**Before The**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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

# COMMENTS OF VERIZON


Kathleen M. Grillo
*Of Counsel*

William H. Johnson
William D. Wallace
1320 N. Courthouse Road, 9th Floor
Arlington, VA 22201
(703) 351-3060

*Attorneys for Verizon*


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## COMMENTS OF VERIZON[1]

### I. INTRODUCTION AND SUMMARY.

This proceeding has the potential to increase video competition and provide additional choices for consumers.[2] Consumers are rapidly turning to the Internet to view video programming, and emerging online video distributors are addressing this demand. Online video services through Netflix, Hulu, Apple, Amazon and others are already popular with consumers, and Verizon plans to introduce its own over-the-top video service in 2015, providing an additional competitive choice. But online video programmers need access to certain must-have cable and broadcast programming to offer consumers true alternatives to traditional video distribution services. The Commission can support these new video competitors and spur more choices for consumers by adopting the right regulatory framework: an approach facilitating online providers' access to desirable content without imposing ill-fitting legacy regulation.

The Commission can implement this framework by bringing the definition of a "Multichannel Video Programming Distributor" ("MVPD") in line with developments in the

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[1] The Verizon companies participating in this filing are the regulated, wholly-owned subsidiaries of Verizon Communications Inc. ("Verizon").

[2] *See Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, ¶¶ 1-3 (2014) ("*NPRM*").

marketplace. First, the Commission can help ensure that these nascent competitors have the same rights to gain access to programming as other MVPDs. Like other competitive video distributors, online providers that qualify as MVPDs would have some protections from the potential abuses of cable incumbents and broadcasters as they seek must-have programming. The existing program access rules and good faith obligations for retransmission consent negotiations – while not a complete answer to the challenges competitive providers face when seeking programming – have been useful to competitive video providers. They would likewise provide some measure of protection to Internet-based video providers, particularly to address problems in acquiring content, such as forced bundling, that can hamper both competitive facilities-based MVPDs and emerging online video distributors.

Second, the Commission can facilitate emerging competition by ensuring that unnecessary regulations are not imposed on over-the-top video services. Most importantly, legacy cable regulation, including local franchising obligations, should not apply to online providers. If applied to online services, such regulations could kill these fledgling services before they even leave the gate. The Commission should also exempt online providers from many of the other regulations that apply to traditional MVPDs, including the Commission's various technology mandates. These make little sense for online video providers that deliver services in varied and evolving ways. The Commission could further alleviate the risk that regulation might unintentionally impede emerging video competitors by allowing over-the-top providers to opt in to the Commission's MVPD framework, rather than having it apply automatically.

Finally, the Commission should ensure that any MVPD obligations that may apply to Internet-based video services are truly necessary to protect consumers and are appropriately tailored in light of the limitations of this emerging technology. Some existing obligations that apply to MVPDs, such as signal leakage requirements, will not translate precisely into the online context. Others, such as video description, are already the subject of pending Commission proceedings that can address their application to online providers. The Commission should also consider whether some of the obligations that come with MVPD status should simply be eliminated to level the playing field among incumbent MVPDs and new online competitors.

## II. THE COMMISSION SHOULD RECOGNIZE THAT OVER-THE-TOP DISTRIBUTORS OF MULTIPLE STREAMS OF PRESCHEDULED, LINEAR VIDEO PROGRAMMING QUALIFY AS MVPDS.

The Commission is correct to conclude that over-the-top video distributors that provide multiple streams of prescheduled, linear programming qualify as MVPDs under the statute, and thus are entitled to the rights that status entails.[3]

First, the statutory term "MVPD" encompasses an entity that makes available "multiple channels of video programming." Emerging video services that share the key characteristics of traditional MVPD services – such as offering multiple channels of pre-scheduled linear programming – fit within this definition, notwithstanding their reliance on the Internet for distribution. Therefore, the Commission can reasonably conclude that a "prescheduled stream[] of video programming" is a "channel of video programming" for purposes of the statutory definition.[4] And an over-the-top video provider that offers multiple streams of such programming would then fall within the definition of MVPD.

