Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Expanding Consumers' Video	)	
Navigation Choices	)	**MB Docket No. 16-42**
	)	
Commercial Availability of	)	
Navigation Devices	)	

REPLY COMMENTS OF CINCINNATI BELL EXTENDED TERRITORIES LLC

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EXECUTIVE SUMMARY

Cincinnati Bell Extended Territories, LLC ("Cincinnati Bell"), an independent local telephone company (never part of AT&T), offers triple-play services in head-to-head competition with Charter Communications, Inc. (as of May 18, 2016, when Charter closed on its recent acquisition of Time Warner Cable, Inc. ("TWC")) in the Greater Cincinnati area. Challenging the likes of TWC or Charter is a formidable task, yet with its focus on quality and innovative services and affordability, Cincinnati Bell has risen to the challenge with great success, now serving more than 120,000 video subscribers throughout its service territories.

The very innovation that drives the successful competitive terrestrial providers, like Cincinnati Bell, would be drastically stymied by any Commission action that would require them to divert tremendous financial resources and human capital to comply with supplying information flows for third party navigation devices. Cincinnati Bell agrees with many other commenting parties that the Commission's proposal is wholly unnecessary and not readily accomplishable, nor the panacea to competitive video offerings that the Commission seeks to enable. Cincinnati Bell implores the Commission to consider the even greater burden and adverse impact such a requirement would pose to competitive terrestrial providers and to consumers in those markets.

The Commission's focus on broadband delivery of video in the future, while appropriate, does not reflect the realities of today or the fact that the Commission's action in this docket would likely increase the stranglehold that the largest terrestrial MVPDs, such as Charter and Comcast, have over the last-mile broadband pipe to consumers. Smaller terrestrial competitors offer consumers an alternative broadband pipe. For competitive terrestrial providers to be able to

continue to serve the public interest by offering that second broadband pipe to consumers, they must be allowed to innovate to effectively compete in the short-term in the delivery of video services.

Should the Commission move forward on its proposal, it should exempt from the new rules smaller competitive terrestrial providers who compete with large and nationally dominant providers. Cincinnati Bell proposes a narrowly tailored exemption – one that does not exempt out competition between providers who do not move the consumer electronics markets or giant competitors who have vast resources and can fend for themselves. Rather, Cincinnati Bell requests an exemption for terrestrial providers who serve fewer than 1 million video subscribers and are in direct competition with larger terrestrial MVPDs serving at least 5 million subscribers.

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Cincinnati Bell is a relatively new entrant to video programming distribution. Since the founding of its parent company in 1873 as City and Suburban Telegraph Company, its parent has been and remained a local independent telephone company – never part of AT&T.[1] In 2008, Cincinnati Bell began building a fiber-to-the-home ("FTTH") system and expanded into high-speed data and video programming ("Fioptics"), going into head-on competition with Time Warner Cable ("TWC"). Challenging TWC with all of its advantages of incumbency and scale was not an easy task, as evidenced by the fact that terrestrial competition is rarely launched against TWC or other large MVPDs, let alone successfully. However, with its focus on quality, affordability and innovation by a home-town provider, Cincinnati Bell knew that it had more than a fighting chance. Cincinnati Bell's current network capability directly competes with Charter in Greater Cincinnati and Northern Kentucky communities that include 454,000

[1] Although part of the Bell telephone system, Cincinnati Bell was always an independent company as AT&T held no more than a minority interest.

households (approximately 57% of Greater Cincinnati).[2] Cincinnati Bell has set an ambitious target to pass 60-70 percent of Greater Cincinnati homes with its Fioptics service offerings by 2017.[3] Cincinnati Bell's efforts to provide consumers choice has met with success as its Fioptics service continues to grow, currently serving approximately 120,000 video subscribers, in Ohio, Kentucky and Indiana.

Despite its success so far, the Commission's recent approval of Charter's acquisition of TWC and Bright House Networks and many of the conclusions reached by the Commission in allowing the acquisition to proceed will only make Cincinnati Bell's challenges that much more daunting.[4] To remain viable, Cincinnati Bell must contain costs, many of which are higher,[5] and rise at a faster rate, than larger, let alone the largest, MVPDs like Charter.[6] Despite its initial success, Cincinnati Bell must continue to focus on providing consumers quality and innovation to remain competitive. To that end, Cincinnati Bell recently introduced its new "skinny bundles" that offer consumers more choice and value and is getting ready to make its Fioptics services available through retail Roku devices beginning in early 2017.

