

Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Promoting the Availability of Diverse and Independent Sources of Video Programing |) | MB Docket No. 16-41 |
| |) | |

To: The Secretary

COMMENTS OF SMITHWICK & BELENDIUK, P.C.

In a speech at the 2015 Internet and Television Expo, Chairman Wheeler stated that the cable industry in 2014 had reached a tipping point. In the second quarter of that year and for the first time, the number of cable broadband subscribers exceeded cable TV subscribers. Chairman Wheeler went on to say that, “we recognized that broadband had to be at the center of our analysis, and that video was, in essence, an application that flows over networks and that could be supplied both by the owners of facilities and by competitors that use broadband pathways to compete against the owners of those broadband pathways.”¹ In its *Notice of Inquiry*, the Commission seeks information on the current state of the marketplace for independent programming and the availability of such programming to consumers. Smithwick & Belendiuk, P.C. believes that any such analysis should include a complete review of the vertically integrated structure of the multichannel video programming distributor (MVPD) marketplace, especially its near monopoly control over access to the Internet.

¹ Prepared Remarks Of FCC Chairman Tom Wheeler NCTA – INTX 2015, Chicago, IL, May 6, 2015.

² *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 183 (DC Cir. 1995).

³ *Satellite Broadcasting and Communications Associate v. FCC*, 275 F.3d 337 (4th Cir. 2001).

For independent programming to function as one of many competing applications, it must be free to flow through diverse distribution networks. To provide meaningful competitive alternatives for viewers of television and customers of well-entrenched and vertically integrated MVPDs, independent programmers must have free and unencumbered access to consumers through both the Internet and existing MVPD distribution channels. MVPDs control Internet access, programming distribution channels and programming. They have the incentive and the ability to impede access to independent, non-affiliated program suppliers in order to favor their own offerings. By bundling traditional MVPD services, programming and Internet delivery of content, vertically integrated MVPDs leverage their dominant market position at the expense of competitive programming offerings.

Video program distribution entails three forms of oligopolies. The first consists of MVPDs such as cable television systems, direct-broadcast satellite providers, and wireline video providers. These companies derive revenue from monthly subscriptions, additional charges from premium channels, and rental fees from set-top boxes. Before the 1990s, cable systems usually operated as the sole local cable supplier to a specific area; having received government sponsored monopolies and guaranteed returns.² In the 1990s, new FCC regulations allowed satellite operators to compete with local cable distributors.³ Moreover, in this same decade, telephone companies, such as AT&T and Verizon, also entered the market, constructing systems in areas where they provided landline telecommunications service. However, even with increased competition, the cable industry still remains concentrated, with thirteen of the largest video providers

² *Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 183 (DC Cir. 1995).

³ *Satellite Broadcasting and Communications Associate v. FCC*, 275 F.3d 337 (4th Cir. 2001).

representing about 94% of the market.⁴ AT&T's recent merger with DIRECTV has increased MVPD concentration. AT&T/DIRECTV now has 26.3 million subscribers, more subscribers than any other MVPD.⁵ The tenth ranked MVPD, WideOpenWest, by contrast, has just 606,500 subscribers.⁶

The second oligopoly consists of video programming networks that produce the content consumers watch. This is a highly concentrated industry dominated by big distributors or programming networks that can leverage market power. Many of the national broadcast and non-broadcast channels, are owned by the dominant MVPDs. A couple of examples will suffice to demonstrate the level of concentration in programming. Comcast provides cable services to 22.3 million customers and Internet service to 22.55 million customers.⁷ Significantly, Comcast's cable customer base is shrinking while the number of its Internet customers has increased. Comcast operates the NBC and Telemundo broadcast television networks.⁸ It also owns such popular cable networks as USA Network, E!, Syfy, MSNBC, CNBC, Bravo, NBC Sports Network, Oxygen, Golf Channel, Esquire Network, and Sprout.⁹ Through NBC Universal, Comcast controls a premier motion picture company and television production operations. Time Warner with 10.8 video subscribers and 12.7 million Internet subscribers also controls a large portfolio of cable networks. Time Warner operates more than 180 channels globally. In the U.S., its networks and related properties include TNT,

⁴ Leichtman Research Group, Inc. Research Notes 1Q 2014 at p. 2,6. (herein after "Leichtman 2014")

⁵ http://www.multichannel.com/sites/default/files/public/pdf/Coverstory_8_17_15_0.pdf *Eat or Be Eaten: Consolidation Creates a Top Heavy List of 25 Largest MVPDs.*

⁶ Id.

