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 AMAZON.COM, INC.

Amazon.com, Inc. ("Amazon"), one of the largest providers of online streaming content through its Amazon Instant Video ("AIV") service, agrees with commenters in this proceeding who have highlighted how over-the-top ("OTT") video providers are successfully meeting consumer demand for high-quality video content that is available instantly and on any number of devices. Because of this success, and the tremendous growth and diversity in the marketplace for online video content, Amazon respectfully urges the Commission to refrain from changing its rules to redefine "multichannel video programming distributor" ("MVPD"), which could impair the success of this thriving marketplace.

I. The OTT Marketplace Is Meeting Consumer Needs Today

Over the past few years, the quantity and quality of online video content has risen dramatically. The increased availability of OTT video content has changed the way people watch video, such that many consumers today watch "programs" on a non-linear basis that can be streamed or downloaded instantly on a variety of online platforms. AIV, for example, makes more than 240,000 titles available to customers for streaming or download on hundreds of devices, including over 40,000 titles available as part of a Prime subscription at no additional charge. Many consumers today do not consume "channels" as we have understood that term for the past half-century. Meanwhile, new platforms, new types of content, and new content providers continue to emerge to meet the demand of consumers who increasingly watch video content online rather than through traditional platforms, and the leading OTT providers offer ever-growing libraries of movies and television shows from which consumers can choose.[1] As the quantity of video content available from OTT providers has increased, so has the quality, with original content from OTT providers winning a number of major awards in the past few years. At the 2015 Golden Globe Awards, for example, Amazon's original series *Transparent* won awards for Best TV Series, Musical or Comedy; and Best Actor in a TV Series, Musical or Comedy, for lead actor Jeffrey Tambor.[2] Amazon's children's television series *Tumble Leaf* has won similar acclaim, receiving four individual Daytime Emmy Awards for Outstanding Individual Achievement in Animation, an Annecy International Animated Film Festival (2014) Jury Award for a television series, a 2015 Annie Award for Best General Audience Animated Television/Broadcast Productions for Preschool Children, and a Parents' Choice Gold Award.

Amid these achievements, the OTT marketplace shows no sign of slowing down. Dish Network recently launched a new service called Sling TV, which will provide live and on-demand access to traditional cable network channels via the Internet at a fraction of the cost of a traditional cable or satellite bill.[3] Similarly, HBO will soon launch a streaming video service that

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[1] *See TV Makers Design for Streaming Video to Stay Relevant*, N.Y. Times (Jan. 6, 2015), http://www.nytimes.com/aponline/2015/01/06/technology/ap-us-tec-gadget-show-future-of-tv.html.

[2] *2015 Golden Globe Award Winners*, GOLDEN GLOBE AWARDS, http://www.goldenglobes.com/golden_globe_winners (last visited Mar. 30, 2015).

[3] *See* Emily Steel, *Dish Network Unveils Sling TV, a Streaming Service to Rival Cable (and It Has ESPN)*, N.Y. TIMES (Jan. 5, 2015), http://www.nytimes.com/2015/01/06/business/media/dish-network-announces-web-based-pay-tv-offering.html.

will allow consumers to view HBO programming without a cable or satellite subscription.[4] CBS recently launched a service called CBS All Access, which not only provides on-demand access to thousands of episodes of current and classic television shows but also will provide a live stream of consumers' local CBS broadcasts.[5] AIV and other online providers also have shown that there is not only a new way to view content, but there are new business models as well. Thus, the last few years have offered consumers access to new business models for video content other than the traditional monthly fee for a bundle of channels selected by the cable operator. Today, through AIV, Netflix, Hulu, Apple, and others, consumers can now choose streaming or on-demand video, subscription-based or a la carte services, digital benefits packages, and more. Announcements for new platforms and innovative distribution models can be expected to continue as the market for online video content continues to flourish.[6]

II. Amazon Does Not See a Current Need for Commission Action

Amazon agrees with the views expressed by many that the tremendous investment in online video content has attracted an enormous number of viewers, yielded award-winning programming, and has occurred under the current regulatory system with no government assistance.[7] Virtually every major content provider in the country (*e.g.*, Warner, Disney, CBS,

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[4] *See* Cecilia Kang, *HBO Is Launching a Stand-Alone Streaming Service in 2015*, WASH. POST (Oct. 15, 2014), http://www.washingtonpost.com/news/business/wp/2014/10/15/hbo-is-launching-a-stand-alone-streaming-service-in-2015/.

