

**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 )

To: The Commission

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding.<sup>1</sup> WISPA generally supports the Commission’s proposal to expand the definition of multichannel video programming distributor (“MVPD”) to include Internet-based video programming distributors. However, Internet-based programming distributors or online video distributors (“OVD”) should have the option of electing whether to be classified as an MVPD or not. An OVD would obtain the burdens and reap the benefits for MVPDs only upon electing to do so.

**Background**

WISPA is the trade association that represents the interests of wireless Internet service providers (“WISPs”) that provide fixed IP-based broadband, interconnected VoIP and video services to consumers, businesses, first responders and anchor institutions across the country.

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<sup>1</sup> *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 (2014) (“*NPRM*”). The Media Bureau (“Bureau”) extended the Comment and Reply Comment deadlines to March 3, 2015 and March 18, 2015, respectively. See *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Order, DA 15-190 (rel. Feb. 10, 2015).

WISPA's rapidly growing membership consists of more than 850 WISPs, vendors, equipment manufacturers, distributors, system integrators and others interested in promoting the growth and delivery of fixed wireless broadband services.

WISPA estimates that more than 3,000 WISPs provide fixed wireless services to more than 3,000,000 people in residences, businesses, hospitals, public safety locations and educational facilities. In some remote locations, consumers may only be able to obtain multi-channel video services from satellite because cable and other wired services are not available. In other areas, Internet-delivered video services provide a competitive alternative.

While WISPs have historically provided traditional Internet service, many WISPs are contemplating the addition of a video distribution service as part of their business model to allow consumers access to more video platform options. WISPs have long been interested in providing innovative video streaming services as an "add-on" to their existing business models. To enhance and complement broadband services that WISPs provide to apartment complexes and residences, WISPs have considered offering some level of Internet-distributed video programming. However, given the regulatory uncertainties surrounding Internet-distributed video, WISPs have not yet entered this space in a meaningful way.<sup>2</sup> The uncertainties in the regulations have forced WISPs to alter their business models to ensure regulatory compliance. Instead of offering their own video services, WISPs wanting to enter the video distribution space have partnered with third party providers such as by reselling satellite-delivered video.

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<sup>2</sup> Other Internet-based video programming distributors have found themselves in a similar predicament. *See, e.g., NPRM* at 15996 (citing Letter from Seth Greenstein, Counsel to Aereo, to Marlene H. Dortch, FCC Secretary, MB Docket No. 12-83, at 2 (filed Oct. 10, 2014)).

## Discussion

In adopting the *NPRM*, the Commission's goal is to ensure that the MVPD definition is "technology-neutral" and "create[s] new competitive opportunities that will benefit consumers."<sup>3</sup> To that end, the Commission is seeking to modernize its interpretation of the term MVPD to encompass Internet-based programming distributors. To determine whether and to what extent OVDs should be included in the definition of MVPD, the Commission asks whether it should adopt the Linear Programming Interpretation, the Transmission Path Interpretation, or another interpretation.<sup>4</sup> The Commission suggests that other interpretations might include a "functional equivalency" standard whereby an OVD acting like a traditional MVPD and looking like an MVPD from the consumers' perspective should be afforded MVPD status.<sup>5</sup> The Commission also asks whether it should permit OVDs to elect MVPD status.<sup>6</sup> By electing such status, the OVD would then take on both the regulatory benefits and burdens of MVPDs. Those do not make such an election would not be bound by the Commission's rules that relate to MVPDs.

Rather than using the Linear Programming Interpretation or the Transmission Path Interpretation, WISPA supports a regulatory framework by which OVDs may elect MVPD status. OVDs should not be pigeonholed into a regulatory framework if the distributor decides that the regulatory burdens exceed the benefits of program access and retransmission consent. Instead, WISPA supports regulatory flexibility so that OVDs wanting the benefits of MVPD classification can elect *on their own* to be classified as such. Those that do not want to be considered as a MVPD should not be saddled with the regulatory burdens attendant to MVPD

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<sup>3</sup> *Id.* at 15997.

<sup>4</sup> *Id.* at 16002-03.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

classification. To determine whether an OVD is qualified to elect MVPD status, WISPA supports using the functional equivalency standard.

A regulatory regime where providers select their status will support the public interest in a number of respects. Most importantly, it will foster innovation and promote competition. OVDs will not be required to design business models around prescriptive regulations, but instead will be able to determine whether a business model fits within the realm of MVPD status or outside the definition. Given the rate at which technology changes, it may be that an OVD determines that its business model works better outside the scope of the Commission's MVPD regulatory grasp. OVDs that do not elect MVPD status would still be free to go to the open market to try to negotiate program distribution agreements with content owners.

Allowing OVDs to elect their regulatory status would also help “avoid the legal conundrum involved in determining the regulatory status of a novel service.”<sup>7</sup> With a choice, an OVD can control its own regulatory destiny. Further, allowing OVDs to elect MVPD status will alleviate concerns that the Commission is “shoehorning Internet video providers . . . into a framework that many people, including those in leadership in Congress, have deemed in need of review or overhaul.”<sup>8</sup> Giving providers the option to select their status will allow providers to make an informed decision, even if the statutory and regulatory framework that underlies the decision is arguably outdated.

For OVDs that select MVPD status, those OVDs should be afforded all of the protections that traditional MVPDs have under existing FCC regulations. Specifically, the program carriage rules should apply regardless of the technology used by the MVPD to deliver the content. Those that qualify as a MVPD and elect MVPD status should have equal access to the same

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<sup>7</sup> *Id.* at 16048 (Statement of Commissioner Jessica Rosenworcel).

<sup>8</sup> *Id.* at 16051 (Concurring Statement of Commissioner Michael O’Rielly).

programming that traditional MVPDs have access to. The Commission also should prohibit discriminatory practices that could prevent new entrants or those in small or rural areas from competing with existing MVPDs, especially those that control access to programming that can be withheld to foreclose distribution in an anti-competitive manner.

### **Conclusion**

WISPA supports the Commission's expansion of the term "MVPD" to encompass more than just traditional cable and satellite operators and to include Internet-based programming distributors. WISPA urges the Commission to adopt a regulatory regime whereby a qualified OVD can elect MVPD classification.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

March 3, 2015

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