access to larger audiences and provides consumers an expanded landscape of video viewing options.

We also want to commend the FCC on two of its more recent definitions that directly affect the ability for BiggyTV to achieve success.

First, raising the **Broadband Speed Benchmark to 25Mbps/3 Mbps** will allow BiggyTV to deliver the best quality product and ensure that all Americans have access to high-speed Internet services.

Second, I commend the Commission for passing of the **Net Neutrality Rules** on February 26, 2014. Without these rules BiggyTV would have no opportunity to grow our business and provide the innovations we have developed.

Some of our Comments may overlap with the newly adopted Rules, but we have included them to provide context to the NPRM regarding MVPDs.



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1) Introduction

Kyle Borg, the author of these comments is the co-founder of BiggyTV, LLC. A Web, mobile, OTT developer and Cloud Designer, Kyle Borg has been an active member of the online video distribution community since 2009.

Previously Mr. Borg has held technology position with Capitol Records, New World Entertainment / Genesis Distribution. During these tenures Mr. Borg gained deepening insights into content distribution, syndication, rights management, network and software development.

Mr. Borg served as COO / VP, Marketing for Shoolery Design, Inc. (“SDI”) an entertainment marketing company, working with entertainment clients including Warner Bros., Universal Pictures, New Line Cinema, NBC, CBS, The CW and HBO. Shoolery Design, Inc. created some of the most memorable and iconic images used in the marketing of motion pictures, television and cable programs.

Along with its owner Mark Shoolery, Mr. Borg was approached numerous times by filmmakers and other video content producers seeking distribution in addition to the marketing of their products. It became evident that without big studio, network or cable broadcast distribution thousands of projects created by these passionate video producers would never see the light of day. Understanding



that video on-demand (“VOD”) or “Search and Click” viewing greatly limits video discovery (i.e. YouTube), Mr. Borg and Mr. Shoolery created BiggyTV.

2) BiggyTV, LLC. – Company Statement

BiggyTV is a Multichannel Video Programming Distributor that provides personalized video discovery through linear streaming to the web, mobile and OTT devices.

BiggyTV launched its iPhone / iPad mobile application which includes seven channels of linear streaming video in December 2015 with planned launches on several other Over-The-Top (“OTT”) devices by the end of March 2015. Because of its enormous potential for growth, BiggyTV was accepted into the 2015 Bootstrap Track of FbStart, Facebook’s new program to help mobile startups succeed.

For the past three years, BiggyTV built an Internet-based platform to complement a private satellite network, delivering additional linear streaming channels to web, mobile devices, and OTT devices.

Where VOD sites require a “search and click” interaction with viewers, these sites would never be successful if not for the original video discovery platforms:



motion pictures and televisions. Linear streaming is the ultimate video discovery model. Not only does it provide a variety of video content, but viewers become loyal to programs and storylines, making it a self-marketing tool providing promotional programming for other motions pictures and TV shows.

More and more consumers demand *TV Everywhere* and want content that matches their tastes or fit with their “super fan affinity group”¹. In order for the video programming distribution industry to best meet those needs, startups like BiggyTV must have the same privileges and protections in the FCC’s Proposed Rules, in addition to those we assert in our comments.

3) Defining MVPD

We provide these comments with the intent to encourage a pro-competitive and pro-collaborative understanding for current MVPDs and the entry of Internet-based Multichannel Video Programming Distributors such as BiggyTV. As a startup, we have limited resources to comment fully on all points, but felt it is essential that we join the discussion on this NPRM.

¹ FierceCable February 20, 2015 Discovery’s Zaslav on TV Everywhere: ‘Cable guys aren’t getting it done’
<http://biggy.tv/1DhBCNj>



We assert that merely expanding the overall definition of what a MVPD looks like today and what it will look like in the future will create confusion and limit innovation.

Grouping current MVPDs such as Comcast, DirectTV, and Time Warner with the new Internet-based MVPDs will inhibit new startups and innovation in digital media delivery. The proposed changes will not create a level playing field for competition, nor will it deliver to consumers the best possible access and options to video content and diversity.

