Before the
Federal Communications Commission
Washington, D.C. 20554

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

Reply Comments of ONE World Sports

ONE World Sports
250 Harbor Drive, 4th Floor
Stamford, Connecticut 06902
(203) 883 – 4493

April 19, 2016

SUMMARY

ONE World Sports ("OWS") is an independent English-language, multi-platform sports network featuring exclusive, best-in-class sporting events, live, from around the globe. OWS appreciates the Commission's interest in the important issue of promoting the availability of independent sources of video programming.

In fulfilling its mandate to promote diverse and independent sources of video programming, the Commission must take care not to be fooled by the *appearance* of diversity that might be gleaned from the many genres of program networks carried by multichannel video programming distributors ("MVPDs") today. For the overwhelming majority of those networks are owned by a small number of massive and powerful media conglomerates that exercise control over the bulk of channel capacity on MVPDs' distribution platforms. Rather, the true focus of this proceeding must be on ***ownership*** diversity, and ensuring that independent program networks have fair access to MVPDs' linear platforms. Only by doing so will the Commission ensure true diversity in the ***sources*** of television programming and the viewpoints presented to the American public.

By far the most serious obstacle confronting independent networks today is the widespread practice of forced bundling and tying of programming by large media conglomerates. By leveraging their control over "must have" programming, including marquee networks and retransmission consent rights, large media conglomerates are able to force MVPDs to carry scores of unwanted affiliated networks that are of limited value to viewers. This coercive and anticompetitive practice excludes independent program networks from the television marketplace, and denies viewers of their services, by sapping MVPDs of the bandwidth and programming dollars they otherwise could devote to carriage of independents.

Forced bundling undermines ownership diversity, particularly now that concentration is rapidly accelerating among both MVPDs and media conglomerates, and independent networks are being squeezed in the middle. In its comments, OWS provides specific, concrete examples of how forced bundling:

- diverts programming dollars, which independent networks desperately need to produce fresh, new original programming, into the pockets of the media conglomerates;
- raises consumer costs;
- threatens to deprive American television viewers of a true diversity of ***sources*** of video programming;
- forces MVPDs to squander scarce bandwidth on networks of limited value to viewers, at the expense of independents;
- limits the ability of MVPDs to create smaller, lower-priced packages (*i.e.*, "skinny bundles") that are consumer friendly and welcome options for independent networks; and
- is a particularly acute problem for small and mid-sized cable operators (which are vitally important to independent networks) because they often are capacity constrained and have no negotiating leverage against large media conglomerates.

Forceful and broad-reaching action by the Commission is urgently needed to address these problems. OWS urges the Commission to promptly move forward with a notice of proposed rulemaking that leads to the adoption of rules prohibiting, or at least significantly limiting, the forced bundling and tying of programming by large media conglomerates.

TABLE OF CONTENTS

I. ABOUT OWS 2

II. PROMPT ACTION BY THE COMMISSION IS NEEDED TO ENSURE THE SURVIVAL OF INDEPENDENT SOURCES OF VIDEO PROGRAMMING 3

III. FORCED BUNDLING AND TYING OF PROGRAMMING BY LARGE MEDIA CONGLOMERATES HARMS INDEPENDENT NETWORKS AND TELEVISION VIEWERS 6

A. Common Bundling and Tying Structure and Tactics 6

B. Forced Bundling and Tying Harms Independent Programmers and Viewers 9

IV. CONCLUSION 14

Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF ONE WORLD SPORTS

ONE World Sports ("OWS") is pleased to submit these reply comments in response to the Notice of Inquiry ("NOI") issued by the Commission in the referenced proceeding. OWS appreciates the Commission's interest in the important issue of promoting the availability of diverse and independent sources of video programming. As many independent television networks[1] persuasively demonstrated in their initial comments, the state of the video marketplace is extraordinarily challenging for independent networks, and indeed threatens the survival of many and significantly deters the creation of new independent entrants to the market.

