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	)	

REPLY COMMENTS OF MLB ADVANCED MEDIA, L.P.

MLB Advanced Media, L.P. ("MLBAM") submits the following reply comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding, which the Commission adopted on December 17, 2014. See 80 Fed. Reg. 2078 (Jan. 15, 2015).

Background

MLBAM is Major League Baseball's Internet and interactive media company. MLBAM is the nation's leading Internet distributor of Major League Baseball ("MLB") content. Each year billions of pages of content and video streams are consumed from MLBAM's award-winning sites, apps and other services.

We began distributing live MLB game telecasts on the Internet in 2002. In 2003, MLB.TV was expanded to include distribution of the entire season's game telecasts, a first among professional sports leagues around the world. Today our MLB.TV subscription service is the most comprehensive live online video distribution service of its kind, distributing all live MLB game telecasts to a global audience of baseball fans on personal computers, tablets, smart phones and Internet-connected devices. We also provide services enabling third-party sports, media and entertainment content to stream more than 25,000 live independent events each year, making us the nation's largest distributor of live event video on broadband networks.

Comments

The Communications Act of 1934, as amended (the "Act"), defines the term "Multichannel Video Programming Distributor" ("MVPD") as:

> [A] person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television-receive only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming. 47 U.S.C § 522 (13).

The Commission proposes to change its interpretation of that term to include "within its scope services that make available for purchase, by subscribers or customers, multiple linear streams of video programming, regardless of the technology used to distribute the programming."

NPRM ¶ 1. The effect of adopting this proposal may be, among other things, to subject the newly-covered services to the significant obligations that the Act as well as other legislation and implementing FCC regulations imposed upon MVPDs. "Among the regulatory obligations of MVPDs are statutory and regulatory requirements relating to (i) program carriage; (ii) the competitive availability of navigation devices (including the integration ban); (iii) good faith negotiation with broadcasters for retransmission consent; (iv) Equal Employment Opportunity ("EEO"); (v) closed captioning; (vi) video description; (vii) access to emergency information; (vi) signal leakage; (vii) inside wiring; and (viii) the loudness of commercials." NPRM ¶ 36 (footnotes and citations omitted).

As a leader in the online video distribution ("OVD") market, we do not believe that such regulation is warranted. The OVD market is already providing consumers with more choices than ever before to watch high-quality television programming on personal computers, tablets, smart phones and other Internet-connected devices. Numerous examples are described in the comments submitted to the Commission by The Walt Disney Company, 21st Century Fox, Inc., CBS Corporation and DirecTV, LLC.[1] There is no market failure to address through regulation, and imposition of additional regulation may limit, rather than increase, consumer choice. The better course is to continue to let this emerging market develop on its own.

If and to the extent that the Commission determines to implement new regulations in this area, it should exclude OVDs that make available only content that they or their affiliates own or otherwise have the right to make available. We agree with the Commission's tentative conclusion that there should be an exclusion for a "distributor that makes available only programming that it owns -- for example, sports leagues or stand-alone program services like CBS's new streaming service." NPRM ¶ 26. However, that exclusion is inadequate, because it does not take into account that such distributors can and often do make available programming that they do not necessarily "own," but otherwise have the right to make available pursuant to license. We urge the Commission to amend the proposed regulations to make clear that the MVPD definition does not include such distributors or activities.

The Commission also requests comment on "how expanding the definition of MVPD in the Communications Act to include some Internet based distributors interrelates with copyright law." NPRM ¶ 66. Nothing in this proceeding should have any impact on whether Internet services are entitled to compulsory licenses to retransmit broadcast programming over the Internet.

First, as stated above, private distribution arrangements between program rights holders and OVDs are already providing consumers with more choices than ever before about how, when and where to enjoy high-quality television programming via broadband networks. There would be no sound policy basis to impose any compulsory license.

---

[1] *Comments of the Walt Disney Company, 21st Century Fox, Inc. and CBS Corporation,* MB Docket No. 14-261 (filed March 3, 2015), p. 2-5; *Comments of DIRECTV, LLC,* MB Docket No. 14-261 (filed March 3, 2015), p. 1, 3; (Examples cited include library services such as Hulu, Netflix, Amazon Instant Video, Google Play, and iTunes; linear television services such as Sony's PlayStation Vue, DISH's Sling TV, and DIRECTV's Yaveo; network TV Everywhere products such as WATCH ESPN, WATCH ABC, WATCH Disney Channel, FOX NOW, FX NOW, NatGeoTV, FOX Sports GO; and network over-the-top offerings such as CBS and HBO).

Second, in litigation brought by MLBAM and several other content owners, courts properly concluded that Congress never intended the compulsory license in Section 111 of the Copyright Act to apply to any service that distributes broadcast programming over the Internet. See WPIX, Inc. v. ivi, Inc., 765 F. Supp. 2d 594 (S.D.N.Y. 2011), aff'd, 691 F.3d 275, 284 (2d Cir. 2012), cert. denied, 131 S. Ct. 1585 (2013).

Third, Congress has made clear that it alone should decide the terms and conditions on which new types of retransmission services receive compulsory licenses to retransmit broadcast programming. See 17 U.S.C. §§ 119 and 122 (containing several statutory licensing conditions different than those in Section 111). As the legislative history of these provisions explains, "In enacting each [compulsory] license, Congress has traditionally considered the unique historical, technological, and regulatory circumstances that affect each industry. Among other differences, the local character of cable systems and the national business model of DBS have resulted in differential public service, carriage, and taxation obligations that ought to be objectively reviewed before Congress enacts sweeping changes" H.R. Rep. No. 108-660 at 9 (2004).

Respectfully submitted,

MLB Advanced Media, L.P.
By MLB Advanced Media, Inc.,
Its General Partner

By: 
Lara Pitaro Wisch
Senior Vice President

Dated: April 1, 2015