If approved, the proposed mergers of Time Warner/Comcast and DirecTV/ATT will only serve to restrict the channels through which content providers are able reach consumers and the greatly limit free choice of how consumers receive video content.

For true innovation to thrive there must be space at the table for new entities. To ensure that the proposed rules provide for a competitive and equal opportunity for Internet-based MVPDs, merely expanding the definition of MVPDs is insufficient.

Our comments are based upon the barriers to growth that we have faced while creating a new company to meets the needs of tomorrow's consumers.



4) BiggyTV's Proposed Category Definitions for MVPDs

a) MVPD with Direct Transmission Paths ("MVPD-DTP").

This defines all MVPDs who are licensed by the FCC for Over-The-Air, Cable or DBS Direct Transmission Paths ("DTP"). We believe a change of the identifying name is required to eliminate confusion between these legacy distributors and the emerging field of multichannel video programming distributors utilizing OTT (Over-The-Top) methods.

We assert that our comments with regards to creating two categories be applied to MVPD-DTP for the purposes of placing a firewall between companies that provide both MVPD-DTP and Internet-based video stream. Similar to the way banks are required to keep their banking and investment units separate, these new rules are meant to create competition, provide a level playing field and spur technical innovation to widen consumer options.

Comcast, DirecTV, ATT, Time Warner are examples of companies we assert should be categorized as MVPD-DTP and that additional Regulations should limit their Internet-based distribution to be a simulcast of current license agreements with Content Provides. Any Internet-based services that these



companies currently operate or plan to launch must to set aside as separate MVPD-OTT as defined below.

An example of this conflict is Time Warner, which delivers both MVPD services and Internet access by Direct Transmission Path of cable. We assert that Time Warner's Internet-based MVPD services must operate as an independent entity providing services without the influence of its MVPD-DTP service and its leverage over Content Producers because of their carriage agreements.

b) MVPD Over-The-Top ("MVPD-OTT")

This category defines a new type of *Multichannel Video Programming Distributor* that is **purely** Internet-based, provides linear streaming of video content and provides the benefits, obligations and protections for delivery of linear video streaming over third party Transmission Paths.

Making the distinction of Internet-based video streaming services is **essential**. Since this type of linear broadcast is relatively new for all players both legacy and startups, the financial burden will be identical as long as our proposed rule changes are made. While MVPD-DTP have deeper pockets, competitors can attract large investors to compete for the consumer and provide the best possible service



delivery and protect US citizens from the monopolistic price fixing that is forced upon them in the current MVPD landscape.

5) Comments on Rulemaking MB DOCKET No. 14-261

c) Discussion MVPD – FCC 14-210 ¶ 13, 14

The definitions outlined provide a general umbrella to define the various types of Internet-based video service offerings. Based upon our past experience, we recommend two additional types of Internet-based linear stream definitions.

i. Sponsored Linear and On-Demand.

This term refers to Internet-based distributors who provide video programming available in a continuous linear stream and on-demand and is provided without ads or subscriptions costs to the consumer. Past clients of BiggyTV have sponsored the distribution of their video content and paid a fee to BiggyTV for carriage of multiple video channels. This has included spiritual programming and shopping channels. Considering this definition it is our recommendation that this type of service should be defined as a MVPD-OTT, even though it makes programming available for free to the consumer.



ii. Ad Based Linear Video Services

This term refers to Internet-based distributors who provide video programming available in a continuous linear stream that includes advertising. The advertising includes, but is not limited to video commercials placed within the linear video stream; banners ads included around the linear video stream or overlay ads that appear over the linear video stream. This is the model for over the air broadcasters, it is reasonable that it should be included in the definition of MVPD-OTTs.

6) MVPD-DTP Privileges and Obligations

We assert that the legacy companies regulated under the current definition of an MVPD specifically relating to service protections, pro-competitive, consumer-focused values and adopted cable-specific provisions of the Communications Act and the FCC Rules implementing these important provisions remain as defined.

We further assert that if a MVPD-DTP (as defined BiggyTV's comments) petitions to have their status changed based upon the delivery of Internet-Based services or in order to avoid the consumer-focused values they should be denied by the Commission.