The Commission is similarly correct to conclude that an MVPD need not provide a physical transmission path to subscribers to qualify for that status. While many MVPDs today provide such a path, nothing in the statutory definition requires it. Accordingly, video

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[3] *See id.*, ¶ 18 ("linear programming interpretation").
[4] An MVPD is defined as "a person . . . who makes available for purchase, by subscribers or customers, multiple *channels of video programming*." 47 U.S.C. § 522(13) (emphasis supplied).

distributors who offer consumers access to content on a consumer-provided broadband connection are not excluded from the definition.[5] In fact, the definition of MVPD is agnostic as to the use of any type of delivery technology.[6] A transmission path requirement would limit the MVPD definition to entities that own or operate the physical facilities over which the service is provided, *e.g.*, cable companies and direct broadcast satellite ("DBS") providers, and make the statutory framework increasingly outdated as consumers turn to the Internet for their video services. The broad definition of MVPD is not so limiting, and can reasonably include video distributors who do not provide a transmission path to their subscribers.

Although the statutory term "MVPD" encompasses online providers that make available multiple "channels," given the wide variety of potential business models among online video providers, and the fact that online video has so far emerged outside of the Commission's MVPD regulatory framework, the Commission should allow providers flexibility in determining whether to offer their services as an MVPD.[7] This approach would allow online providers to determine whether the benefits that come with MVPD status are justified in light of any associated technical complications, content rights issues or regulatory burdens. And such an approach would help to ensure that the Commission's regulations do not unintentionally undermine emerging sources of video competition. To avoid confusion on this point, the Commission could establish a registration process for online providers who believe they qualify as MVPDs and are interested in acting as such. By registering, they would agree to meet the obligations that come out of this proceeding as well as obtain the benefits.

[5] *See NPRM*, ¶¶ 18-22.
[6] *See id.*, ¶ 23; 47 U.S.C. § 522(13).
[7] *See NPRM*, ¶ 17; *see also id.*, Statement of Commissioner Jessica Rosenworcel.

## III. THE COMMISSION SHOULD EXTEND THE PROTECTIONS OF THE PROGRAM ACCESS AND RETRANSMISSION CONSENT RULES TO OVER-THE-TOP MVPDS.

The primary benefit to online video providers from qualifying as an MVPD is access to the protections of the Commission's program access rules and the good faith obligations as broadcasters negotiate retransmission consent. Content remains the lifeblood of the video distribution marketplace; this is true for emerging competitors as well as existing MVPDs. Yet, access to content comes at an increasingly steep price because, while the amount of video content being produced in the United States continues to increase, much of the most popular content remains under the control of a few large content providers. Indeed, almost all popular programming in the United States is sourced from just a half dozen programming vendors, most of whom control both some broadcast network programming as well as cable programming.

The Commission's program access rules for cable-affiliated programming and retransmission consent framework for carriage of broadcast station signals help enable competitive video providers to obtain at least some programming they need to compete in the video marketplace.[8] While these rules have limits that keep them from effectively addressing the full range of content providers and their practices that affect competitive video distributors, they nonetheless provide some measure of protection that has proven important for emerging video services, like Verizon's FiOS TV. In contrast, over-the-top video distributors currently have no protections at the Commission (other than certain merger conditions) when they attempt to gain access to cable-affiliated programming or broadcast station signals.

Competitive and start-up video distributors – as MVPDs – can benefit from being able to invoke these rules to include in their channel lineups the programming consumers desire. As an initial matter, competitive and start-up distributors begin with a disadvantage as compared to

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[8] *See, e.g.*, *Verizon Tel. Cos. v. Madison Square Garden*, Order, 26 FCC Rcd 13145 (2011).

their incumbent competitors because programming costs are usually related to subscriber volumes, and incumbent cable operators can offer program owners large subscriber volumes that newer entrants cannot. And, then, must-have programming is costly. For example, sports programming is highly popular with consumers in the current video marketplace.[9] An increasing number of regional sports networks ("RSNs"), affiliated with the same handful of program producers and/or incumbent cable operators, control access to both professional and collegiate sports programming and demand substantial per-subscriber rates for distribution on non-affiliated MVPD networks.[10] Against this backdrop, the protections provided by the program access and retransmission consent rules – while incomplete – are important.