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[2] Charter acquired the TWC operations in many of Cincinnati Bell's service territories in Northern Kentucky and Cincinnati as of May 18, 2016. *See* Press Release, *Charter Communications, Time Warner Cable and Bright House Networks Complete Transactions* (May 18, 2016), at https://newsroom.charter.com/press-releases/2016/charter-communications-time-warner-cable-and-bright-house-networks-complete-transactions/ (last visited May 23, 2016).
[3] Sean Buckley, *Cincinnati Bell's Fox: We'll pass 60-70% of homes with Fioptics by 2017*, Fierce Telecom, http://www.fiercetelecom.com/story/cincinnati-bells-fox-well-pass-60-70-homes-fioptics-2017/2014-03-04 (last visited August 25, 2014).
[4] *See In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, FCC 16-59 (May 5, 2016) ("Charter Merger Order").
[5] *See* Charter Merger Order at ¶ 12 (noting how the merger will result in certain efficiencies, including lower programming costs)
[6] *See In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Comments of Cincinnati Bell Extended Territories LLC (October 13, 2015) at 11-14.

DISCUSSION

I. CONSUMERS TODAY ALREADY BENEFIT FROM A COMPETITIVE RETAIL NAVIGATION MARKETPLACE IN FULFILLMENT OF SECTION 629'S MANDATE.

The Commission's justification for this proceeding – purported stagnation in multichannel video programming distribution diversification and traditional video provider's lock on set-top-box technology and revenues – simply do not align with marketplace realities. Not only are traditional MVPDs losing video customers at a record pace, but program providers (for example, HBO GO, MLB.com At Bat) and incumbent cable providers' competitors (such as Fioptics, U-Verse Easy App) are offering alternatives that don't require traditional set-top boxes.[7] Even the Commission, through an active rulemaking, is contemplating classifying an entirely new and rapidly growing class of video providers -- those delivering video over the public Internet, so-called "over-the-top" or "OTT" providers -- as MVPDs, which would facilitate those providers' access to video programming and the right to negotiate for broadcast retransmission consent.[8]

Apps-based models provide access to video content, including streaming content, to almost half a billion consumer-owned devices today.[9] The continuing market-driven, face-paced

[7] Cincinnati Bell's use of "traditional video" MVPDs or providers is in reference to terrestrial and satellite multichannel video providers, "incumbent" video providers refers to those cable MVPDs that originally provided service to a particular area before the introduction of an additional terrestrial MVPD (*e.g.*, a telco or cable overbuilder that uses a variety of technologies to deliver video and broadband to customers), which Cincinnati Bell refers to as a "competitive terrestrial" MVPD or provider.
[8] *See In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket 14-261, Notice of Proposed Rulemaking, FCC 14-210, 29 FCC Rcd 15995 (2014)
[9] *See* Digitalsmiths,Q3-2015, Video Trends Report, Consumer Behavior Across Pay-TV, VOD, PPV, OTT, Connected Devices, and Content Discovery, at http://www.digitalsmiths.com/downloads/Digitalsmiths_Q3_2015_Video_Trends_Report-

development of innovative technologies will lessen the reliance on, and hasten the demise of, traditional set-top-boxes.

Many terrestrial providers, in addition to offering apps (such as Cincinnati Bell's Fioptics TV App) that permit in-home viewing of content on a wide variety of consumer-owned devices, will soon transition the traditional television viewing experience to one available via a number of consumer-owned devices (in the case of Cincinnati Bell, for example, the Roku media player, a party to this proceeding that similarly opposes Commission intervention).[10] This rapid evolution of the marketplace for content delivery devices undercuts the need for Commission action. Cincinnati Bell refers the Commission to the comments filed by organizations in which Cincinnati Bell maintains membership, including the US Telecom Association and the American Cable Association,[11] and well as numerous other parties' comments for more extensive discussions on point.[12]

Consumer_Behavior_Across_Pay-TV_VOD_PPV_OTT_Connected_Devices_and_Content_Discovery.pdf (last visited May 23, 2016).

[10] *See generally In the Matter of Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket 16-42, Comments of Roku, Inc. (April 22, 2016).

[11] *See In the Matter of Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket 16-42, Comments of American Cable Association (April 22, 2016) ("ACA Comments"), Comments of ITTA (April 22, 2016)("ITTA Comments"), Comments of the United States Telecom Association (April 22, 2016) (US Telecom Comments").

[12] *See In the Matter of Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket 16-42, Comments of National Cable & Telecommunications Association (April 22, 2016 ("NCTA Comments"), Comments of the Motion Picture Association of American and SAG-AFTRA (April 22, 2016) (discussing intellectual property and security issues associated with FCC's navigation devices proposal).