We assert that MVPD-DTP may be allowed to provide *TV Everywhere* services meaning linear stream of current channels and streams as allowed by their Content



License agreements with Content Providers that simulcast their Transmission Path programming. These Internet-based linear streams must operate under current FCC Rules and Regulations.

If a MVPD-DTP creates a service that offers alternative linear streaming content, it must do so under the categorization of MVPD-OTT any such services must be separate and stand alone from all currently identified Only with this clear difference will the consumer benefit from the Proposal Rule changes.

7) MVPD-OTT Privileges and Obligations

Rules to define the specifics Privileges and Obligations of a Multichannel Video Programming Distributor who delivers Internet-based over-the-top linear video streaming is a blank canvas. The Communications Act and applied FCC rules cannot be squeezed into this new field.

We assert that MVPD-OTT must provide at least 7 channels of linear streaming video content not including any retransmission channels to qualify as an MVPD-OTT defined herein and receive an MVPD-OTT license from the FCC. This limits the burden on MVPD-DTPs to negotiate only with MVPD-OTT that are licensed by the FCC.



We assert that it would be impossible to take the current MVPD Rules and apply them to Internet-based linear delivery, which is why the FCC must create two new clear definitions of MVPD-DTP and MVPD-OTT.

Exponential growth and innovation caused by the revolution of digital media must not be stifled by legacy regulations that will choke competition and limit consumers from the largest number of programming options.

However, we assert that those Rules and Regulations that directly affect the *consumer experiences* should be applied to MVPD-OTT services given a phased in schedule.

8) MVPD-DTP Content Licensing

Consumers and Content Providers are best served when there are options; currently there are little or no options for Content Providers to deliver their programs to viewers. With the advent of Internet-based linear streaming the opportunity exists for the FCC to give Content Providers an alternate means of distribution, but only if Content License Rules are changed.

We assert below Comments that address the interests of Content Provides.



a) Separate Licensing for MVPD-DTP and MVPD-OTT Services

We propose Content Licensing for Internet-based delivery of content cannot be part of any negotiations by MVPD-DTPs and that it cannot be a condition for carriage on MVPD-DTP services. Content Providers should have the right to find the best Internet-based distribution partner and negotiate the best possible licensing rights without the fear that they will be blocked or dropped by MVPD-DTP.²

b) No Content Blocking based upon MVPD-DTP Carriage Agreement

We propose that MVPD-DTP may not block content providers from entering into license agreements with MVPD-OTT for distribution of video content currently carried on the MVPD-DTP.

c) Distribution of foreign programming content providers in US

In order to provide consumers with the greatest choice of programming, MVPD-DTP Internet-based services can not sign exclusive non-competing agreements with foreign based and foreign language content providers for linear streaming services.^{3 4}

² See FCC NPRM 14-210 Footnote 198

³ DirecTV launched Yaveo in December 2014 which includes three Spanish language linear channels

⁴ Dishworld has exclusive rights on Roku for linear stream of international network feeds



9) MVPD-DTP Internet-based Carrier Device

d) Access to Network Devices provided by MVPD-DTP to consumers

We propose that any specialty network device that delivers MVPD-DTP Internet-based video content, must also allow other MVPD-OTT that are licensed by the FCC to be made available on same device and that the MVPD-OTT will not be charged a carriage fee.^{5 6}

An example is, MVPD Frontier Communications signed an agreement with the TiVo Roamio OTA, a HD-DVR model from TiVo sold at retail that provides access to a mix of over-the-air broadcast TV and over-the-top content from sources such as Netflix and YouTube. TiVo provides a developer program that gives access to those TiVo devices.⁷ BiggyTV is developing a TiVo application similar to its iPhone application that will provide consumers access to BTV's linear channels on TiVo devices.

It is only a matter of time that the cable and DBS providers will begin to swap out their consumer equipment with similar devices that are a hybrid of their Transmission Path services with Over-The-Top linear streams. Other MVPD-OTT

⁵ Roku; iOS; Android; and FireTV allow multiple linear streaming channels from various content providers on the same platform.

⁶ If MVPD-OTTs are blocked from accessing MVPD-DTP Internet-based delivery devices, consumers will be forced to purchase a separate piece of equipment and will limit consumer options.