The dysfunction of the current video marketplace manifests itself in a variety of ways, which are identified in the NOI.[2] However, OWS has elected to focus its comments in this

---

[1] In the NOI, the Commission defined an "independent programmer" as "one that is not affiliated with an MVPD." NOI at note 4. OWS believes this definition is inappropriate because it treats networks that, for example, are affiliated with broadcast television stations, broadcast networks, or the media conglomerate owners of multiple multichannel networks (including marquee networks) as independent. It is difficult to imagine Nickelodeon as an "independent programmer," but the network fits the NOI's definition of that term. OWS uses the term "independent network" herein to mean a non-broadcast television network that is not affiliated with an MVPD, a broadcast television station, a broadcast television network, or the owner of three or more other non-broadcast multichannel television networks.

[2] Two of these – the most-favored nation ("MFN") and alternative distribution method ("ADM") provisions that are found in virtually all distribution agreements with multichannel video programming distributors ("MVPDs") – can be onerous, burdensome and detrimental to both independent networks and the television viewers they seek to serve. OWS believes it is appropriate for the Commission to consider rules restricting or substantially limiting the use of MFN and ADM provisions in MVPDs' distribution agreements with independent networks. OWS does not, however, suggest that the Commission restrict the use of MFNs and ADMs in MVPDs' agreements with non-independent networks since those entities, by virtue of their size and/or possession of retransmission consent rights, have the marketplace leverage necessary to negotiate with MVPDs concerning reasonable terms of carriage and distribution.

proceeding on what it believes is by far the most serious problem facing independent networks today: the widespread practice of forced bundling[3] and tying of programming by large, multi-network media conglomerates,[4] a practice that has denied independents access to the overwhelming majority of MVPDs' scare channel capacity and programming dollars, has had a profoundly anticompetitive impact on independent networks' ability to reach the viewing public, and threatens to deprive American television viewers of a true diversity of ***sources*** of video programming. OWS urges the Commission to promptly move forward with a notice of proposed rulemaking that leads to the adoption of rules prohibiting, or at least significantly limiting, this harmful practice.

I. ABOUT OWS

OWS is an English-language multi-platform sports network featuring exclusive, best-in-class sporting events, live, from around the globe. OWS, a stand-alone, wholly independent network, is owned and operated by ONE Media Corporation, and is not affiliated with any MVPD, broadcast station or network, or other non-broadcast network.

OWS was created to fulfill American sports fans' growing interest and demand for global sports. A June 2015 nationwide study by Frank N. Magid Associates revealed that 40 percent of the respondents are highly likely or likely to have an interest in global sports categorically and 49 percent are likely to watch OWS specifically. OWS delivers live and exclusive coverage of some of America's most popular sports played outside the USA – basketball, golf and ice hockey

---

[3] In the NOI, the Commission described program bundling as the practice by media conglomerates of "leverag[ing] their marquee programming (*e.g.*, premium channels or regional sports programming) to force MVPDs to carry additional channels that have little or no consumer demand." NOI at ¶ 15. OWS believes the Commission's description is too narrow, as it does not include entities that, through their ownership of broadcast television stations, can use the threatened withholding of retransmission consent as a powerful weapon to force MVPDs to carry unwanted affiliated programming services, including both digital multicast channels and commonly owned or affiliated linear cable networks.

[4] OWS uses the term "media conglomerates" to mean companies that own (1) four or more linear cable television networks, (2) a marquee cable network, and/or (3) broadcast television stations or networks.

– plus sporting events with the largest global followings, including soccer and cricket. The Magid study referenced above also illustrated that 50 percent of Hispanic/Latinos, 45 percent of African-Americans and 59 percent of the Asian community are extremely interested or very interested in global sports. Significantly, OWS serves numerous ethnic minorities by providing programming of particular interest to those communities. For example, OWS's telecasts include:

- the England National Cricket Team's international home matches, which are of particular interest to Americans of Indian, Pakistani and Sri Lankan descent;
- the Kontinental Hockey League, a hockey league covering countries in Eastern Europe;
- the Chinese Basketball Association, the preeminent men's professional basketball league in Asia;
- the New York Cosmos and the North American Soccer League, which appeal to Americans of Hispanic descent; and
- best-in-class competitions in table tennis and badminton from around the world, which is of particular interest to Asians and Europeans.

Thus, while of broad appeal to all American sports fans, OWS is serving the needs of many ethnic communities that generally are ignored by large multi-network programming groups and major broadcast companies.

