

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
Annual Assessment of the Status of ) MB Docket No. 15-158  
Competition in the Market for the Delivery )  
of Video Programming )

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**COMMENTS OF AT&T SERVICES, INC.**

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AT&T Services, Inc., on behalf of its affiliates, including DIRECTV (collectively, “AT&T”), respectfully submits these comments in response to the Federal Communication Commission’s (the “Commission”) Public Notice seeking information and comment on the status of competition in the delivery of video programming.<sup>1</sup>

## **I. Introduction and Summary**

There has never been a better time to be a video consumer. Hundreds of channels of linear programming are available, along with over-the-top (“OTT”) Internet video, thousands of video on-demand programs, state-of-the-art DVRs, and TV Everywhere services offered by traditional multichannel video programming distributors (“MVPDs”). Video can be accessed from a proliferation of Internet-connected devices like smartphones, tablets, smart TVs, game consoles, laptops, and PCs. The net result is that consumers have more choices than ever to watch what they want, when they want, and how they want. As Chairman Wheeler has observed: “[w]e are on the verge of a new reality for video....”<sup>2</sup>

As new platforms for the delivery of video programming proliferate and become more widely used, “[n]ew competition to the traditional cable bundle is being introduced like never before.”<sup>3</sup> The combined AT&T/DIRECTV will play a critical role in that process. AT&T and DIRECTV have each been leaders in video delivery quality, innovation, and cutting-edge features and functionalities. Going forward, the combined AT&T/DIRECTV will stimulate even greater competition in this rapidly evolving marketplace by delivering innovative and improved

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<sup>1</sup> *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, Public Notice, MB Dkt No. 15-158, DA 15-784 (rel. July 2, 2015).

<sup>2</sup> Tom Wheeler, Chairman, Federal Communications Commission, Remarks to The Ohio State University Moritz College of Law Symposium on “The Future of Internet Regulation” at 8 (Mar. 27, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332731A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332731A1.pdf).

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

services to consumers across all screens, with integrated and efficient bundles of high quality video, high-speed broadband services, and mobile services.

At the same time, enormous industry investment in wireline and wireless broadband networks has ignited an explosion in OTT video growth, enabling subscription OTT video providers like Netflix and Amazon Prime to become major disruptive forces in the video marketplace. Those companies are experimenting with innovative delivery methods, as well as investing in original, innovative, and compelling content. Distributors like Hulu, YouTube, and Vimeo, and programmers like HBO, Showtime, CBS, and Nickelodeon, also have invested heavily in the creation of new content and begun offering it directly to consumers through subscription streaming services, while Apple plans to launch a subscription streaming service in 2016. The combined AT&T/DIRECTV likewise will play a key role in meeting consumer demand for OTT video services by providing robust broadband platforms, both wireline and wireless, for the delivery of OTT content.

While the video marketplace charges into the future, however, certain aspects of the Commission's regulatory scheme remain mired in the past. In particular, the Commission's outdated retransmission consent regime has resulted in skyrocketing retransmission consent fees and a rising number of local broadcast station blackouts, leading to higher prices and service disruptions. The Commission should take action in the pending rulemaking proceeding,<sup>4</sup> as well as the proceeding to be initiated soon pursuant to the STELA Reauthorization Act of 2014,<sup>5</sup> to quickly and thoroughly revamp the retransmission consent regime to reflect the realities of today's marketplace and benefit consumers.

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<sup>4</sup> *Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351 (2014) ("*Retransmission Consent Reform Proceeding*").

<sup>5</sup> Sec. 103(c), Pub. L. 113-200 (Dec. 4, 2014).

## **II. The Combined AT&T/DIRECTV Will Continue to Lead in Video Delivery Quality, Innovation, and Cutting-Edge Features and Functionalities.**

### **A. AT&T Has Provided Award-Winning U-verse TV.**

Since launching U-verse TV in 2006 from the ground up as the country's only all IP-based MVPD service, AT&T has fostered competition as an industry leader in innovation and customer experience.<sup>6</sup> In a marketplace where AT&T was not only new, but was the fourth or fifth player into the market, AT&T was able to grow U-verse TV from zero customers to over 6 million customers in less than a decade by constantly innovating and vigilantly focusing on improving the customer experience. AT&T was awarded the 2015 Frost & Sullivan North American Company of the Year for Multichannel Video for U-verse TV, the third time in the past six years AT&T has received this prestigious award.<sup>7</sup> AT&T also has been an innovator in set-top box and multi-screen technology, offering a wireless DVR, an array of interactive games, the ability to watch up to four channels at a time, and integration with U-verse TV smartphone and iPad<sup>®</sup> apps to control and manage DVRs from anywhere.<sup>8</sup>