⁷ <http://venturebeat.com/2015/07/23/comcast-now-has-more-internet-customers-than-cable-tv-subscribers/> *Comcast now has more Internet customers than cable TV subscribers*, July 23, 2015

⁸ Comcast 10-K 2015

⁹ Id.

TBS, Adult Swim, truTV, Turner Classic Movies, Turner Sports, Cartoon Network, Boomerang, CNN and HLN. Time Warner also owns premium cable channels HBO and Cinemax. Currently, Time Warner is seeking to merge with Charter Communications and Bright House Networks. The merger would create another mega company whose interests would in no way align with those of independent program producers.

The third oligopoly consists of control of access to broadband Internet. The 17 largest MVPDs in the U.S. represent 94% of the Internet market.¹⁰ Real-time entertainment, i.e. streaming video and audio, is the largest Internet traffic category.¹¹ Real-time entertainment is responsible for over 63% of fixed and 40% of the mobile downstream bytes during the peak period.¹² This is due in large part to the market leadership of Netflix, which accounts for 34.2% of downstream traffic during the peak period.¹³ Increasingly, applications are replacing real-time, linear television channels. Young consumers, ages 16 to 34, are moving away from traditional, linear television viewing to Internet based on-demand viewing. Young consumers spend 34% of their time viewing television online, compared with 12% for individuals 35-64.¹⁴ Thus, younger consumers spend nearly triple the time watching television online. This is an important, growing trend in how individuals access entertainment programming. In traditional, linear television, audiences are told what to watch and when to watch it. Internet viewers choose the shows they want to watch and when to watch them.

¹⁰ <http://www.multichannel.com/news/distribution/cable-broadband-enjoys-banner-year/403242> Cable Broadband Enjoys a Banner Year. March 11, 2016.

¹¹ Sandivine, Global Internet Phenomena Report 1H 2014, (herein after Sandivine 2014).

¹² Id. On an average day, the peak time for downstream Internet traffic on fixed networks is roughly from 9:00 until 11:30 p.m.

¹³ Id.

¹⁴ Kleiner, Perkins, Caufield, Byers, Internet Trends – Code Conference, Mary Meeker, May 28, 2014, p. 122.

The top 15% of real time entertainment users consume on average 212GB of data a month, more than seven times the usage of a typical Internet customer, who consumes 29GB per month. These “cord cutters” consume an average of 100 hours of video per month and account for 54% of total traffic consumed each month.¹⁵ This is a troubling trend for multi-channel video providers as it signals a rapid decline in traditional cable channel subscriptions.

MVPD companies like Charter, Time Warner and Comcast have controlled video distribution for decades, deciding what channels were available to consumers and on what prices and terms. But the Internet has put consumers in charge and the results are compelling. In 2015, the 17 largest MVPDs in the U.S., representing 94% of the market, raked in 3.1 million net additional high-speed Internet subscribers. On the other end, the top MVPDs lost about 185,000 broadband subscribers last year. The growth of high-speed broadband Internet access poses a new challenge to the oligopoly of the MVPDs: Internet-based TV. Hundreds of new entrants are coming in with innovative video offerings. Often called over-the-top (OTT) video, such service is provided via the consumer’s existing broadband connection rather than through separate cables, spectrum, or other infrastructure.