The program access and retransmission consent regimes may also help address practices used by programmers that make it more difficult for over-the-top providers, as well as competitive facilities-based MVPDs, to offer their differentiated packages of programming to consumers, such as smaller, niche service offerings.[11] For example, program owners usually offer desired programming with demands to bundle that programming with other less desired channels. Program owners may require, directly or indirectly through the economics of pricing

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[9] *See Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, ¶¶ 52-53 (2010); *Verizon Tel. Cos. v. Madison Square Garden*, ¶ 29 ("given the non-replicable nature of the content on the MSG HD and MSG+ HD, Verizon has no ability to formulate a viable competitive response that would allow Verizon to compete for the many subscribers that highly value these [sports] networks").

[10] *See, e.g.*, R. Glier, "Examining the pros and cons of the SEC Network," USA Today (May 31, 2014) (examining market for RSNs in context of new Southeastern Conference sports network owned by ESPN), *available at* http://www.usatoday.com/story/sports/ncaaf/sec/2014/05/31/sec-network-espn-comcast-direct-tv/9812745/; D. Thompson, "Mad About the Cost of TV? Blame Sports," *The Atlantic* (Apr. 2, 2013) ("Sports accounts for half of the programming costs of TV"), *available at* http://www.theatlantic.com/business/archive/2013/04/mad-about-the-cost-of-tv-blame-sports/274575/.

[11] *See, e.g.*, R. Krause, "Skinny Dish Package Weighs on Pay TV Moving Toward A La Carte? The 12-channel Sling TV service may be a harbinger for content competition," Investor's Business Daily (Jan. 23, 2015).

(*i.e.*, one desired channel is more expensive than a bundle), that providers purchase a bundle of programming that includes both desired and unwanted channels.  Obtaining only the particular channels that a provider (and its customer base) is interested in is frequently not a possible result. And, in these situations, alternative pricing arrangements – such as basing costs on viewership rather than subscribership – are often rejected.  Additionally, as online distribution services proliferate, a content owner may choose to limit access to online distribution rights.  Such practices not only make it difficult for competitive video providers to offer smaller and more tailored video offerings that better meet consumer demand, but essentially force consumers to pay for today's large packages that may include programming they do not want to watch. Effective implementation of the program access and retransmission consent rules would help address these abuses, at least when employed by programmers subject to these rules, and could facilitate additional choices that would benefit consumers.

Extending the protections of the program access and retransmission consent frameworks to over-the-top video distributors would improve their ability to negotiate for competitive distribution options and potential program lineups that consumers want and demand.  Even if problems such as bundling are not easily remedied, both these emerging competitors and competitive facilities-based MVPDs should have the opportunity to invoke these protections when content owners significantly hinder their efforts to obtain must-have programming.

## IV. THE REGULATORY FRAMEWORK FOR OVER-THE-TOP MVPDS SHOULD NOT INCLUDE BURDENSOME OR ILL-FITTING LEGACY REGULATION.

Over-the-top video remains in its infancy.  Most of the rules governing MVPDs were implemented well before these services were even contemplated.  The obligations imposed on MVPDs were developed primarily in the context of legacy, facilities-based services, such as cable and satellite.  As a result, many of the regulations that apply to MVPDs may have little relevance in the case of new online providers.[12] In fact, some regulations – such as franchising or technology mandates – could pose serious risks to online providers' ability to offer service.

In considering an appropriately tailored framework for online MVPDs, the Commission should calibrate its regulatory framework to encourage, and not undermine, the further development of over-the-top services. In particular, the Commission should shield these emerging competitors from the outdated and burdensome regulations that apply to cable services. Moreover, as these new services continue to increase competitive options for consumers, the Commission should work to prevent market distortions by removing regulations, such as technology mandates, on traditional MVPDs that are no longer justified or needed, and indeed may make it more difficult for traditional MVPDs to compete with these new services.

