Before the

Federal Communications Commision
Washington DC 20554

In the matter of
MB Docket No. 14-261, “Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services”

Comments of Erik L. Schwartz, Head of Product for BitTorrent Live.

From:
Erik L Schwartz
BitTorrent Inc
303 2nd Street S600
San Francisco, CA 94107

To:
Marlene H. Dortch, Secretary
Federal Communications Commision

Background

BitTorrent Live is a peer-to-peer live video streaming protocol that enables very low latency streaming of live video signals on the internet. Its peer-to-peer architecture has disconnected audience size from distribution cost and complexity. It is exactly the kind of technological innovation and breakthrough for the distribution of live television online that this proposed rule is designed to promote.

Introduction

The Federal Communications Commission (FCC) has published a Notice of Proposed Rule Making 14-261 (NPRM) that would allow providers of linear streaming online video services to be classified as Multichannel Video Programming Distributors (like cable companies or satellite TV companies) in regards to retransmission consent. This would allow a new category of online TV providers to compete for customers on a level playing field against existing MVPDs who are widely distrusted and who have earned unfavorable reputations with consumers. It would allow consumers to choose among providers, where quality, price, and customer service are factors the consumer considers. It would eliminate protectionist regulations that give legacy providers near-exclusive access to live television programming that forces consumers to choose between the programming they want and the quality, price, and customer service they deserve.

I want to touch on two issues in this comment:

Live Linear Video vs Video on Demand

The comments section of the NPRM is filled with tales about how much competition currently exists for consumers to access TV programming. Netflix, Hulu, Apple, Amazon, and others are now offering a wide variety of TV programming in an on-demand format. Some of these are pay per view, some are subscription based, some are hybrids. However, this really only tells half the story. Despite their frequent

and prominent mentions in the NPRM comments, none of these on-demand services would be impacted by this new rule.

VOD is terrific for pre-produced, mostly scripted, mostly serialized television programming. But the VOD revolution has left live television behind. All you need to do is look at the widespread online commentary about problems surrounding any big live event (the Superbowl, the World Cup, the Oscars) that is streamed live online to see the issue. The common comment is “Well, Netflix can make this work -- why does ESPN’s live stream lag a minute behind?” What is not well understood is that the technology solutions to support a great user experience with large-scale VOD are very different (and much easier) than the technology solutions required to support a great experience for live video online.

The competition in VOD services has created many creative innovations in the technology to support delivering VOD to a mass audience. One of the reasons that there have been fewer innovations in delivering live television online is that regulations that favor existing MVPDs give near-monopoly to access to live programming. Therefore, the technology startups which are traditionally the engines that pressure existing players to innovate have no incentive to compete.

With all the hype and public commentary around VOD, we should not forget that live television is incredibly important at a societal level. In many ways, live is the difference

between “video” and “television”. Television is a communal event that is shared by a society. The vast majority of the most watched television in the history of the medium has been live events, simultaneously shared.

Traditional MVPDs are now building OTT virtual MVPDs

Existing terrestrial MVPDs are now building OTT virtual MVPDs. For the moment, at least, most (but not all) of these virtual MVPDs are limited to their authenticated terrestrial subscribers (TV Everywhere). Dish seems to have used its MVPD classification to break Apple’s exclusivity on HBO Now for streaming to its virtual MVPD (Sling TV). All of these providers seemingly use their current classification as MVPDs to gain more favorable access to programming for their OTT products.

These traditional MVPD owned OTT services do not control a transmission path. They are leveraging their parent company’s ownership of a transmission path. They are not required to, nor do they distribute, these OTT services exclusively over the transmission path that they control. Consumers can watch Comcast’s OVD service or Dish’s Sling TV service over their Verizon LTE data connections.

How can there be a level playing field for competition if one class of OTT provider must be negotiated with in good faith, and a different class can be ignored (or worse yet, be locked out by the contracts of the existing MVPDs)? Where the only difference between the two is control of the wire the signal may occasionally flow through for part of its

journey from broadcaster to viewer? Without the right to fairly negotiate retransmission consent, live linear OTT can only be dominated by the existing providers, whether or not they have the best service or technologies.

As video is increasingly distributed via internet protocols (even by existing MVPDs), the transmission path argument becomes irrelevant. The transmission path is merely an IP pipe through which all data flows.

In Conclusion

We strongly encourage the FCC to adopt the proposed rule making. Technological advancements are being held back by archaic and protectionist rules designed for 20th century video distribution systems.

Respectfully submitted,

Erik L Schwartz