The OTT marketplace is competitive, dynamic, and even a bit chaotic. Perhaps the best-known video provider is Netflix. But the service faces a virtual horde of competitors, including Amazon Instant Video, Vudu, Hulu, Sling TV, Flixster, Crackle, TV.com, and YipTV and many others. And more OTT services are on the way. Perhaps

¹⁵ Sandivine 2014 p.7. Cord cutters are users in the top 15% of streaming audio and video. Sandivine could not resolve if they have actually cut the cord but concluded that “they are likely using streaming as a primary form of entertainment.

most notably, Apple is planning to debut a new online TV service, providing about 25 channels of OTT programming, including content from CBS, ABC, and Fox.¹⁶ Google is also rolling out a new subscription service, called YouTube Red. These ventures use a variety of business models. Some, like Netflix, allow unlimited viewing for a flat monthly rate. Others charge a fee to digitally rent a particular movie or TV show, or to buy it. Most operate on an “on demand” basis, but a few, including Apple’s planned service and Dish Network’s Sling TV offer “linear,” or scheduled, programming.

The top MVPDs have the incentive and the economic ability to check the emergence of OTT distributors and independent program suppliers. Entrenched MVPDs have significant bargaining power with programmers and the ability could hurt smaller MVPDs and new entrant video services. The three forms of oligopolies, the oligopoly of program distribution, the oligopoly of program network ownership and the oligopoly of Internet access, pose a triple treat to the emergence of OTT and independent programming. When there is unfettered competition there is little need for regulation, as the market will correct itself. In the case of the MVPDs, the market for programing, program distribution and access to the Internet is highly concentrated and must be regulated until there is sufficient competition to allow the market to self-regulate. To permit emerging independent programmers to compete on a level playing field with the dominant MVPDs, Smithwick & Belendiuk, P.C. asks that the FCC implement the following changes to its rules.

¹⁶ *The Wall Street Journal*, Apple Plans Web TV Service in Fall, March 17, 2015; <http://www.bloomberg.com/news/articles/2015-12-08/apple-said-to-suspend-effort-to-develop-live-tv-service>

A. The Commission Should Require MVPD Broadband Providers To Open The Last Mile of the Internet to Competition.

The Telecommunications Act of 1996 imposed a set of new obligations on incumbent local exchange carriers, including the duty to provide competing carriers access to unbundled network elements at cost-based rates.¹⁷ In the *Cable Modem Order*¹⁸ the FCC determined that Internet access services provided by the cable companies were inexorably linked to telecommunications. At that time broadband Internet access providers played a prominent role in the user's Internet experience. Thus the FCC found that cable modem providers offered broadband transmission that was integrated with other features and services within their networks. As such it classified cable broadband as an information service.

In 2005, the FCC went a step further when it concluded that telecommunications companies providing broadband connections to the Internet were no longer required to offer the wireline broadband transmission component of wireline broadband Internet services as a stand-alone telecommunications service under Title II.¹⁹ The Commission determined that wireline broadband Internet access service provided by a telecommunications company was an information service, rather than a telecommunications service, and therefore was not subject to Title II regulation. Citing

¹⁷ See 47 U.S.C. §§ 251(c)(3), 252(d)(1). *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996).

¹⁸ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-785, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, (2002) (*Cable Modem Order*), *aff'd*, *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (*Brand X*).

¹⁹ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005). (*Broadband Access to the Internet Order*).

the Supreme Court’s Decision in *Brand X*, the FCC reasoned “Wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service.”²⁰

The Commission in the *Broadband Access to the Internet Order* based its decision on two primary findings, (1) that broadband Internet service is an integrated information service, and (2) that the broadband Internet providers would have sufficient financial incentives to permit independent ISPs to provide competing Internet services.

The Act defines “information service” as

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.²¹

The Act also defines “telecommunications service” as

“the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used”²² and “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”²³

Applying the definitions of “information service,” “telecommunications,” and “telecommunications service,” the Commission found that wireline broadband Internet

²⁰ *Broadband Access to the Internet Order*, p. 14860, citing *Brand X*.

²¹ 47 U.S.C. § 153(20).

²² 47 U.S.C. § 153(46).