II. PROMPT ACTION BY THE COMMISSION IS NEEDED TO ENSURE THE SURVIVAL OF INDEPENDENT SOURCES OF VIDEO PROGRAMMING

The NOI seeks comment on the state of the marketplace for independent programming and information "on barriers experienced by all types of independent programmers." NOI at ¶ 2.

If the NCTA were to be believed, the Commission would conclude that "independent and diverse programming" is "thriving."[5] However, NCTA and some other commenters have placed

[5] MB Docket 16-41, Comments of National Cable and Telecommunications Ass'n, at 1 (filed March 30, 2016) ("NCTA Comments").

inordinate and inappropriate emphasis on *programming* or *audience* diversity,[6] rather than on what is the true measure of ***source diversity*** and what should be the central focus of this proceeding – ***ownership diversity***. By contrast, the Writer's Guild of America, West, Inc. succinctly captured the true marketplace dynamic:

> Independent programmers face exclusion and the suppression of competition both from large distributors and large content suppliers. Large MVPDs, through their control of access to subscribers, wield significant power over programmers. … Independent programmers also face threats from the large programmers with the leverage to crowd out space for competing networks. Large conglomerations of producers, broadcast and cable networks and local stations crowd independent programmers out of the wholesale programming market by leveraging their control over "must have" programming into carriage of affiliated networks.[7]

Concentration is rapidly accelerating among both MVPDs and media conglomerates, while independent networks are being squeezed in the middle. In its comments, TheBlaze characterized the situation well: "When elephants fight, it is the grass that suffers. In the programming marketplace, independent programmers are caught in the middle of a battle of behemoths."[8] OWS agrees and urges the Commission to adopt reasonable market reforms that support independent networks' opportunity for success in order to "foster a diverse, robust, and competitive marketplace for the delivery of multichannel video programming." NOI at ¶ 2.

The Commission must act quickly. Recently, the market has seen a number of independent networks being forced to sell out to media conglomerates or broadcast groups, which have the leverage to muscle their content onto MVPD line-ups in highly-penetrated packages and extract inordinately large license fees. For example, OWS understands that

---

[6] For example, NCTA states: "Program networks similarly have an interest in developing unique programming that appeals to underserved audiences, such as Latino viewers, African-American audiences, and other ethnic and religious groups, as well as those with interests in music, arts, and other niche interests." NCTA Comments, at 3-4.
[7] MB Docket No. 16-41, Comments of Writer's Guild of America, West, Inc., at 3 (filed March 30, 2016).
[8] MB Docket 16-41, Initial Comments of TheBlaze, at 11 (filed March 30, 2016).

Sinclair Television's recent acquisition of The Tennis Channel was predicated on its strategy of leveraging the retransmission consent rights of Sinclair's many broadcast stations to coerce MVPDs to agree to greatly expanded carriage of The Tennis Channel.

Moreover, in OWS's experience, investment capital for independent networks has become increasingly difficult to obtain – and comes with onerous, unfavorable terms – because the television programming distribution market is heavily tilted against independents. These capital limitations make it difficult for independents to produce original programming or, in OWS's case, acquire rights for and televise high-profile, global sports events, which creates inherent disadvantages for independent networks seeking to compete in the marketplace.

Finally, while over-the-top ("OTT") presents opportunities for the exploration and development of new distribution methods, OTT is a nascent distribution model, and it is far too early in the game for any independent network to build a viable business exclusively or predominantly on that method. Moreover, it is expensive to build an online video brand from scratch and virtually all independent networks face significant streaming limitations (or outright prohibitions) in their distribution agreements with MVPDs. Thus, at this juncture, OTT is an important adjunct to, but not a substitute for, broad distribution on MVPDs' linear platforms.