[5] *See* Joe Flint, *CBS Launches Online Subscription Video Service*, Wall St. J. (Oct. 16, 2014), http://www.wsj.com/articles/cbs-launches-online-subscription-video-service-1413465013. The local broadcast signal is currently available from CBS's owned and operated stations; the network announced that it intends to add affiliates' programming in markets across the country as it reaches agreements with individual affiliates. *See id.*

[6] *See* DiMA Comments at 4 (noting that "more innovation is underway as Sony is preparing its own online content package of traditional cable channels").

[7] *See, e.g.*, Cox Comments at 10 (stating that "OTT services are burgeoning without any regulatory leg-up, with robust new OTT offerings being launched by Sony, DISH Network, and (continued…)

Comcast, Fox, Sony), many leading information technology companies (*e.g.*, Amazon, Apple, Google, Microsoft), and many new companies (*e.g.*, Netflix, Roku) are investing hundreds of millions of dollars in content and technology to explore and expand online video content delivery and consumption. This fresh history runs counter to some of the key assumptions in the Commission's Notice of Proposed Rulemaking ("NPRM"), which Cox notes are "based on a misplaced judgment that OTT providers need a regulatory boost to achieve success in the marketplace."[8] In light of the excellent results achieved over the last several years, Amazon does not see why the Commission would risk interfering with the OTT marketplace, which is still growing and changing, at this stage in its development.

The concept of a multichannel video programming distributor ("MVPD") was originally introduced as part of the 1992 Cable Act.[9] As the Commission noted in its NPRM, MVPD status is attended by a large number of regulatory privileges and obligations, including the right to seek relief under the program access rules and obligations relating to program carriage and good faith negotiation with broadcasters for retransmission consent.[10] However, many OTT providers have no desire to avail themselves of these rights and obligations. Indeed, most OTT providers today

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others"); DiMA Comments at 4 (stating that "these new services, which are radically transforming online viewing habits, all have grown in response to evolving consumer demands and without government intervention or assistance").

[8] Cox Comments at 5.

[9] *See* Cable Television Consumer Protection and Competition Act of 1992, § 2, Pub. L. No. 102-385, 106 Stat. 1460, 1463 (1992) (defining the term "multichannel video programming distributor").

[10] *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, MB Docket No. 14-261, FCC 14-210, at ¶ 36 (rel. Dec. 19, 2014) (listing many of the regulatory privileges and obligations of MVPD status, including "the right to seek relief under the program access rules and the retransmission consent rules"; requirements include competitive availability of navigation devices, good faith negotiation with broadcasters for retransmission consent, equal employment opportunity hiring, closed captioning, video description, access to emergency information, signal leakage, inside wiring, and the loudness of commercials).

bear no resemblance to "MVPDs" as that term was originally understood, nor do these providers wish to become more like traditional MVPDs. The NPRM incorrectly assumes that online video content delivery is simply an extension of the current cable television industry. Rather, the services offered by AIV, Netflix, Apple, and others represent a new industry altogether. The recent announcements by DISH and HBO to offer online products represents an effort by traditional cable industry participants to move to the new industry that online content providers have been building for the past several years. Importantly for the sake of this proceeding, there has been no indication that additional regulation is needed to enable this new industry to grow and bring consumers even more benefits. Thus, the Commission's proposed rule changes seek to graft a twentieth-century economic and physical distribution model onto a modern digital media platform.[11] Amazon does not support this approach.

III. The Commission Should Ensure That It Does Not Impair the OTT Marketplace

For the reasons set forth above, Amazon does not see a need for Commission action at this time. If the Commission feels compelled to act, however, it should take care to ensure that its new rules do not impair the already thriving market for online video content. As explained below, the Commission should not force every entity offering online video content into the definition of "MVPD."

The Commission's NPRM tentatively concludes that "entities that provide Subscription Linear video services" would be classified as MVPDs.[12] The Commission also frequently refers

[11] That the Commission has proposed to waive "some or all" of the regulatory obligations associated with MVPD status reveals how ill-suited MVPD classification is for OTT providers. *See id.* ¶ 37.