U-verse TV offers customers a wide array of programming packages, HD content, and local channels, where available. These packages include popular entertainment, sports, public interest, premium, Spanish-language, and family channels.<sup>9</sup> In addition, U-verse TV provides

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<sup>6</sup> See, e.g., AT&T U-verse, At a Glance, [http://www.att.com/Common/about\\_us/pdf/mediakit/u-verse/uverse\\_quarterly\\_infographic.pdf](http://www.att.com/Common/about_us/pdf/mediakit/u-verse/uverse_quarterly_infographic.pdf) (last visited Aug. 19, 2015).

<sup>7</sup> Press Release, AT&T, Frost & Sullivan Recognizes AT&T for Leadership in Internet and Video Services (Jan. 26, 2015), [http://about.att.com/story/att\\_recognized\\_for\\_leadership\\_in\\_internet\\_and\\_video\\_services\\_catering\\_to\\_customers.html](http://about.att.com/story/att_recognized_for_leadership_in_internet_and_video_services_catering_to_customers.html).

<sup>8</sup> See AT&T, U-verse TV: Advanced Features and Apps, [http://www.att.com/Common/merger/files/pdf/uverse\\_current\\_features.pdf](http://www.att.com/Common/merger/files/pdf/uverse_current_features.pdf) (last visited Aug. 19, 2015).

<sup>9</sup> AT&T U-verse, TV Packages, <http://uverse.com/uverse/packages-and-features> (last visited Aug. 19, 2015); AT&T U-verse, HD Packages, <http://uverse.com/uverse/hd-packages> (last

customers a robust TV Everywhere experience, giving them the freedom and flexibility to watch virtually the same content both inside and outside the home through the U-verse TV smartphone and tablet apps, and the U-verse TV online portal.<sup>10</sup>

**B. DIRECTV Has Been A Premier National MVPD for Two Decades.**

Similar to U-verse TV, DIRECTV entered the video marketplace as a competitor to well-entrenched incumbents by focusing on enhancing the customer experience. Consequently, DIRECTV has long been an MVPD leader in quality and service in every respect, from HD content to new technologies to user-friendly interfaces, and consistently ranks among the top MVPDs for overall customer satisfaction.<sup>11</sup> DIRECTV offers a nationwide premier lineup of channel packages, dozens of premium movie channels, non-English language and public interest content, and the nationally recognized NFL Sunday Ticket™ service.<sup>12</sup> Pioneering the delivery of HD programming over a decade ago,<sup>13</sup> DIRECTV today offers an extensive lineup of

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visited Aug. 19, 2015); AT&T U-verse, Spanish Language Package, [http://uverse.com/uverse/spanish-language-packages?utm\\_source=packages-and-features&utm\\_medium=tile&utm\\_campaign=Paquete\\_Espanol](http://uverse.com/uverse/spanish-language-packages?utm_source=packages-and-features&utm_medium=tile&utm_campaign=Paquete_Espanol) (last visited Aug. 19, 2015).

<sup>10</sup> See AT&T U-verse: More Ways to Watch, [http://www.att.com/Common/merger/files/pdf/uverse\\_multiscreen.pdf](http://www.att.com/Common/merger/files/pdf/uverse_multiscreen.pdf) (last visited Aug. 19, 2015).

<sup>11</sup> See, e.g., Press Release, ACSI, ACSI: Customers Loathe Pay TV and ISPs, Love Their Smartphones (June 2, 2015), <https://www.theacsi.org/news-and-resources/press-releases/press-2015/press-release-telecommunications-and-information-2015>; Press Release, JD Power, Performance and Reliability Problems Decline in Both Residential TV and Internet Services; Quality and Connection Speeds Continue to Improve (Sept. 25, 2015), <http://www.jdpower.com/press-releases/2014-us-residential-television-internet-telephone-service-provider-satisfaction#sthash.qHCWNGxX.dpuf>.

<sup>12</sup> DIRECTV, NFL Sunday Ticket, <http://www.directv.com/sports/nfl> (last visited Aug. 19, 2015) (Game availability is subject to local blackout rules.).