²³ 47 U.S.C. § 153(43).

access service “inextricably combines the offering of powerful computer capabilities with telecommunications,” and therefore is an information service.²⁴

The FCC’s 2005 decision to allow wireline common carriers to discontinue their tariff offerings of stand-alone broadband transmission was predicated on its belief that the large gatekeeper providers would nevertheless continue making broadband transmission available to independent ISPs.²⁵ Likewise, the Commission reasoned that the cable operators, which have never been required to make Internet access transmission available to third parties on a wholesale basis, would have business incentives to make such transmission available to ISPs.²⁶ “Incumbent LECs have represented that they not only intend to make broadband Internet access transmission offerings available to unaffiliated ISPs in a manner that meets ISPs’ needs, but that they have business incentives to do so.”²⁷ The FCC assured the public that it was not sacrificing competitive ISP choice for greater deployment of broadband facilities. Rather, “our reasoned judgment tells us that sufficient marketplace incentives are in place to encourage arrangements with innovative ISPs.”²⁸

Unfortunately, this did not prove to be the case. As a result of the FCC’s decision, up to 7,000 independent ISPs were forced out of business.²⁹ What is left today is a paucity of competition, controlled by a handful of MVPDs. Increasingly American’s are faced with a Hobson’s choice for broadband Internet access; they can have any

²⁴ *Broadband Access to the Internet Order*, p. 14864.

²⁵ *Broadband Access to the Internet Order*, p. 14887.

²⁶ *Broadband Access to the Internet Order*, p. 14887.

²⁷ *Broadband Access to the Internet Order*, p. 14893-4.

²⁸ *Broadband Access to the Internet Order*, p. 14895.

²⁹ <http://newnetworks.com/killingispscreatednetneutrality/>

broadband Internet provider they like as long as it is the large MVPD that serves their area.

Information services like email and web hosting that the FCC in 2002 viewed as being inexorably linked with broadband transmission are today provided primarily by entities unaffiliated with the broadband provider and are separate and distinct from the transmission service. Third parties, such as Google, primarily handle consumers' email.³⁰ Web hosting is competitively provided. Furthermore, many end-users' "web presence" is now associated with third party applications such as Facebook and Twitter. Broadband customers now demand, and broadband providers supply, a pure telecommunications service to receive and deliver data, voice, video, text, and images. When a broadband customer views a video on YouTube, accesses Netflix, watches a video stream, updates a Facebook page, posts on a blog, or shares files, all that is needed from the broadband provider is pure transmission.

In the *Open Internet Order*,³¹ the FCC found that "times and usage patterns have changed and it is clear that broadband providers are offering both consumers and edge providers straightforward transmission capabilities that the Communications Act defines as a 'telecommunications service.'" The FCC also found that broadband Internet providers function as gatekeepers and that they have the ability to control access to the last mile of the Internet. Despite its unequivocal findings, the FCC did not open the last mile to competition. The FCC decided instead to forbear from key interconnection provisions vital to competition. The Commission concluded that the availability of other

³⁰ See "Gmail Opens Increase 243%; Android Drops Back to #4," Litmus, February 7, 2014, which identifies at least 86% of email opens being associated with Gmail, Outlook.com, Yahoo, and AOL. <https://litmus.com/blog/gmail-opens-increase-android-drops-january-email-client-market-share>

³¹ *Protecting and Promoting the Open Internet, Report And Order On Remand, Declaratory Ruling, And Order in General Docket 14-28*, 30 FCC Rcd 5601, 5615 (2015) ("*Open Internet Order*").

protections adequately address concerns about forbearance from the interconnection provisions under the section 251/252 framework and under section 256.

We thus forbear from applying those provisions to the extent that they are triggered by the classification of broadband Internet access service in this Order. The Commission retains authority under sections 201, 202 and the open Internet rules to address interconnection issues should they arise, including through evaluating whether broadband providers' conduct is just and reasonable on a case-by-case basis.³²

The FCC went on to say,

We also reject arguments suggesting that we should not forbear from applying sections 251(b) and (c) with respect to broadband Internet access service.... Section 251(c) subjects incumbent LECs to unbundling, resale, collocation, and other competition policy obligations.³³

In the *Open Internet Order*, *passim* the FCC repeatedly and consistently states that its new rules are designed to ensure that telecommunications networks develop in ways that foster economic competition, technological innovation, and free expression. The Commission found that competition for broadband Internet access service is limited, with the majority of Americans facing a choice of only two providers.³⁴ Yet, for reasons that are not explained in the *Open Internet Order*, the FCC decided to forbear from the interconnection requirements of the Telecommunications Act of 1996.