The video marketplace is at a critical point for independent networks. Many independents simply have been unable to survive the enormous market pressures, including, for example: Automotive Television Network, Blackbelt TV, Channel America, Colours TV, Computer Science Television, History International, INHD2, The Interactive Channel, Knowledge TV, The Lottery Channel, National Jewish Television Network, Network 1, Research Channel, The Silent Network, SingleVision, Talk TV and Varsity TV.[9] Indeed, a study

[9] *See* http://en.wikipedia.org/wiki/List_of_United_States_cable_and_satellite_television_networks.

of independent networks launched from 2005 to 2007 found a survival rate of only 55 percent,[10] and conditions have only grown worse over the ensuing years. Access by independents to MVPDs' channel capacity has never been more limited, capital has never been so difficult for independents to obtain, and the multichannel industry (both MVPDs and media conglomerates) has never been so concentrated. If the Commission truly wants to fulfill Congress' mandate of promoting the American viewing public's access to diverse sources of video services, it must act promptly and decisively to level the playing field and ensure fair and nondiscriminatory access, on reasonable terms, by independent networks to MVPDs' distribution platforms.

III. FORCED BUNDLING AND TYING OF PROGRAMMING BY LARGE MEDIA CONGLOMERATES HARMS INDEPENDENT NETWORKS AND TELEVISION VIEWERS

In OWS's experience, the primary marketplace obstacle facing independent networks is the pervasive practice of forced bundling and tying of programming by large media conglomerates. In this section, OWS details how forced bundling occurs in today's marketplace and its pernicious effects on independent networks and, ultimately, television viewers.

A. Common Bundling and Tying Structure and Tactics

A presentation from an industry analyst at the Media Bureau's recent state of the video marketplace workshop summarized the effects of forced bundling and depicted how a handful of media conglomerates are able to use bundling to capture the overwhelming majority of MVPDs' channel capacity and, derivatively, the overwhelming share of television ratings, licensing fees and advertising revenues. Tasneem Chipty, of Analysis Group, presented evidence demonstrating that just six large programming conglomerates – 20th Century Fox, CBS, Disney, NBC Universal, Time Warner, and Viacom – secure:

---

[10] *See* Tasneem Chipty, presentation at Media Bureau State of the Video Marketplace Workshop, page 4 (Mar. 21, 2016), available at: https://transition.fcc.gov/bureaus/mb/policy/video_marketplace/presentation_Chipty_2016.pdf.

- 77 percent of total cable and broadcast networks' 24-hour ratings;
- 75 percent of total cable and broadcast networks' prime-time ratings; and
- 81 percent of the industry's affiliate and advertising revenues.[11]

Data presented by independent network INSP, LLC was even more alarming:

> Today, of the 250 television networks measured by comScore/Rentrak, 162 (or almost 65 percent) are owned by eleven large media conglomerates, while only 88 (about 35 percent) of these networks are independently owned. For example, Disney and Viacom each own 21 networks, Liberty Media owns 18 networks, News Corp. owns 15, CBS owns 14, and Discovery owns 13 networks. As a practical matter, this means that the lion's share of MVPD channel capacity is being consumed by a small number of media conglomerates, and this trend continues to grow.
>
> Data comparing television viewership between conglomerate and independent programmers is even more ominous. As of January 2016, nearly ***91 percent*** of the total television viewing of the 250 networks measured by comScore/Rentrak was of programming owned by the same eleven largest conglomerate programmers, leaving only ***9 percent*** of television viewership scattered among the 88 independent programmers.
>
> When *prime-time* viewing is considered, the dominance of the media conglomerates is even more striking: only ten owners account for 95 percent of the prime-time ratings of the top-50 networks.[12]

The major media conglomerates routinely use threats to withhold – or actually withhold – their most popular, "must-have" channels or retransmission consent rights in order force MVPDs to carry unwanted channels, and to negotiate higher license fees, preferential channel and tier placement, and other discriminatory considerations for their secondary, undesired program networks.[13] Not even the largest MVPDs are immune from these pressures. As Verizon stated in its initial comments:

---

[11] *See* Tasneem Chipty, presentation at Media Bureau State of the Video Marketplace Workshop, p. 10 (Mar. 21, 2016) at: https://transition.fcc.gov/bureaus/mb/policy/video_marketplace/presentation_Chipty_2016.pdf.

[12] MB Docket 16-41, Comments of INSP, LLC at 3-4 (filed March 30, 2016) (footnotes and table omitted).

[13] *See, e.g., Viacom Channels off Cable ONE as NCTC Pact Expires*, Multichannel News (April 2, 2014), available at: http://www.multichannel.com/viacom-channels-cable-one-nctc-pact-expires/373503 .