<sup>13</sup> See Press Release, DIRECTV, DIRECTV Demonstrates World's First Live MPEG-4 AVC HD Transmission Via Satellite; Advanced Transmission and Compression Technology Will Support Massive Expansion of Programming (Jan. 6, 2005), [http://investor.directv.com/files/doc\\_news/general\\_releases/2005/DTV\\_News\\_2005\\_1\\_6\\_General1.pdf](http://investor.directv.com/files/doc_news/general_releases/2005/DTV_News_2005_1_6_General1.pdf).

premium HD channels, including local HD channels in 197 markets, representing over 99% of U.S. homes.<sup>14</sup> And the company is developing the capability to support Ultra-HD programming, which will allow viewers to watch video programming at four times the resolution of today's HD televisions.<sup>15</sup>

Consumers have access to DIRECTV content and advanced features both at home and on the go. The DIRECTV Genie HD DVR permits customers to record five shows in HD simultaneously, recommends shows based on a subscriber's unique tastes, and allows viewers to have a "whole home" DVR experience on every television in their house without a box in every room.<sup>16</sup> Subscribers also can program their DVR from any smartphone, tablet, or computer.<sup>17</sup> Moreover, through DIRECTV Everywhere, subscribers can access live and on-demand programming on their computers, tablets, smartphones, and other mobile devices. In 2015, DIRECTV expanded its DIRECTV Everywhere offering to include dozens of live TV in-home and out-of-home streaming channels, including premium movie and sports channels.<sup>18</sup>

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<sup>14</sup> DIRECTV, HD Locals, [http://www.directv.com/DTVAPP/content/hd/hd\\_locals](http://www.directv.com/DTVAPP/content/hd/hd_locals) (last visited Aug. 19, 2015); DIRECTV, HD Channel Lineup, [http://www.directv.com/technology/hd\\_channels](http://www.directv.com/technology/hd_channels) (last visited Aug. 19, 2015).

<sup>15</sup> See DIRECTV, DIRECTV 4K Ultra HD, <http://www.directv.com/technology/4k> (last visited Aug. 19, 2015).

<sup>16</sup> DIRECTV, Genie HD DVR, [http://www.directv.com/technology/genie\\_receiver?ACM=false](http://www.directv.com/technology/genie_receiver?ACM=false) (last visited Aug. 19, 2015); DIRECTV, What is "Genie Recommends"? And how does it work?, [https://support.directv.com/app/answers/detail/a\\_id/3955/~/what-is-\"genie-recommends\"%3F-and-how-does-it-work%3F](https://support.directv.com/app/answers/detail/a_id/3955/~/what-is-\) (last visited Aug. 19, 2015). As a leading member of the RVU Alliance, DIRECTV has helped pioneer open standards that have been implemented by multiple television manufacturers. RVU Alliance, <http://rvualliance.org/> (last visited Aug. 19, 2015). "The RVU Alliance™ is a consortium of leading content service provider, semiconductor, consumer electronics and technology companies who have come together to advance Remote User Interface (RUI) technology for home networked television entertainment." *Id.*

<sup>17</sup> DIRECTV, DIRECTV DVRs & HD DVRs: DIRECTV App for Phones, [https://support.directv.com/app/answers/detail/a\\_id/3225](https://support.directv.com/app/answers/detail/a_id/3225) (last visited Aug. 19, 2015).

<sup>18</sup> Press Release, DIRECTV, DIRECTV Everywhere Now Offers Nearly 90 Out-of-Home Live Streaming Channels and More than 120 In-Home Live Streaming Channels (Mar. 17, 2015),

**C. The Combined AT&T/DIRECTV Will Promote Increased Competition in the Video Distribution Marketplace.**

As the Commission has recognized, the combined AT&T/DIRECTV will utilize the unique strengths of both companies to become a more robust competitive alternative to traditional cable providers than either company could be standing alone.<sup>19</sup> With the ability to offer compelling bundles of high quality video, broadband, and mobile services, interactive entertainment, and access to the OTT content that consumers demand across platforms, the combined company will bring immediate benefits to consumers. This, in turn, will spur other competitors, including traditional cable incumbents, to up their game, engendering a virtuous cycle of innovation and competition.

**III. OTT Video Has Become, and Will Continue To Be, a Major Competitive Force in Video Programming Delivery.**

Enormous industry investment in wireline and wireless broadband networks has ignited growth in OTT video services. Netflix, Amazon, Google, and Hulu, as well as other smaller providers are all part of a vibrant, innovative, and growing video marketplace. Some OTT services mimic a channel-oriented experience, while others cater to niche foreign language audiences, offer video on-demand, or offer an array of choices ranging from full-length professional content to user-posted clips.