The *Open Internet Order* therefore did nothing to open the telephone and cable broadband markets to competition, which is sorely needed, since the FCC's 2005 predictive judgment has been proven erroneous. Clearly, the broadband gatekeepers have

³² *Open Internet Order* at p. 5849-50

³³ *Open Internet Order* at p. 5850.

³⁴ *Open Internet Order* at p. 5810-11.

no economic incentive to open their gates and enable competing ISPs to enter the broadband Internet market.

The *Open Internet Order* found that circumstances have changed since the FCC decided it would no longer require common carriers to offer broadband transmission separately from broadband Internet access service. It found that “times and usage patterns have changed and it is clear that broadband providers are offering both consumers and edge providers straightforward transmission capabilities that the Communications Act defines as a ‘telecommunications service.’”³⁵ Likewise, the FCC found that broadband providers have the market power and the means to engage in predatory practices. These near monopoly broadband providers function as gatekeepers and have all the tools necessary to deceive customers, degrade content or disfavor content.³⁶

In the *Open Internet Order*, therefore, the FCC effectively reversed the *Cable Modem Order* and the *Broadband Access to the Internet Order*. Inexplicably, the Commission failed to restore the status quo *ante* by requiring broadband providers to make available to competitors stand-alone broadband transmission over the gateway last mile. As the FCC acknowledged, it is this very lack of competition that gives the broadband gatekeepers the power to abuse their customers and those entities seeking to interact with them.

In this proceeding, the FCC has taken up the question of Internet gatekeepers again; this time by asking what can be done to insure that independent video program distributors can reach viewers? Independent programmers primary means of distribution

³⁵ *Open Internet Order* at p. 5814

³⁶ *Open Internet Order* at p. 5616.

is through the Internet or by reaching a carriage agreement with the local MVPD. As long as MVPDs control access to the Internet, video programmers will be shutout or otherwise unfairly discriminated against in their efforts to get their programming to their customers. In New York, Comcast unilaterally dropped the Yankees' baseball YES Network, claiming that YES was not a popular network. YES is jointly owned between FOX and the Yankees. Comcast, which is a part owner of the Mets' SNY, does carry SNY, as well as other Major League Baseball games. As the New York Post described it,

It's cable. There's nothing new, here. Cable does and says what it wishes, where it wishes, how it wishes and when it wishes. And if you know better — if you know it's double-dealing while they pretend to be on their subscribers' sides — good for you, but either way cable couldn't care less.

Bottom line: If Comcast owned a piece of YES as it does SNY, there would be no dispute.³⁷

It is worth noting, that the New York Yankees organization is much bigger and more powerful than the typical independent program supplier. Still there is little it can do when Comcast denied it access to a million viewers in New York. To break the strangle hold that MVPDs have on access to the Internet, programing and viewers, the FCC should open the Internet to allow independent video programmers to function as ISPs. In this way the FCC will make possible fair competition for program distribution and equal access to viewers. If there were a hundred independent ISPs in New York willing to carry the YES Network, would Comcast have dared to shut off Yankees baseball?