⁷ Multichannel News *TiVo Explores New Over-The-Air Frontier* <http://biggy.tv/18s50X2>



should not be shut out, nor should the consumer be force to purchase a separate network device to receive programming from entities identified by the FCC as a MVPD-OTT.

e) Autonomous content carriage

If a content provider either has a dispute with or is not carried on the MVPD-DTP traditional DTP or its Internet-based delivery, that content provider can still be carried on the MVPD-OTT distributed on the MVPD-DTP Internet-based network device^{8 9}.

10) Internet-based multichannel video distributor and Congressional Regulation

In a review of past FCC Rules and Regulations as an interpretation of Congressional Communications Act a common theme of expectations stand out.

a) Congressional Protection of Consumer Rights

Acting on behalf of US citizens the Congress asserted certain laws and regulations that were meant to build controls around MVPDs and their monopolistic control of content distribution. These regulations are essential and must continue to be enforced upon Multichannel Video Programming Distributor

⁸ An example of this would be that any network device that carries Dish Network's SlingTV, but also allow other MVPD-OTT onto the device with equal access and service.

⁹ Currently BiggyTV's iOS application can be installed on any iPhone/iPad device and is broadcasting seven channels of linear video streaming.



with a Direct Transmission Path (“MVPD-DTP”) as it is in the consumer’s best interest and provides a pro-competitive environment.

It is based upon this review of history that we recommend a clear and definitive separation between MVPD-DTP and all MVPD-OTT

11) MVPD-OTT Content Licensing

a) Non-Exclusive Internet-based distribution of MVPD-OTT channels

We propose that MVPD-OTT may not require exclusive rights for Internet-based linear video streaming.

b) Distribution of foreign programming content providers in US

In order to provide consumers with the greatest choice of programming, MVPD-OTT Internet-based services can not require exclusive, non-competing agreements with foreign based and foreign language content providers for linear streaming services.¹⁰

For example, DishWorld, which is owned by Dish Network, has an exclusive agreement with Roku that blocks any international streams of foreign based or foreign language channels to be distributed on the Roku in the US unless it has a distribution agreement with DishWorld. This type of exclusivity creates a

¹⁰ DirecTV launched Yaveo in December 2014 which includes three linear channels. <http://biggy.tv/1vH2mXy>



monopoly and blocks foreign national living in the US from any pro-competitive opportunities; it also blocks MVPD-OTT operators from servicing this very large consumer foreign ex pates living in the US.

c) Final Comments on FCC NPRM 14-261

It is our hope that as the FCC moves forward in defining the Rules that include Over-The-Top deliver of linear video stream it will consider not only the protection of the US consumer, but all of the current MVPD that are considered Small Businesses. These important businesses but may not have the resources to launch an OTT service independently and we believe that creating these two categories of MVPD will spur partnerships and strategic alliances with startups in the MVPD field and allow MVPD Small Business to thrive and compete.

12) COMMENTS ON INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS (“IRFA”)

This section of comments provided by BiggyTV address Appendix B of the NPRM FCC 14-210.

a) Proposed Rule Changes do not provide small business with sufficient protections nor make room for innovation.

As provided in comments to the FCC’s NPRM, we believe that merely expanding the definition of a multichannel video-programming distributor to include Internet-based distribution will not be in the best interest of small



businesses such as BiggyTV nor is it in the best interest of Content Providers or Consumers.

BiggyTV provides consumers the same service currently defined as a multichannel video programming distributor; however, our only transmission path is by over-the-top services that rely on Internet-based connections. If our access to consumers is blocked or restricted our entire company will go out of business.

As discussed above, we assert that the definition of MVPDs should be split into two categories, one that identifies companies that operate under the currently MVPD definitions and regulations MVPD-DTP. The companies that fall under this category would be called multichannel video programming distributor with Direct Transmission Paths (“MPVD-DTP”).