> large programmers frequently negotiate distribution rights for must-have programming channels with demands to carry less desirable, affiliated channels, which can increase the rates for the programming and result in bloated packages that may be of little interest to most consumers. While offering a large and diverse array of programming is generally important for competitive MVPDs, "bundle inflation" limits their discretion in selecting what they feel is the best lineup or package of channels for their subscribers, including limiting resources to add independent and minority programming to the mix of channels.[14]

Similarly, OWS has been told by many cable operators that the large media conglomerates demand highly-penetrated carriage, which increases license fees and forces them to relegate the launch of new independent networks – to the extent they even can launch independents, given bandwidth limitations – to smaller, less highly-penetrated genre-based packages that reach far fewer subscribers.

OWS has occasionally experienced first-hand the opportunities that can arise for independent networks in the very rare instances when an MVPD resists the demands of a media conglomerate. For example, in a few cases, OWS has been able to secure carriage when certain MVPDs dropped networks from the major media conglomerates rather than cave to the conglomerates' unreasonable demands. These cable operators see the value of independent programming but first must be relieved of the massive financial and bandwidth constraints that accompany their current coerced relationships with the conglomerates.

In OWS's experience, independents are being forced to compete against their media conglomerate rivals' networks with the deck stacked against them at every turn. For example, OWS repeatedly has been asked by MVPDs to demonstrate its desirability to viewers and ratings performance *at launch,* while it is inconceivable that such a requirement exists for the secondary networks of the media conglomerates.

[14] MB Docket No. 16-41, Comments of Verizon, at 3-4 (filed March 30, 2016).

Worse yet, a number of potential distributors – particularly small and mid-sized cable operators – have told OWS they would like to carry the network but instead must essentially ***reserve bandwidth*** for the major media conglomerates in order to accommodate the inevitable future demands of new bundled networks they will be forced to carry after the next contract cycle.

B. Forced Bundling and Tying Harms Independent Programmers and Viewers

It is abundantly clear that the forced bundling and tying practices of the large media conglomerates – and their voracious appetite for bandwidth on MVPD systems – are a major impediment to the growth and development of independent networks. These practices reverberate throughout the television industry, causing substantial harm to independent networks and, ultimately, the viewing public. Examples of the pernicious effects of forced bundling include the following:

- Forced bundling diverts money that independent networks desperately need to produce fresh, new original programming, directing it into the pockets of the media conglomerates who, in the words of an industry analyst at the Commission's recent workshop on the state of the video marketplace, are "overearning."[15]
- Forced bundling causes MVPDs to squander scarce bandwidth[16] on networks of limited value to viewers.
  - <u>Example 1 – ESPNEWS</u>. One high-profile example is ESPNEWS. When the network was launched in 1996, it served an (albeit limited) purpose by providing fans sports highlights in a fast-paced format. But the network launched in an era

---

[15] Statement of Richard Greenfield, Managing Director and Media Analyst, BTIG, presentation at Media Bureau State of the Video Marketplace Workshop (Mar. 21, 2016).

[16] *See, e.g.*, MB Docket 16-41, Comments of the American Cable Ass'n, at 18 (filed March 30, 2016) ("As ACA has demonstrated over the years, many small cable operators have limited capacity.").

when the Internet was in its infancy and smart phones did not exist. Today, sports fans routinely use mobile devices to view highlights, rendering ESPNEWS all but irrelevant. The network continues to exist for no other reason than forced bundling. MVPDs (and ultimately, MVPD subscribers) are forced to pay for ESPNEWS and it continues to consume valuable bandwidth on MVPD platforms across the county.[17]

- Example 2 – FOX College Sports ("FCS"). FCS is a low-performing college sports network in competition with OWS that, like ESPNEWS, exists entirely because of forced bundling. MVPDs are forced to carry FCS or face disruption from its parent company, which also owns the FOX broadcast network, FOX News, the FX Network and multiple regional sports networks.

- Example 3 – The SEC Network. The SEC Network (owned by ESPN/Disney) – which has its regional focus built into its name – is frequently mentioned by OWS's prospective distributors as a network they resent being forced to carry outside of the southeastern United States due to (1) its large license fee, (2) limited appeal beyond the Southeast, and (3) mandated carriage on a highly-penetrated tier.[18] Indeed, one very large MVPD told OWS on multiple occasions that it had no available bandwidth to add channels, yet that same MVPD later made room for the SEC Network, presumably by dropping another network.