³⁷ <http://nypost.com/2016/03/11/comcasts-move-to-ban-yankees-viewers-typical-cable-idiocy/> *Comcast Move to Ban Yankees Typical Cable Idiocy*, March 11, 2016

B. The Commission Should Ban Any Form of Traffic Prioritization Including Sponsored Data and Zero Ratings

Comcast has been rolling out data caps on its broadband plans. This limits the amount that customers can use the Internet without facing expensive penalties. Customers are allowed 300GB of data per month, and once they reach that point they are charged an extra \$10 for each additional 50GB or for an additional \$35 per month a customer can get unlimited data.³⁸ Data caps affect all kinds of Internet usage, but impact streaming video disproportionately because video streaming requires more data. A person watching the average four-hours of TV a day over their broadband connection rather than through a traditional cable service would quickly exceed Comcast's cap. Of special concern is the way Comcast is tabulating customer data usage. Specifically, while typical Internet usage—streaming Netflix or Hulu, watching YouTube—is counted toward a customer's monthly data cap, Comcast's own Stream TV service can be used without any cap or limit. Such a system obviously makes Comcast's service far more attractive, giving it an unfair advantage over other streaming options. Customers can get unlimited access to Comcast's "Stream TV" for \$15/month, but unlimited access to Netflix will now cost \$35/month to get the 'unlimited bandwidth' package, on top of the cost of a subscription to Netflix. Other MVPDs are starting to adopt their own zero rating plans. Verizon has started excluding its own mobile video streaming service, go90, from data charges. No doubt, other MVPDs, if unchecked, will adopt similar unfair, anticompetitive plans.

³⁸ <http://time.com/money/4143682/comcast-data-caps-internet/> *Why Comcast Keeps Insisting Its Data Caps Aren't Caps—and That They're Fair* December 15, 2015.

MVPDs such as Comcast and Verizon have already demonstrated that adopting zero-ratings gives MVPDs an unfair advantage over competing services, especially over fledgling services provided by independent programmers. In establishing a “clear, bright line rule” banning paid prioritization and prioritization of affiliate traffic. If an open Internet stands for anything, it means that a common carrier that is transmitting nothing but bits of data to and from its customers according to the customers’ preferences may not discriminate or interfere with what it is transmitting.

The *Open Internet Order* at p. 5655-6 explains the ban on paid prioritization:

Prioritizing some traffic over others based on payment or other consideration from an edge provider could fundamentally alter the Internet as a whole by creating artificial motivations and constraints on its use, damaging the web of relationships and interactions that define the value of the Internet for both end users and edge providers, and posing a risk of harm to consumers, competition, and innovation. Thus, because of the very real concerns about the chilling effects that preferential treatment arrangements could have on the virtuous cycle of innovation, consumer demand, and investment, we adopt a bright-line rule banning paid prioritization arrangements. (Footnotes omitted)

This reasoning is sound and supportable. However, the *Open Internet Order* never considered whether prioritization that does not involve consideration, monetary or otherwise, may produce the same harms and ought be proscribed. “[T]he chilling effects that preferential treatment arrangements could have on the virtuous cycle of innovation, consumer demand, and investment,” clearly could obtain whether or not the broadband provider received consideration from the content distributor. There is now evidence that gatekeeper MVPDs are favoring their services at the expense of competitors and their

customers. MVPDs that provide Internet service are common carriers and should be regulated as such.

A common carrier makes service available to the public, who in turn “may communicate or transmit intelligence of their own design and choosing...” The intelligence that customers transmit over a broadband provider’s network is made up of bits of data. There is no reasonable basis for a carrier to treat data bits differently or prefer some to others.

The *Open Internet Order* at p. 5666-8 discusses “sponsored data” plans, and contains the FCC’s analysis:

We are mindful of the concerns raised in the record that sponsored data plans have the potential to distort competition by allowing service providers to pick and choose among content and application providers to feature on different service plans. At the same time, new service offerings, depending on how they are structured, could benefit consumers and competition. Accordingly, we will look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the facts of each individual case, and take action as necessary.
(Footnote omitted)

The FCC put the consideration of sponsored data plans to individual case-by-case proceedings under the “no-unreasonable interference/disadvantage” standard adopted in the *Open Internet Order*. Comcast’s and Verizon’s zero rating plan clearly interfere with free and open competition in the video distribution marketplace and are designed to disadvantage independent program distributors. Allowing MVPDs to decide which content providers’ bits will or will not count against a customer’s data plan gives them control and leverage over Internet traffic that is unprecedented and wholly inappropriate for a Title II transmission service. Accordingly, the FCC should ban schemes that allow