Direct to consumer offerings from CBS,<sup>20</sup> HBO,<sup>21</sup> Showtime,<sup>22</sup> and Nickelodeon<sup>23</sup> allow subscribers to access specific programming content without also having a traditional MVPD or

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<http://investor.directv.com/press-releases/press-release-details/2015/DIRECTV-Everywhere-Now-Offers-Nearly-90-Out-of-Home-Live-Streaming-Channels-and-More-Than-120-In-Home-Live-Streaming-Channels/default.aspx>.

<sup>19</sup> *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, MB Docket No. 14-90, FCC 15-94, ¶¶ 3-4, 111 (rel. July 28, 2015).

<sup>20</sup> CBS, CBS All Access, <http://www.cbs.com/all-access/> (last visited Aug. 19, 2015).

OTT subscription. Apple reportedly is planning to launch a subscription streaming service in 2016,<sup>24</sup> and Sony's PlayStation Vue subscription streaming service has already begun expanding nationwide.<sup>25</sup> At the same time, traditional MVPDs are developing their own OTT services beyond the wide variety of TV Everywhere services consumers can access with their MVPD subscription. For example, DISH now offers the subscription Sling TV service, which reportedly signed up approximately 250,000 subscribers in its first few months.<sup>26</sup> Comcast has announced that it will soon be offering a subscription streaming service, Stream, in select markets, with plans to expand nationally in 2016.<sup>27</sup> And Verizon, which recently purchased AOL and its

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<sup>21</sup> HBO, HBO Now, <https://order.hbonow.com/> (last visited Aug. 19, 2015). One analyst estimates that HBO Now has as many as 1.9 million subscribers. Daniel Frankel, *MoffettNathanson: HBO Now Has as Many as 1.9M Subs, Sling TV Has Up to 200,000*, Fierce Cable (July 31, 2015), <http://www.fiercecable.com/story/moffettnathanson-hbo-now-has-many-19m-subs-sling-tv-has-200000/2015-07-31>.

<sup>22</sup> Showtime, Stream Showtime, <http://www.sho.com/sho/order/5/ott/> (last visited August 19, 2016).

<sup>23</sup> Sarah Perez, *Nickelodeon Unveils "Noggin," A Mobile Subscription Service For Preschoolers Arriving In March*, Tech Crunch (Feb. 25, 2015), <http://techcrunch.com/2015/02/25/nickelodeon-unveils-noggin-a-mobile-subscription-service-for-preschoolers-arriving-in-march/>. Analysts estimate that Nickelodeon's "Noggin" service has as many as 320,000 subscribers. Daniel Frankel, *MoffettNathanson: HBO Now has as many as 1.9M Subs, Sling TV has up to 200,000*, Fierce Cable (July 31, 2015).

<sup>24</sup> Peter Burrows *et al.*, *Apple Said to Delay Live TV Service to 2016 as Negotiations Stall*, Bloomberg (Aug. 13, 2015), <http://www.bloomberg.com/news/articles/2015-08-13/apple-said-to-delay-tv-service-to-2016-as-negotiations-stall>.

<sup>25</sup> Dave Gershgorin, *Sony Just Turned Its PlayStation Vue Streaming Service Into a Viable Cable Killer*, Popular Science (June 16, 2015), <http://www.popsci.com/sony-brings-tv-tv-playstation-vue>.

<sup>26</sup> Peter Kafka, *Sling TV's Web TV Subscriber Numbers Keep Growing, Now Around 250,000*, re/code (June 5, 2015), <http://recode.net/2015/06/05/sling-tvs-web-tv-subscriber-numbers-keep-growing-now-around-250000/>.

<sup>27</sup> Matt Strauss, Executive Vice President and General Manager, Video Services for Comcast Cable, *Introducing a New Streaming TV Service From Comcast*, Comcast Voices Blog (July 12, 2015), <http://corporate.comcast.com/comcast-voices/a-new-streaming-tv-service-from-comcast>.

Internet video assets, as well as Intel Media's "OnCue" online TV unit in early 2014, is planning to offer a mobile video service.<sup>28</sup>

Similarly, the combined AT&T/DIRECTV is working to develop unique OTT video offerings for consumers through, among other initiatives, its Otter Media joint venture with The Chernin Group. This joint venture was established to invest in, acquire and launch OTT video services, and it includes a majority stake in Fullscreen, a global online media company that works with more than 50,000 content creators who engage 450 million subscribers and generate 4 billion monthly views.<sup>29</sup> Further, DIRECTV's subscription streaming service Yaveo offers Spanish-language content aimed at U.S. Hispanic consumers,<sup>30</sup> and DIRECTV and U-verse video applications already are available on tablets, smartphones, and other devices, where they appear alongside those of OTT distributors.<sup>31</sup>