### A. Over-the-Top Video Services Should Not Be Subject to Legacy Cable Regulation.

The Commission should confirm in this proceeding that over-the-top video distributors are immune from legacy cable regulations because they are not "cable operators" and do not provide a "cable service." A contrary result – such as requiring online service providers to negotiate franchise agreements across the country – would be inconsistent with law and the Commission's policy goals to facilitate the entry and growth of new competitors to traditional pay TV services.

#### 1. Over-the-Top Video Services Are Not Cable Services.

Under the plain language of the statute, an over-the-top video service is not a "cable service," and is not subject to legacy cable regulation. The definition of "cable service" requires

[12] For example, over-the-top video distributors do not supply inside wiring to their subscribers (*NPRM*, ¶ 61) or a network that could be responsible for signal leakage (*NPRM*, ¶ 60). The Commission also asks about application of its rules enforcing Equal Employment Opportunities for MVPDs (47 C.F.R. § 76.71(a)) and its rule banning enforcement of exclusive arrangements to provide a video programming service to Multiple Dwelling Units ("MDUs") (47 C.F.R. § 76.2000(a)). *See NPRM*, ¶¶ 58, 63. The latter rules do not rely on the technology of the MVPD.

"the one-way *transmission* to subscribers of (i) video programming, or (ii) other programming service…."[13] Pursuant to the "linear programming interpretation" for the definition of MVPD, an over-the-top MVPD does not provide the transmission path to the subscriber. Rather, its customers must subscribe independently to a broadband Internet access service over which the customer requests delivery of the programming from the MVPD through the Internet connection to the consumer's video-displaying equipment. Accordingly, the definition of "cable service" simply does not apply.[14]

Moreover, legacy cable regulation does not apply because the Internet is not a "cable system." The definition of "cable system" requires "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service…."[15] However, a broadband network does not include "associated signal generation, reception, and control equipment that is designed to provide a cable service" for the over-the-top video distribution service.[16]

The definition of "cable system" also specifically exempts a "facility that serves subscribers without using any public right-of-way."[17] The Commission and courts have found that "use" of the public rights-of-way requires more than just transmission of a signal over wires or cables, but, rather, requires at least an "incremental burden on those rights-of-way," which

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[13] 47 U.S.C. § 522(6) (emphasis supplied).

[14] *Cf. Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 67 (2002) (cable modem service not a "cable service" because provider does not control what content subscriber chooses over transmission facility or transmit content to all subscribers to that facility).

[15] 47 U.S.C. § 522(7).

[16] The Commission has referred to such equipment as including "headend equipment." See *Telephone Co.-Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 5069, ¶ 24 (1992) ("*Telco-Cable Cross-Ownership*").

[17] 47 U.S.C. § 522(7)(B).

does not exist where video is transmitted over facilities that are independently authorized to be in the public right-of-way,[18] as with over-the-top video distribution.

Finally, an over-the-top video distributor is not a "cable operator" because it is not "any person or group of persons (A) who provides a cable service over a cable system,"[19] as explained above. A "cable operator" could also include "any person or group of persons. . . (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of . . . a cable system."[20] But, an over-the-top video distributor can and does offer service without having any ownership or management responsibility in the broadband connection used by its subscribers[21] and, therefore, cannot be deemed a "cable operator" under the Act.[22]

### 2. Applying Cable Regulation to Online Video Providers Could Kill These Emerging Competitors.

Confirming that over-the-top video is not subject to cable regulation is not only legally correct, as explained above, but also necessary as a matter of policy to ensure that over-the-top video services thrive. While some cable incumbents may see a competitive benefit in subjecting online video services to cable regulation, such regulation was designed for a much different context. Namely, this regulation was largely designed to address monopoly cable operators where consumers' only choice was between the local cable incumbent or broadcast TV.

