Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

COMMENTS OF NETFLIX, INC.

Netflix, Inc. ("Netflix") hereby submits these Comments in response to the Commission's Further Notice of Inquiry ("NOI")[1] in the above-captioned proceeding.

Netflix will spend nearly $5 billion in 2016 licensing and producing TV shows and movies so that each of our 62 million members can find the video programing they want to watch. Great video programming is what makes a great video service and Netflix is committed to finding compelling programming from producers all over the world. The love for Netflix content, coupled with the flexibility to watch that content whenever and wherever, is what drives members to Netflix and what keeps them from leaving.

The relationship between content and consumer attention is not unique to Netflix or any online video source. Millions of people turn on their TVs every day to watch great content on broadcast and cable networks. But Internet television networks such as Netflix provide additional choice and greater flexibility for consumers. Amazing content is more widely available at any given moment and consumers are bundling different products to create their own package of

[1] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry*, MB Docket No. 15-158, (rel. July 2, 2015) ("NOI").

linear and on-demand content. No longer is "what's on" the only variable when a consumer reaches for the remote. Rather, consumers now consider *how* they want to watch right along with *what* they want to watch.

I. Internet Video Is Increasing Competition and Choice For Consumers

The online video marketplace is fast-paced, highly competitive, and driven by consumer demand. Netflix is just one of many choices consumers have to watch high quality, professional video programming online. There are over 50 online video distributors (OVDs) and at least nine new OVDs have launched in 2015 thus far.[2] The video programming marketplace has never been more competitive and diverse. The beneficiaries of these market shifts are consumers, who enjoy increased choice of video programming and distribution models.

Consumers are embracing these new services. Nearly ten million households added an online video-on-demand subscription in 2014.[3] Some consumers use OVDs as their sole or primary source of video programming, but most television households use OVDs in conjunction with traditional broadcast and/or Multi-Channel Video Programming Distributor ("MVPD") services.[4] While the number of consumers watching video programming online is increasing,[5]

[2] SNL Kagan, *Selected US OTT Video Services* (July 24, 2015), ava*ilable at* https://www.snl.com/InteractiveX/doc.aspx?ID=33327623; and SNL Kagan, *HBO NOW bolsters an evolving OTT space* (May 14, 2015), ava*ilable at* https://www.snl.com/InteractiveX/article.aspx?ID=32412687

[3] SNL Kagan, *Internet video-on-demand revenue projections* (July 16, 2015), ava*ilable at* https://www.snl.com/interactivex/doc.aspx?id=33258413

[4] SNL Kagan, *Survey finds top reason for video cord cutting is multichannel TV cost* (July 09, 2015), *available at* https://www.snl.com/interactivex/article.aspx?id=33129877&KPLT=6, (SNL Kagan predicts that only 7.6M of the 118.9M TV households in the U.S. rely exclusively on OTT sources of video).

[5] PWC, *Feeling the Effects of the Videoquake*, (December 2014), *available at http://www.pwc.com/en_US/us/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-videoquake-video-content-consumption.pdf* (The percent of people who access video content on the Internet rose from 66% in 2013 to 71% in 2014).

residential cable revenues will likewise continue to grow through 2022.[6] Even still, the proliferation of Internet delivered content is changing and challenging all media to better respond to the needs and demands of consumers.

The emergence of OVDs has encouraged competition and innovation among traditional distribution models. MVPD services, television networks and movie studios are all joining this nascent and growing market. For example, DISH launched Sling, an online MVPD in February;[7] Comcast announced Stream, an in-footprint online MVPD in July;[8] and CenturyLink announced the development of an OVD in August.[9] Online MVPDs delivering linear video such as these are often purchased in conjunction with OVDs offering video-on-demand services. Because consumers frequently subscribe to both services, cable and broadcast networks are also beginning to deliver their content to consumers over the Internet. CBS, HBO, Sundance, Showtime, Noggin, and others all offer an independent OVD service. Even sports programming, which is often watched live, is becoming increasingly available online. The Tennis Channel offers an Internet delivered service and DirecTV recently announced that *Sunday Ticket*, their popular football package will be available online for the 2015 season.[10] ESPN, the largest sports network which has seen enormous growth as part of traditional MVPD packages, indicated that it

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[6] SNL Kagan, *U.S. Multichannel Industry Benchmarks*, https://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx

[7] Dish Press Release, *Sling TV to Launch Live, Over-the-Top Service for $20 Per Month; Watch on TVs, Tablets, Computers, Smartphones, Game Consoles* (January 15, 2015), ava*ilable at http://about.dish.com/press-release/products-and-services/sling-tv-launch-live-over-top-service-20-month-watch-tvs-tablets*

[8] Comcast Press Release, *Introducing a New Streaming Service From Comcast*, (July 12, 2015), ava*ilable at http://corporate.comcast.com/comcast-voices/a-new-streaming-tv-service-from-comcast*

[9] Centurylink Earnings call, (8/5/2015) *available at http://ir.centurylink.com/Cache/1500074614.PDF?Y=&O=PDF&D=&fid=1500074614&T=&iid=4057179* at 5

[10] NFLsundayticket.tv, (accessed on August 18, 2015), *available at* https://nflst.directv.com/

will eventually be sold direct to consumers over the Internet.[11] It is clear that the ability to watch video content online is what people want — and increasingly, what they expect.