It is indisputable that OTT video providers have become major forces in the video marketplace. Netflix has over 65 million subscribers worldwide, and with 42 million U.S. subscribers, it has a larger U.S. subscriber base than any MVPD.<sup>32</sup> And, while there has been a

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<sup>28</sup> See Phil Goldstein, *Report: Verizon's Mobile OTT Video Service To Be Called 'Go90,' Will Have Some Content Exclusively for Verizon Wireless Subs*, Fierce Wireless (July 27, 2015), <http://www.fiercewireless.com/story/report-verizons-mobile-ott-video-service-be-called-go90-will-have-some-cont/2015-07-27>; Dawn C. Chmielewski, *Verizon to Buy Intel's Online TV Unit for About \$200 Million*, L.A. Times (Jan. 22, 2014), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-intel-verizon-20140122-story.html>.

<sup>29</sup> See Press Release, AT&T, AT&T Completes Acquisition of DIRECTV (July 24, 2015), [http://about.att.com/story/att\\_completes\\_acquisition\\_of\\_directv.html](http://about.att.com/story/att_completes_acquisition_of_directv.html).

<sup>30</sup> See Yaveo by DIRECTV, <https://www.yaveo.com/> (last visited Aug. 19, 2015).

<sup>31</sup> See, e.g., AT&T U-verse, U-verse App, <http://uverse.com/uverse/uverseapp> (last visited Aug. 19, 2015); DIRECTV, Mobile Apps, [http://www.directv.com/technology/mobile\\_apps](http://www.directv.com/technology/mobile_apps) (last visited Aug. 19, 2015).

<sup>32</sup> See Jeff John Roberts, *Netflix Streams Its Way to Another Blockbuster Quarter, Share Price Soars*, Fortune (July 15, 2015), <http://fortune.com/2015/07/15/netflix-q2-earnings-2015/>.

decline in overall traditional MVPD subscribership,<sup>33</sup> Netflix is continuing its rapid growth, adding 7.4 million new members in the first half of 2015.<sup>34</sup> Netflix is also in the midst of a significant international expansion<sup>35</sup> that is sure to provide additional growth opportunities and which simply cannot be matched by traditional MVPDs that are necessarily limited by their network reach. Amazon's Prime service, which includes streaming video among a number of other services, also has been growing at warp speed, with membership increasing by 53% in 2014.<sup>36</sup> YouTube's popularity also continues to grow, with the number of visitors to its homepage up over three times in the past year, and average session time up more than 50 percent in that period.<sup>37</sup>

In a few short years, Netflix and Amazon Prime have reshaped the consumer home video experience – for example by releasing new series at different times throughout the year, and releasing all episodes of a new season at once, allowing viewers to “binge watch.” Their original

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<sup>33</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3256 ¶ 2 (2015).

<sup>34</sup> See Jeff John Roberts, *Netflix Streams Its Way to Another Blockbuster Quarter, Share Price Soars*, *Fortune* (July 15, 2015), <http://fortune.com/2015/07/15/netflix-q2-earnings-2015/>; *Netflix Wows Wall Street With Strong Subscriber Growth*, *CNN Money* (Apr. 15, 2015), <http://money.cnn.com/2015/04/15/media/netflix-first-quarter-2015-earnings/>.

<sup>35</sup> See Shalini Ramachandran & Tess Stynes, *Netflix Steps Up Foreign Expansion*, *Wall St. Journal* (Jan. 20, 2015), <http://www.wsj.com/articles/netflix-adds-more-users-than-expected-1421788528>.

<sup>36</sup> Jason Del Rey, *Amazon Crushes Q4 Earnings on Back of Huge Prime Membership Growth*, *re/code* (Jan. 29, 2015), <http://recode.net/2015/01/29/amazon-crushes-q4-earnings-on-back-of-huge-prime-membership-growth/>. Amazon does not report the number of Prime subscribers, but analysts have estimated 44 million. See Allison Enright, *Amazon Prime Has 44 Million U.S. Customers and They're Increasingly Loyal*, *Internet Retailer* (July 30, 2015), <https://www.internetretailer.com/2015/07/30/loyal-and-growing-amazon-prime-has-44-million-us-customers>.