In today's environment, over-the-top video distributors are innovating and attracting consumers in part because they are not required to seek local or state franchises and meet local,

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[18] *Telco-Cable Cross-Ownership*, ¶ 11; *see City of Chicago v. FCC*, 199 F.3d 424, 432-33 (7th Cir. 1999).
[19] 47 U.S.C. § 522(5).
[20] *Id.*
[21] *See Telephone Co.-Cable Television Cross-Ownership Rules*, Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300, ¶ 52 (1991). In any event, the broadband network is not a "cable system," as explained above.
[22] *See NPRM*, n. 107 ("We note that even if an Internet-based distributor qualifies as an MVPD it will not be subject to a number of regulations and statutory requirements applicable to cable and DBS operators unless it also qualifies as one of those services.").

state and federal cable requirements. Ensuring over-the-top video distributors are not subject to cable regulation will ensure that the Commission does not "deter investment in new technologies and drive some current or prospective Internet-based distributors from the market."[23]

This result is necessary to promote innovation and investment even if the over-the-top video distributor is the owner or manager, or its affiliate, of the broadband connection used by some subscribers and even when that owner or manager also provides a managed video service over the same facilities. The Commission has determined that a local franchising authority's jurisdiction "applies only to the provision of cable services over cable systems"[24] and that "the provision of video services pursuant to a cable franchise does not provide a basis for customer service regulation by local law or franchise agreement of a cable operator's entire network, *or any services beyond cable services.*"[25] The owner or manager of the broadband connection used by subscribers for access to that service is not providing a "cable service" simply because it provides the over-the-top service on a mixed-use facility, and so, does not become a "cable operator." It should be treated just like an over-the-top video distributor with no facilities of its own. Accordingly, the Commission should confirm that "an OTT service, if provided to consumers [by a cable operator] without regard to whether they subscribe to the cable operator's managed video service, would be a non-cable MVPD service inside and outside the operator's

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[23] *Id.*, ¶ 38.

[24] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, ¶ 121 (2007) ("*Section 621(a)(1) R&O*"); *see also Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, 22 FCC Rcd 19633, ¶¶ 16-17 (2007) (applying findings with respect to mixed used networks to incumbent cable systems), *aff'd on recon.*, Order on Reconsideration, MB Docket No. 05-311, FCC 15-3, ¶¶ 14-15 (Jan. 21, 2015).

[25] *Section 621(a)(1) R&O*, ¶ 122 (emphasis supplied).

footprint, even if [the OTT service] is accessible over that cable operator's broadband facilities."[26]

### B. The Commission Should Not Impose Technology Mandates on Over-the-Top MVPDs.

Likewise, given the diverse approaches to providing video over the Internet, the Commission should confirm that technology mandates, such as its various navigation device rules, do not apply to over-the-top MVPDs.[27] While some of these providers' services may employ customer premises equipment ("CPE"), others may simply require an Internet connection. And, for those that require use of CPE, or software-based conditional access technology, it is likely – at least currently – that the form and function of the CPE will vary from provider to provider. Accordingly, while these requirements obviously could not be applied to any over-the-top service that does not employ special CPE, they also should not be applied to any that do.

Relieving over-the-top MVPDs – and other video providers – of these technology mandates will further competition and consumer choice. Both incumbent cable operators and competitive providers like Verizon have been subject to the integration ban, but many competing video distributors, including satellite providers and online video providers, have not. For example, the Commission has recognized that the current CableCARD implementation for the integration ban is not applicable to IP-delivered video services.[28] However, in accordance with

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[26] *NPRM*, ¶ 78.
[27] *See* 47 C.F.R. §§ 76.1204, *et seq.*
[28] *See Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996*; *Commercial Availability of Navigation Devices; Compatibility between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, 25 FCC Rcd 4275, ¶ 9 (2010) ("*Section 304 NOI*"). At the same time, the Commission has conceded that there is no industry-recognized standard for a security element to be used in IP-delivered video systems. *See Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd 11780, ¶ 61 ( 2007).

the upcoming sunset of the integration ban,[29] the Commission expects to receive a report on downloadable security options in September 2015.[30] Given the lack of a downloadable security standard or standards, the Commission should not require over-the-top MVPDs to comply with the existing integration ban or the rules implementing Section 629 of the Act at this time.