OVD competition is unique in that each has its own business model, content catalog, and target audience. Some OVDs only distribute content from a single producer, while others, like Netflix, offer a combination of original content and licensed favorites. Sports, news, local, children's, and niche content can all be retrieved independently and custom tailored to fit a given consumer's interests. Consumers can create their own "bundle" by purchasing multiple services from any number of combinations of video distributors. There is room for many distributors in the growing video programming market. Increased choice, however, means that at any point one distributor can be supplanted by another. In a market where consumers have many video options, Netflix constantly competes to deliver compelling content through a user interface that is appealing and intuitive for our members, and by offering new and innovative features, including higher resolution 4K content—a resolution that is unavailable through most traditional MVPD services.

One way some OVDs distinguish themselves competitively is by focusing on content that is unique and cutting edge. Historically, video services have been bound by a linear program schedule and reliance on advertising, which means they have put a premium on airing content that will appeal to the widest audience during times they can attract the most viewers. Instead, online business models, such as Netflix's, depend on consumers consistently finding amazing content to watch. These OVDs do not rely on getting millions of people to watch a single show at a pre-determined time; they derive value from the entire period that the content is licensed and

[11] *Disney's Bob Iger: Inevitable that ESPN Goes Direct-to-Consumer*, WALL STREET JOURNAL, July 27, 2015 *available at* http://blogs.wsj.com/cmo/2015/07/27/disneys-bob-iger-inevitable-that-espn-goes-direct-to-consumer/

available on the service. This gives OVD customers time to discover new content and enables OVDs to make deeper investments in new programming. For example, both Amazon Prime and Netflix have departed from common industry practice by ordering entire pilot seasons instead of single pilot episodes.

OVDs are experimenting with storytelling formats, offering "niche" content, and taking risks on non-traditional subject matter. Amazon Prime has received both critical and consumer acclaim for its original show *Transparent*, which broke new ground by featuring a transgender character in a leading role. *Blue,* which challenges the viewer's perceptions of sex-workers, has received over 65 million views on Youtube and is now being distributed on Hulu Plus. Netflix is also addressing difficult content through films such as *Beasts of No Nation*, set to be released simultaneously on Netflix and in theaters on October 16, which depicts the story of a child soldier torn from his family to fight in the civil war of an African country.

OVDs can also set themselves apart by licensing and producing a wide array of content that appeals to diverse demographics — including underrepresented audience segments that may not be prime targets for advertisers. Netflix picked-up a new season of the western drama, *Longmire*, whose cancellation after three seasons on the A&E network has been attributed in part to a mismatch between the show's older-skewing audience and advertiser priorities.[12]

II. Content Delivery Networks Make Delivery of Online Video More Efficient for Online Video Providers and Broadband Access Providers

[12] *See* Linda Holmes, *Television 2015: Netflix Is A Video Store That Saved A Western,* NPR, Aug. 19, 2015, *available at* http://www.npr.org/sections/monkeysee/2015/08/19/432848421/television-2015-netflix-is-a-video-store-that-saved-a-western ("There's a logic to this that's in part completely about the business model: Netflix doesn't rely on advertising. Advertisers tend to like their audiences young, but you can be as old as you want, and Netflix will still take your money… [Netflix] can have multiple editorial brands for the same reason a video store can have multiple aisles. It can be an old-person's outlet, an outlet for underrepresented populations like transgender people, an outlet for bringing about new chapters to things you loved in the past like *Full House*, a cult comedy home, and so forth.")

The increased competition, diverse business models, and new approaches to video content are innovations made possible by an Internet that is open and efficient. Online video is a data-rich application (particularly in higher resolution formats such as HD, 4K, and Ultra HD). To improve efficiency, many online video services use Content Delivery Networks (CDNs) to bring their data closer to a broadband Internet access service ("BIAS") provider's last mile network. CDNs replicate data across multiple servers in different geographic locations. When a consumer requests data using her broadband internet connection, the CDN automatically chooses the server closest to her geographic location from which to send the data. By minimizing the distance that data must travel, CDNs can reduce traffic and congestion, resulting in an improved viewing experience and lower costs and strain on BIAS provider networks.

Most CDNs are third party services. Prominent CDN services include Akamai,[13] Limelight,[14] and CDNetworks.[15] Transit providers Level3[16] and Cogent[17] also provide CDN services, as do telecommunications companies such as Verizon.[18] New and smaller online video services are likely to rely on third party CDNs or transit providers because their data delivery needs do not justify the costs of building-out proprietary networks themselves and relying on transit or commercial CDNs will be less expensive.