---

[17] ESPNEWS now primarily displays repeats of ESPN's studio style programs. ESPN canceled Nielsen ratings for ESPNEWS in the fall of 2015 because Disney apparently does not want to reveal how poorly the network is performing.

[18] Furthermore, the live games of national consequence are carried on one of ESPN's major platforms (ESPN, ESPN2 or ESPNU). Games of secondary importance have been removed from ESPN, ESPN2 or ESPNU and placed on the SEC Network – thereby lessening the value of those networks. But the license fees of those networks remain unchanged notwithstanding the reduction in quality content. Consumers continue to pay heavily for those networks *and* foot the bill for the SEC Network. *See* http://www.al.com/sports/index.ssf/2015/08/how_the_sec_network_became_a_n.html .

Quite obviously, it caved to pressure to carry the channel as part of ESPN/Disney's large bundle.

- Forced bundling accompanied by demands for widely-penetrated carriage have the effect of limiting the ability of MVPDs to create smaller, lower-priced packages (*i.e.*, "skinny bundles") that are consumer friendly and welcome options for independent networks such as OWS. According to the American Cable Association, "[a]s long as [the media conglomerates] continue to insist on penetration requirements for their own programming, ACA members will find it impossible to offer slim bundles – which, in turn, will make it harder for subscribers to access diverse programming."[19]
- Forced bundling raises consumer costs. A recent study found that 56 percent of consumers (and 60 percent of females) would forego ESPN if they could save $8 per month for cable or DBS service.[20] That option clearly does not exist in today's world of forced bundling. But forced bundling drives up costs to consumers in other less obvious ways as shown in the following examples.
    - <u>Example 1 – ESPN3</u>. ESPN3 is ESPN's flagship online delivery service. ESPN has extracted from MVPDs license fees for ESPN3 for every broadband subscriber they have, not just the relatively few that actually use ESPN3. More than 90 percent of ESPN3's content attracts fewer than 10,000 unique viewers from among its massive household reach. For a linear network, 10,000 unique viewers would not even register for ratings purposes. Yet ESPN3 generates an

---

[19] MB Docket 16-41, Comments of the American Cable Ass'n, at 33 (filed March 30, 2016) ("ACA Comments").

[20] *See 56% Would Drop ESPN in a Heartbeat if it Meant Saving $8 a Month on Cable*, TechDirt (published January 20, 2016) (citing consumer study by BTIG Research), available at: https://www.techdirt.com/articles/20160114/06532833339/56-would-drop-espn-heartbeat-if-it-meant-saving-8-month-cable.shtml.

estimated $100 million in annual revenue for Disney. To make matters worse, ESPN is in the process of migrating content to its new "ESPN Pass Pay-Per-View" platform, which is scheduled to launch in early 2017. When that happens, consumers will be forced to pay at least the same amount for a greatly diminished ESPN3 service. MVPDs, independent networks and consumers will lose, while only Disney will win.

  - Example 2 – ESPN3. Prior to its acquisition by AT&T, DirecTV had no broadband platform, and therefore no valid reason to pay ESPN millions each year in license fees for ESPN3. The fact that DirecTV – an enormous MVPD even before its acquisition by AT&T – paid Disney millions annually for nothing of value demonstrates the enormous leverage the media conglomerates have over MVPDs. In some instances, Disney was being paid ***three times*** for the same service by the same customer who may never even use the service. For example, a Verizon FiOS broadband subscriber with DirecTV video service and an Xbox membership would pay three times for ESPN3.

- For several reasons, forced bundling is a particularly acute problem for small and mid-sized cable operators. First, smaller MVPDs have even less negotiating leverage than larger MVPDs to push back against the unreasonable demands of media conglomerates. According to the ACA, "[a]n individual small cable operator, of course, has essentially zero leverage against a large programmer. Its carriage or non-carriage of a large programmer's channels represents no more than a rounding error for the large programmer."[21] Second, smaller cable systems typically face more significant capacity

[21] ACA Comments, at 5, n 12.

limitations than larger MVDPs.[22] For OWS and other independent networks, small and mid-sized cable operators are an important source of launches, validation and growth because it takes much longer to negotiate with the larger MVPDs. Independent networks – and the Commission – therefore have a strong interest in ensuring that the economic viability of small and mid-sized cable operators is not undone by the unreasonable demands of the media conglomerates.