<sup>37</sup> Sarah Perez, *People Watch More YouTube Than Ever Before – Especially On Their Phones*, *TechCrunch* (July 17, 2015), <http://techcrunch.com/2015/07/17/people-watch-more-youtube-than-ever-before-especially-on-their-phones/#.8ngl9j:QyMv>.

content has redefined what Americans view as “must see TV.” Both companies are attracting leading directors, actors, and other talent, producing critically acclaimed programming, and garnering the highest awards in the industry.<sup>38</sup> Other OTT providers are following Netflix’s and Amazon’s lead, with Hulu<sup>39</sup> and Vimeo<sup>40</sup> among others, producing their own original content.

Moreover, the constant stream of new devices – including many offered by some of the largest and most well-established global technology companies – further enhances consumer access to video content. Amazon offers Fire TV (in both set-top box and USB stick forms),<sup>41</sup> Apple offers Apple TV,<sup>42</sup> and Google offers Chromecast.<sup>43</sup> Consumers also can stream both OTT and traditional MVPD content using Roku boxes,<sup>44</sup> video game consoles,<sup>45</sup> and a wide variety of smart TVs, tablets, smartphones, laptops and PCs capable of streaming video.<sup>46</sup>

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<sup>38</sup> See, e.g., Cecilia Kang, *Netflix, Amazon Get Record Emmy Nods*, Washington Post (July 16, 2015), <https://www.washingtonpost.com/blogs/the-switch/wp/2015/07/16/netflix-amazon-get-record-emmy-nods/>.

<sup>39</sup> See Hulu, *Hulu Originals*, <http://www.hulu.com/originals> (last visited Aug. 19, 2015).

<sup>40</sup> See, e.g., Vimeo, *High Maintenance*, <https://vimeo.com/ondemand/highmaintenance> (last visited Aug. 19, 2015).

<sup>41</sup> See Amazon, *Amazon Fire TV Stick*, [http://www.amazon.com/dp/B00GDQ0RMG/ref=ods\\_fs\\_ftvs](http://www.amazon.com/dp/B00GDQ0RMG/ref=ods_fs_ftvs) (last visited Aug. 19, 2015).

<sup>42</sup> See Apple, *Apple TV*, <https://www.apple.com/appletv/what-is/> (last visited Aug. 19, 2015).

<sup>43</sup> See Google, *Chromecast*, <http://www.google.com/chrome/devices/chromecast/> (last visited Aug. 19, 2015).

<sup>44</sup> See Roku, <https://www.roku.com/> (last visited Aug. 19, 2015).

<sup>45</sup> See, e.g., Microsoft Xbox, *Netflix on Xbox One*, <http://www.xbox.com/en-US/entertainment/xbox-one/live-apps/netflix> (last visited Aug. 19, 2015); Sony PlayStation, *PlayStation Vue*, <https://www.playstation.com/en-us/explore/playstationnetwork/playstation-vue/> (last visited Aug. 19, 2015).

<sup>46</sup> See, e.g., Verizon FiOS on Xbox One, <http://www.xbox.com/en-US/entertainment/xbox-360/live-apps/verizon> (last visited Aug. 19, 2015); Comcast Voices, *Introducing a New Streaming TV Service From Comcast* (July 12, 2015), <http://corporate.comcast.com/comcast-voices/a-new-streaming-tv-service-from-comcast>; John Falcone, *TWC TV App Turns Roku Into a Cable Box for Time Warner Customers (Hands-On)*, C/Net (Mar. 5, 2015), <http://www.cnet.com/news/twc-tv-app-turns-roku-into-a-cable-box-for-time-warner-customers->

Concurrent with this expansion in OTT options, there has been a significant shift in consumer's viewing habits. Growing numbers of consumers watch OTT in addition to traditional MVPD service, while others are increasingly “cord nevers” who rely entirely on their broadband connections to view video. In 2009, more than 99 percent of videos were viewed on TVs, delivered through standard channels.<sup>47</sup> Today – only a few years later – Internet video accounts for 36% of the time consumers spend watching video,<sup>48</sup> and Netflix alone accounts for more than 35 percent of evening peak traffic on North American fixed networks.<sup>49</sup> Nielsen has found that the monthly time spent watching video on the Internet increased from 10 hours 49 minutes to 12 hours 13 minutes from Q1 2014 to Q1 2015.<sup>50</sup> According to one recent survey, 52% of all U.S. households subscribe to Netflix, Amazon Prime, and/or Hulu Plus, while 56% of households have at least one television set connected to the Internet, up from 44% in 2013 and

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hands-on/; AT&T U-verse, U-verse App, <http://uverse.com/uverse/uverseapp> (last visited Aug. 19, 2015); DIRECTV, Mobile Apps, [http://www.directv.com/technology/mobile\\_apps](http://www.directv.com/technology/mobile_apps) (last visited Aug. 19, 2015).