[12] *Id.* ¶¶ 14, 18.

to "linear streams of video programming."[13] The Commission should clarify that a "linear stream" does not include so-called "binge watching," in which a new program such as *Transparent* or past seasons of *The Wire* are made available all at once for viewers to watch online.[14] Clarification is needed because these programs can be consumed one after the other in a linear fashion, but such consumption is still "on demand," at the viewer's discretion.[15]

A concern highlighted by this need for clarification is that the Commission's proposed definition of who would be subject to Commission regulation rests too much on the word "linear." Under the Commission's proposal, "linear" appears to be the only word that prevents the majority of OTT providers from being regulated, yet many have no interest in replicating the model that the Commission is seeking to graft onto digital media platforms. The concern stems from the fact that it is not possible to know how current OTT offerings could evolve in the future. Even a few years from now, the landscape of online video content delivery—the providers, the delivery methods, and even the content itself—could be remarkably different from what it is today. So while the Commission should clarify that "binge watching" is not included within the definition of a "linear stream," this step alone is not enough to address our concerns. It would be a mistake if companies are forced to distort their offerings to avoid classification as an MVPD when they have no ambition to replicate the traditional MVPD model. Amazon

[13] *See, e.g.*, *id.* ¶¶ 1, 22, 25.

[14] *See* John Jurgensen, *Binge Viewing: TV's Lost Weekends*, WALL ST. J. (July 13, 2012), http://www.wsj.com/articles/SB10001424052702303740704577521300806686174 ("Binge viewing is transforming the way people watch television and changing the economics of the industry. . . . [T]echnologies such as on-demand video and digital video recorders are giving rise to the binge viewer, who devours shows in quick succession—episode after episode, season after season.").

[15] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 29 FCC Rcd 1597, 1603 ¶ 15 n.23 (2014) ("A linear channel is one that distributes programming at a scheduled time. Non-linear programming, such as video-on-demand ('VOD') and online video content, is available at a time of the viewer's choosing.").

agrees with Verizon that "[c]onfirming that over-the-top video is not subject to cable regulation is not only legally correct . . . but also necessary as a matter of policy to ensure that over-the-top video services thrive."[16]

If the Commission acts in this proceeding, it should acknowledge, and any new rules should make clear, that not all OTT providers seek to (a) distribute linear television broadcast stations, (b) avail themselves of the rights and obligations accompanying MVPD status, or (c) in any way resemble the current understanding of MVPDs.[17] Any new definitions should not force all OTT providers into the square peg of an MVPD, whether an "old" or "new" version of that term. In that regard, Amazon agrees with the view expressed by the television network affiliates that the retransmission consent regime should not apply to entities that are not interested in carrying linear broadcast television stations.[18] This view of keeping online streaming providers not interested in broadcast carriage outside of the FCC's retransmission consent regime found widespread support.[19] This noteworthy consensus should caution the Commission that there is perhaps less need for regulation than it may have first assumed.

[16] Verizon Comments at 10.

[17] These important distinctions are recognized even by commenters urging the Commission to classify certain online video distributors as MVPDs. *See, e.g.*, Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (Mar. 3, 2015) ("Affiliates Associations Comments") at iv ("The Affiliates Associations . . . agree with the Commission's proposed Linear Programming Interpretation and respectfully urge its broad application to OVDs that distribute more than one stream of broadcast station programming at a prescheduled time to subscribers, but not to transaction-based or on-demand services.").

[18] *See* Affiliates Associations Comments at 26-27.

[19] *See, e.g.*, Verizon Comments at 14 (it is not "bad faith" for an OTT provider to opt not to carry broadcast stations and thereby refuse negotiations with broadcasters); FilmOn X Comments at 26 (good faith negotiation rules should apply only to those OTTs that seek to transmit broadcast signals, and many national OTT providers may not).

IV. The Commission Should Move Cautiously

Many media and entertainment commentators have celebrated our current time as the new "golden age of television."[20] As noted above, however, the concept of "television" is still evolving, largely through the influence of online platforms. For that reason, the Commission should be cautious about impeding future innovation.[21]

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For the reasons set forth above, Commission action at this time is unnecessary to encourage competition and promote consumer welfare in the marketplace for online video content. If the Commission nevertheless takes action to reclassify certain online video distributors as MVPDs, it should do so in a way that will reclassify only those distributors who wish to take advantage of the rights and obligations of MVPD status and will not impair the growing and diverse OTT marketplace.

Respectfully submitted,

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[20] *See, e.g.*, David Carr, *Barely Keeping Up in TV's New Golden Age*, N.Y. TIMES (Mar. 9, 2014), http://www.nytimes.com/2014/03/10/business/media/fenced-in-by-televisions-excess-of-excellence.html; Lee Cowan, *Welcome to TV's Second "Golden Age,"* CBS NEWS (Oct. 1, 2013), http://www.cbsnews.com/news/welcome-to-tvs-second-golden-age/.

[21] *See* NAB Comments at 5 (noting that "[t]he implications of extending existing regulatory policies to rapidly developing Internet-delivered video programming services are not yet known" and that the NPRM "leaves a number of critical issues unexplored").