More established online video providers that have reached sufficient scale may find it more efficient to develop their own CDNs to deliver their data to BIAS providers. Netflix has developed its Open Connect CDN to bring Netflix data as close as possible to BIAS subscribers

[13] *See* https://www.akamai.com/us/en/solutions/products/media-delivery/index.jsp
[14] *See* http://www.limelight.com/solutions/orchestrate-video-delivery.html
[15] *See* http://www.cdnetworks.com/solutions/media-entertainment/
[16] *See* http://www.level3.com/en/products/content-delivery-network/
[17] *See* https://www.cogentco.com/en/products-and-services/solutions
[18] *See* http://www.edgecast.com/solutions/media-entertainment/

free-of-charge.[19] This reduces costs and congestion for BIAS providers and improves the performance for consumers (including non-Netflix users) by increasing network efficiency and reliability. Netflix and the BIAS provider are directly connected, either at an Internet exchange point, or via servers within data centers. Locating data closer to the consumers requesting them is the most technically efficient, and therefore least cost-intensive way to serve Netflix traffic on any BIAS network. Most BIAS networks in the markets where Netflix operates around the world, are already Open Connect partners.

A. Settlement Free Interconnection Practices Are Essential to Realize the Efficiencies CDNs Provide for Online Video Delivery.

Direct interconnection is the most efficient way for a BIAS provider to receive traffic from data-rich media applications. The vast majority of broadband access providers in the U.S. do not charge access fees for interconnection. This practice, referred to as "settlement free interconnection" is how Netflix connects with 99% of U.S. broadband networks.

While localizing content reduces the distance traffic travels on a BIAS provider's network, the efficiencies of CDNs are lost when a BIAS provider charges an access toll to deliver traffic onto its last-mile network. As Netflix has highlighted in previous filings, some broadband providers have refused to interconnect or upgrade capacity to meet consumer demand unless an OVD pays a fee.[20] Refusal to interconnect (or upgrade existing interconnection capacity) without access tolls reflect a BIAS provider's gatekeeper position. These fees are divorced from the actual costs of "physical interconnection," and are instead designed to charge

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[19] *See* https://openconnect.netflix.com/. Netflix pays for 100% of the costs to deliver content to a BIAS Provider's doorstep. Open Connect does not shift traffic delivery costs onto the BIAS provider, or any other entity.

[20] Netflix Comments, filed in GN Dkt No 14-29 and GN Dkt No 10-127 (July 15, 2014); Netflix Reply Comments, filed in GN Dkt No 14-29 and GN Dkt No 10-127 (September 15, 2014).

edge providers for transporting data over their terminating broadband access network.[21] It is this terminating access monopoly that gives a BIAS provider market power to impair a consumer's experience and demand fees from online content providers.

Such access fees can have an adverse effect on OVD competition. Whether applied to a proprietary or public CDN service, access fees raise the costs for online video services. These costs are passed through to the consumer as a price increase and/or a decrease in an OVD's content investment. BIAS providers with affiliated video services may be particularly motivated to raise the costs of competitive OVDs, as this makes the affiliated service more attractive.

Absent the ability to charge interconnection access fees, BIAS providers would be motivated to interconnect with CDNs to lower their own costs and improve the efficiency of their network. In a positive industry development, Charter, as part of its proposed acquisition of Time Warner Cable and Bright House Networks, recently announced a new settlement free interconnection policy for its network. Charter committed to extend this policy to its entire broadband footprint if the merger is approved.[22] Such enforceable industry commitments, coupled with continued FCC scrutiny of anti-competitive BIAS provider interconnection practices, will ensure that the Internet remains an open and competitive platform for new and innovative online video services.

III. Conclusion

The current video market has reached a new golden age of television, in large part because creative storytelling and technology have converged to bring video programming to new

[21] *See Ex Parte of Christopher Libertelli, Vice President Global Public Policy, Netflix, Inc.*, GN Dkt No 14-28, MB Dkt No 14-57, and MB Dkt No 14-90 (filed Nov. 5, 2014).
[22] *See Ex Parte of Samuel L. Feder, Counsel to Charter Communications*, MB Dkt No 15-149 (filed July 15, 2014).

audiences. Internet television networks, such as Netflix, have inspired changes that make amazing content more abundant, diverse, and accessible. Netflix provides one of the many choices consumers have when forming their video entertainment bundle.

However, this competition, innovation and choice should not be taken for granted. Demand for online video is increasing the amount of traffic traversing the Internet and content providers are doing their part to increase efficiency by localizing content with CDNs. But video competition also depends upon FCC oversight of interconnection — and putting in place policies that keep the Internet a free and open platform for expression.

Respectfully submitted,

/s/

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