- Example 1 – Suddenlink/Viacom. In 2014, Suddenlink reportedly was facing a 50 percent rate increase by Viacom for its bundle of 24 networks, even though the ratings of some of those networks had fallen by as much as 30 percent. Instead of capitulating, Suddenlink dropped the Viacom networks and used the vacated channel capacity to sign deals with a number of independent networks, including Revolt TV, RLTV, TheBlaze and others.[23] Unfortunately, that kind of opportunity for independent networks – borne of an MVPD that decides to fight back against unreasonable bundling demands – rarely happens.
- Example 2 – CableOne/Viacom. It was reported that CableOne rejected Viacom's demand that the small cable operator pay as much as a 100 percent rate increase across 15 Viacom networks, in spite of the fact that the ratings of many of the networks had substantially declined. When CableOne asked to be allowed

[22] *See, e.g.,* ACA Comments at 18-19 ("As ACA has demonstrated over the years, many small cable operators have limited capacity. … Forced bundling, then, causes an obvious diversity problem for such systems: Bundled channels take up a large portion of the cable operator's limited 'shelf-space' and prevent it from carrying other, diverse programming.").
[23] *See* http://www.multichannel.com/news/news-articles/suddenlink-viacom-negotiations-reach-impasse/384319.

to carry only part of Viacom's bundle of networks, it was reported that Viacom quoted a rate that was higher than if CableOne carried the entire bundle.[24]

- Example 3 – GCI/AMC. In a similar situation, Alaskan cable operator GCI decided not to renew carriage of AMC Networks after it reportedly was confronted with AMC's demand for a 200 percent rate increase for AMC's entire bundle of networks. GCI utilized the reclaimed channel capacity to launch carriage of a variety of replacement networks, including some independent channels such as Outside Television and OWS. But, here again, this is the rare instance of a cable operator that is willing to face down a conglomerate's demands. The major MVPDs, which have the largest subscriber bases – access to which is essential if independent networks are to have the opportunity to succeed – feel that they have no choice but to carry the conglomerates' entire bundles.[25]

OWS could provide many more examples of the harmful effects of forced bundling and tying on consumers and independent networks. Those listed above are merely the tip of the iceberg. What cannot be demonstrated is the opportunity cost of what is being lost because independent network programming is being foreclosed by the forced bundling of marginal networks such as ESPN Classic, FCS, ESPNEWS, and many, many others.

IV. CONCLUSION

In enacting the Communications Act, and in subsequent amendments, Congress has made perfectly clear that consumer choice and the greater public interest are served not just by having a multiplicity of ***genres*** of channels from which viewers can choose, but rather by ensuring diversity in the ***sources*** and ***ownership*** of that content. Merely having a large

---

[24] *See* http://www.multichannel.com/viacom-channels-cable-one-nctc-pact-expires/373503.

[25] *See* http://www.multichannel.com/news/networks/gci-drop-amc-univision/396180; http://www.multichannel.com/blog/money/walking-wounded/396192.

number of channels of every conceivable genre does not fulfill Congress' mandate if the overwhelming majority of those channels are owned or controlled by a handful of media conglomerates. Real television diversity can be achieved only if independently-owned networks and the small business entrepreneurs who create them – whose programming expresses their independent editorial viewpoints – are ensured fair access to the American viewing public. That requires fair and non-discriminatory access to MVPDs' platforms!

OWS urges the Commission to move forward promptly with a rulemaking that leads to the adoption of rules that prohibit, or at least significantly limit, the harmful practice of forced bundling and tying of programming by media conglomerates. Such action is desperately needed to remove the primary, and most significant, barrier facing independent networks in today's video marketplace.

Respectfully submitted,

ONE World Sports
250 Harbor Drive, 4th Floor
Stamford, Connecticut 06902
(203) 883 – 4493

Dated: April 19, 2016