The following are examples of entities that fall into the MPVD-DTP category; these are based the Regulatory Flexibility Act Analysis (“RFA”) whether they have Direct Transmission Path or are Over-The-Air (“OTA”) :

- Cable Television Distribution Services (Comcast; Time Warner)
- National Television Broadcasting: (CBS, ABC, NBC, Fox)
- Direct Broadcast Satellite Service: (DirecTV, Dish Network)
- Wireless Distribution (AT&T; Sprint; T-Mobile)



- Satellite Master Antenna Television
- Home Satellite Dish

Each of these categories and the entities mentioned have clearly defined brand recognition in the consumers mind and thus can easily be move into a more definitive category of MVPD-DTPs.

Comments on Project Reporting, Recordkeeping, and Other Compliance Requirements

i. RecordKeeping

We assert that any company that is identified as a MVPD-OTT and issued an FCC License, the recordkeeping requirements of the Commission would not be burdensome, given that the Commission provides 160 days after designation as a MVPD-OTT to represent that required recordkeeping procedures are in place.

ii. Program Carriage

We assert that (i) requiring a financial interest in a video programming vendor's program service as a condition for carriage may cause a limit in the financial model of starts up in the MVPD field as revenue models are still being discovered.

We assert that it would not be overly burdensome for MVPD-OTT to comply with the Commissions Regulation for program carriage which prohibits MVPDs



from (ii) coercing a video programming vendor to provide, or retaliating against a vendor for failing to provide, exclusive rights as a condition of carriage; or (iii) unreasonably restraining the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage.

iii. Local Commercial and Noncommercial Carriage

With regards to access to local commercial and noncommercial broadcast stations on MVPD-OTT we assert that based upon zip codes provided by the consumer when registering for a MVPD-OTT reaches a certain level (ie 5,000) in a broadcast market as defined by the FCC, a MVPD-OTT must carry local commercial and noncommercial broadcast stations in that broadcast market.

iv. Competitive availability of navigation devices

We assert that this Regulation is an absolute necessity for both MVPD-DTPs and MVPD-OTTs and not overly burdensome. Any Internet-based network devices that delivers a designated MVPD-OTT network should allow any other MVPD-OTT the ability to deliver services to consumers.



We believe this definition should not just be defined as separate device, but it is inevitable that MVPD-DTP adapt their consumer equipment to not only broadcast over their Direct Transmission Path, but will include a purely Internet-based connection and navigation.

For example, DirecTV may start replacing their satellite boxes to include software that provides navigation for their OTT service. In this case, DirecTV must include access, clearly outlined programming and SDK kits so that all other designated MVPD-OTTs can offer their networks without the consumer having to purchase a separate network device.

v. Good Faith with Broadcasters for Carriage

We assert that this is not overly burdensome for MVPD-OTTs. This is essential to provide a pro-competitive market and give consumers access to content of equal quality to those available through cable and DBS MVPD-DTP

vi. Equal Employment Opportunity (“EEO”)

We assert that this is not overly burdensome for MVPD-OTTs at the full-time employee count that matches the levels outlined by Title VII.



vii. Closed Captioning

We assert that provided that the Content Provider provides the necessary encoding or separate time code triggered text file, this would not be overly burdensome. We also assert that it the burden of Closed Captioning may be placed on the Content Provider and an MPDV-OTT may decide not to carry content that does not include Closed Captioning.

viii. Video Description and Emergency Information

We assert that these requirements be tabled until a common solution is created for all MVPD-OTTs

ix. Loudness of Commercials

We assert that this is not overly burdensome for MVPD-OTTs

d) Final Comments on IFRA

Creativity, innovation and new markets are driving through the ability for small business to be nimble and seize opportunities. We believe that copyright of content owners must be respected; we also believe the current MVPDs deserve to protect their investment. However, space must be forged for those of us who want to solve what we see is lacking in the US video streaming consumer market most



importantly among our focus is competition in the multichannel video programming distributor space. Without creating a clear and definitive separation into these two entities MVPD-DTP and MVPD-OTT US consumers and Content Providers will continue to be at the mercy of monopolistic media companies who will increase their fees and limit competition.

13) Request for Notification of Participation at Hearings

BiggyTV requests notification of any hearing, and further requests time to presents its Comments in said hearings.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kyle Borg", written over a light blue horizontal line.

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