Moreover, while these regulations were intended to promote consumer choice in certain types of equipment, they never succeeded, as the Commission has recognized.[31] As a result of consumer demand and technological development – not regulatory mandates – consumers can now access video over a variety of consumer-supplied equipment, without set-top boxes, including "TV Everywhere" applications, PCs, game consoles, and mobile devices, such as tablets and smartphones.[32] In short, the existing technology mandates have outlived their usefulness and the equipment paradigm for which they were designed, and that is true for both emerging and traditional MVPDs.

Under Section 629(c), the Commission may waive its navigation device rules as "necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products."[33] Over-the-top MVPDs represent a new development for multichannel video programming. Moreover, the Commission can sunset these requirements when the market

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[29] *See* STELA Reauthorization Act of 2014, Pub. Law 113-200 (H.R. 5728), § 106 (Dec. 4, 2014).
[30] *See* Public Notice, "Appointment of Members to the Downloadable Security Technology Advisory Committee," DA 15-114 (Jan. 27, 2015).
[31] *See Section 304 NOI*, ¶¶ 4-11.
[32] *See*, *e.g.*, Letter from Michael K. Powell, National Cable & Telecommunications Ass'n, to The Honorable Tom Wheeler, FCC, MB Docket No. 10-91 *et al.*, at 2 (Feb. 5, 2014), attached to Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, FCC, MB Docket No. 10-91 *et al.* (Feb. 5, 2014); W. Mossberg, "So Many Ways to Deliver Online Video to Your TV," Wall Street Journal (Aug. 14, 2013).
[33] 47 U.S.C. § 549(c).

for MVPDs is fully competitive, the market for equipment used with MVPD services is competitive, and eliminating these rules will promote competition and the public interest.[34] The Commission should waive or sunset these rules now, given the dynamic nature of this part of the marketplace and the public interest goal of promoting competition among innovative and emerging approaches to delivering video programming.

### C. The Commission Should Permit Over-the-Top MVPDs to Choose Whether to Carry Broadcast Station Programming.

While over-the-top MVPDs would be subject to the good faith requirements of the retransmission consent rules, not all may decide to carry local broadcast station programming. Given the variety of business models that over-the-top providers may choose, the Commission should not deem it bad faith if an over-the-top MVPD chooses not to carry any broadcast station programming and therefore refuses to negotiate broadcast station retransmission agreements.

### D. The Commission Should Treat Over-the-Top MVPDs Like Other IP-Based Video Distributors for Purposes of Other Regulations.

The Commission should apply to over-the-top MVPDs those rules and policies adopted for video programming distributors using Internet protocol ("IP") pursuant to the accessibility requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") and the loudness mitigation obligations of the Commercial Advertisement Loudness Mitigation ("CALM") Act. The statutes and the Commission's implementing orders directly address IP-based video, and thus provide the appropriate direction for applying them to online MVPDs, including:

[34] *Id.* § 549(e).

- ***Closed Captioning.*** The Commission's existing rules govern providing closed captioning of "video programming delivered using Internet protocol" that is not otherwise part of an MVPD's managed video service.[35]
- ***Video Description and Access to Emergency Information.*** The Commission has pending inquiries into how its video description and emergency information rules would apply to IP-based video distribution.[36]
- ***Accessible User Interfaces.*** The Commission has adopted rules governing audible accessibility for on-screen text menus and programming guides that apply when an MVPD provides a "navigation device" to subscribers.[37]
- ***Commercial Loudness Mitigation.*** The Commission has addressed IP-based video services in the context of the CALM Act requirements.[38]

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[35] *See* 47 C.F.R. § 79.4.
[36] *See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, ¶¶ 80-84 (2013).
[37] *See* 47 C.F.R. § 79.108.
[38] *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, ¶ 56 (2011).

## V. CONCLUSION.

For the reasons set forth above, the Commission should expand the definition of Multichannel Video Programming Distributor to include over-the-top video distributors and implement that definition consistently with the recommendations set forth above.

Respectfully submitted,

_/s/ *William H. Johnson*___
William H. Johnson
William D. Wallace
1320 N. Courthouse Road, 9th Floor
Arlington, VA 22201
(703) 351-3060

*Attorneys for Verizon*

Kathleen M. Grillo
*Of Counsel*

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