<sup>47</sup> Chris Albrecht, *Nielsen: Almost 99 Percent of Video Watched on a TV Screen*, Gigaom (May 20, 2009), <https://gigaom.com/2009/05/20/nielsen-almost-99-percent-of-video-watched-on-a-tv-screen/>.

<sup>48</sup> *Over 50% of Consumers in U.S. Broadband Households Subscribe to an OTT Video Service*, Parks Associates (Apr. 9, 2015), <http://www.parksassociates.com/blog/article/pr-april2015-nab-super-session>.

<sup>49</sup> *Global Internet Phenomena Report*, Sandvine (May 28, 2015), <https://www.sandvine.com/trends/global-internet-phenomena/> (finding that Netflix accounts for “36.5% of downstream traffic in the peak evening hours” on fixed networks in North America)

<sup>50</sup> *Nielsen Total Audience Report Q1 2015*, Nielsen at 12, <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2015-reports/total-audience-report-q1-2015.pdf>.

24% in 2010.<sup>51</sup> By one count, nearly 60 percent of U.S. broadband households use one or more paid OTT video services.<sup>52</sup>

This growth is expected to accelerate. Analysts project that global OTT video revenues will reach \$51.1 billion in 2020, nearly double the \$26 billion expected in 2015, with \$19.1 billion of that revenue coming from the United States.<sup>53</sup> OTT video providers are expected to generate significant advertising revenues, leading to changes in advertising agencies' practices.<sup>54</sup> While an estimated 900 million people access TV programming and movies online today, that number is expected to increase to over 1.3 billion video viewers by 2019.<sup>55</sup>

The combined AT&T/DIRECTV is embracing this video upheaval, working to expand subscribers' ability to access content from as many other sources and on as many devices as economically and technically practical, consistent with its commitment to ensure a high quality video experience. Improved broadband and wireless services and bundles resulting from the combination of the two companies will enhance access to OTT services like Netflix, Amazon Prime, Google, and Hulu. And the integration of DIRECTV's advanced set-top box technology

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<sup>51</sup> Press Release, Leichtman Research Group, Over Half of U.S. Households Have a TV Connected to the Internet, (May 27, 2015), <http://www.leichtmanresearch.com/press/052715release.html>.

<sup>52</sup> *Over 50% of Consumers in U.S. Broadband Households Subscribe to an OTT Video Service*, Parks Associates (Apr. 9, 2015), <http://www.parksassociates.com/blog/article/pr-april2015-nab-super-session>.

<sup>53</sup> *Global OTT TV & Video Forecasts*, Digital TV Research (June 2015), <https://www.digitaltvresearch.com/products/product?id=122>.

<sup>54</sup> See Joyce Wang, *The Start of an OTT Explosion . . . and Google's TV Plan*, Cablefax (Oct. 28, 2014), <http://www.cablefax.com/programming/start-ott-explosion-googles-tv-plan>.

<sup>55</sup> *New Vindicia and Ooyala Study With Parks Associates Finds OTT Marketplace Remains Rife With Opportunity for Innovative Entrants*, Parks Associates (June 8, 2015), <https://www.parksassociates.com/blog/article/new-vindicia-and-ooyala-study-with-parks-associates-finds-ott-marketplace-remains-rife-with-opportunity-for-innovative-entrants>.

into the combined company's MVPD offerings will make it easier for consumers to enjoy both traditional MVPD and OTT content on their televisions.<sup>56</sup>

In order to ensure that the OTT ecosystem remains a model of robust growth and innovation, the Commission should refrain from classifying certain OTT video services as MVPDs, as it has proposed in another proceeding.<sup>57</sup> As described in both AT&T's and DIRECTV's comments in that proceeding, doing so would be harmfully premature given the still developing OTT ecosystem, and applying outdated or overly restrictive regulation could undermine the advancement of Internet-delivered video.<sup>58</sup>

#### **IV. Skyrocketing Retransmission Fees and Program Blackouts Should Be Remedied.**

Legacy regulations governing the broadcast retransmission consent process overhang the extraordinary dynamism of the video distribution marketplace today. While vibrant and dynamic competition characterizes today's video distribution marketplace, the legacy retransmission consent rules work against those competitive forces by giving broadcasters an artificial and unnecessary advantage in licensing negotiations. As a result, retransmission consent fees and the number of local broadcast station blackouts continue to skyrocket. In fact, retransmission

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<sup>56</sup> See John Stankey, CEO, AT&T Entertainment and Internet Services, *AT&T Entertainment and Internet Services Integration Update & Business Outlook* (Aug. 12, 2015); [http://www.att.com/Common/about\\_us/investor\\_relations/pdf/stankey.pdf](http://www.att.com/Common/about_us/investor_relations/pdf/stankey.pdf); Mike Dano, *AT&T to Stop Investing in U-verse CPE, Will Move to New in-Home Architecture Using DirecTV System*, FierceCable (Aug. 12, 2015), <http://www.fiercecable.com/story/att-stop-investing-u-verse-cpe-will-move-new-home-architecture-using-direct/2015-08-12>.

<sup>57</sup> See *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 (2014).

<sup>58</sup> See *id.*, MB Docket No. 14-261, Comments of AT&T Services, Inc. at 4 (filed Mar. 3, 2015); *id.*, Reply Comments of AT&T Services, Inc. at 4 (filed Apr. 1, 2015); *id.*, Comments of DIRECTV, LLC at 2-3 (filed Mar. 3, 2015).

consent fees have grown 8,600% between 2005 and 2012,<sup>59</sup> and 450 blackouts have occurred in the last five years alone.<sup>60</sup> Retransmission consent fees are predicted to grow to \$6.3 billion in 2015 and to over \$10 billion by 2021.<sup>61</sup>

As AT&T and DIRECTV have explained in the *Retransmission Consent Reform Proceeding*, these exploding retransmission consent fees, like all incremental costs, are inevitably reflected in higher MVPD prices.<sup>62</sup> Higher prices translate into lower demand and limitations on subscriber choice.

The record in the *Retransmission Consent Reform Proceeding*<sup>63</sup> provides numerous meritorious proposals for re-balancing the broken retransmission consent negotiation process that currently hampers the delivery of video programming. Those proposals and more will fill the record in the upcoming retransmission consent proceeding required by the STELA

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<sup>59</sup> Tom Wheeler, Chairman, Federal Communications Commission, *Protecting Consumers By Protecting Competition*, Official FCC Blog (Mar. 6, 2015), <https://www.fcc.gov/blog/protecting-television-consumers-protecting-competition>.

<sup>60</sup> See *American Television Alliance Demands Media General End Outrageous TV Blackout*, American Television Alliance (Jul. 15, 2015), <http://www.americantelevisionalliance.org/american-television-alliance-demands-media-general-end-outrageous-tv-blackout/> (“Since 2010, millions of Americans have seen dark screens instead of their favorite channels due to at least 455 broadcaster blackouts. The menace of TV blackouts continues to grow[.]”).

<sup>61</sup> Tony Maglio, *U.S. TV Station Retransmission Fees Now Expected to Reach \$10.3 Billion by 2021*, *The Wrap* (July 7, 2015), <http://www.thewrap.com/u-s-tv-station-retransmission-fees-now-expected-to-reach-10-3-billion-by-2021/>.

<sup>62</sup> See *Retransmission Consent Reform Proceeding*, MB Docket No. 10-71, Comments of AT&T at 5 (filed June 26, 2014); *id.*, Reply Comments of AT&T at 7 (filed July 24, 2014); *id.*, Notification of Ex Parte Communication of American Cable Association, Charter Communications, DIRECTV, DISH Network, and Time Warner Cable at 2 (filed Mar. 21, 2014).

<sup>63</sup> See generally, *id.*, Comments of AT&T (filed June 26, 2014); *id.*, Reply Comments of AT&T (filed July 24, 2015); *id.*, Comments of DIRECTV and DISH Network (filed June 26, 2014).

Reauthorization Act of 2014.<sup>64</sup> The public interest requires that the Commission quickly and thoroughly revamp the retransmission consent regime to reflect the realities of today's marketplace and to thereby benefit video programming consumers.

## **V. Conclusion**

With the surging popularity of OTT video, competition for the delivery of video programming has never been stronger. More than ever before, consumers have choices to watch what they want, when they want, where they want, and how they want, and the combined AT&T/DIRECTV is positioned to bring even greater competition into the video delivery market – both as a stronger MVPD presence and as an enabler of OTT video. To ensure that competition remains strong and that consumers reap the benefits, the Commission should resist imposing legacy MVPD regulations on certain OTT providers, while reevaluating and revamping its retransmission consent regime to reflect the realities of today's marketplace.

Respectfully submitted,

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<sup>64</sup> Sec. 103(c), Pub. L. 113-200 (Dec. 4, 2014).