II. TERRESTRIAL FACILITIES-BASED COMPETITORS ARE CRITICAL TO LONG-TERM VIABILITY OF INNOVATIVE, ALTERNATIVE MVPD SERVICES.

A. The Commission's Proposed Navigation Device Requirements Will Serve to Mandate Sameness among Terrestrial Video Providers, Stymying Innovation and Differentiation.

As numerous commenting parties have already explained, the Commission's proposal represents a step backwards.[13] In today's fast-paced and constantly evolving video programming distribution industry, video programming service providers – traditional MVPDs or OVDs - need to focus on innovating and developing dynamic and compelling video offerings that differentiate themselves from the myriad of other services now or soon available. However, such innovation largely would be stymied for certain competitive terrestrial MVPDs, like Cincinnati Bell, if the Commission misguidedly moves forward with requiring all MVPDs to make available the sought-after information flows to the masses. Essentially, such steps would be mandating sameness between incumbent and competitive terrestrial providers, penalizing competitive terrestrial providers for having invested in building the very physical infrastructure that newer video programming services now seek to exploit and all video programming services need to serve their customers.

By moving forward, the Commission would be essentially picking winners and losers in the delivery of video programming services. On the winning side – large incumbent MVPDs that can afford to accommodate the Commission's mandated information sharing and whose terrestrial competitors' ability to compete through innovation has been blunted, and new entrants,

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[13] *See generally, In the Matter of Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket 16-42, Comments of Comcast Corporation and NBCUniversal Media, LLC (April 22, 2016) ("Comcast Comments"), NCTA Comments, ACA Comments, ITTA Comments.

such as Google or Amazon, that would benefit from the information being provided. On the losing side –competitive terrestrial providers, like Cincinnati Bell, which, while using more traditional means (*e.g.*, cable or IPTV) to deliver video programming services, have built businesses on differentiating their offerings from the incumbent cable behemoths through innovation and an improved consumer experience.

B. The Future of Video Programming Resides in Broadband Delivery.

The long-term viability of video programming distribution is rooted in broadband Internet access services ("BIAS"), not traditional cable services. Taking a page from numerous over-the-top ("OTT") video services that have sprung up over the last few years, video programming distribution by traditional providers will largely transition to broadband delivery in the years to come.

The slow pace of progress by traditional and new entrant video programming distributors being able to deliver video programming to consumers -- where they want it, how they want it, and when they want it -- is a result of difficult and complex legal and technological issues, not the lack of a more robust retail market for navigation devices.[14] However, once the industries resolve the myriad of technological, security and, intellectual property and contractual issues, the ability of any video provider – a traditional MVPD or an OVD -- to deliver its programming will rest in last-mile broadband availability to subscribers.

Even then, and even if it successfully moves forward with this proceeding, the Commission will not be able to assure that all end users will have access to any type of video content at any location on any device at any time absent federal regulation of every entity

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[14] *See*, *e.g.*, NCTA Comments at 31.

involved in delivery of video programming from the content originator to the end user. The Commission unfortunately has oversimplified the challenges to making its goal of commercially available navigation devices a reality. Beyond the other issues discussed above, edge providers and OVDs have shown an unwillingness to work with certain smaller MVPDs that do not use the most widely adopted equipment. Why? Because some of the same providers that the Commission seeks to help with this proceeding remain unwilling to invest in the platform modifications needed to support less predominant navigation devices. Thus, the Commission's goal of making all video content available to end users simply will not be realized regardless of whether the Commission successfully requires MVPDs to support third party navigation devices.

C. Video's Future Success Resides in a Multiplicity of Last-Mile Broadband Providers.

Over the last decade, the federal government has gone to great lengths to make sure that broadband is available to all Americans, even having funded its deployment in many instances.[15] And more recently, the Commission has spoken of the desirability of consumers having access to multiple terrestrial broadband providers, something that the Commission has pointed to as justification for Commission action on more than one occasion.

1. Multiple Substitutable BIAS Providers Served as a Justification for the Commission's 2015 Open Internet Order.

In its 2015 *Open Internet Order*,[16] the Commission spoke of the desirability of multiple ***substitutable paths*** to consumers, noting that consumers do not view fixed broadband and

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[15] *See*, *e.g.*, American Recovery and Reinvestment Act of 2009, P. Law 111-5, 123 Stat. 115 (2009); *see also Broadband Initiatives Program*, Notice of Funds Availability (NOFA) and solicitation of applications, 75 Fed. Reg. 3820 (January 22, 2010); *see also In the Matter of Connect American Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011).
[16] *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 80 (2015) ("*2015 Open Internet Order*") ("Without multiple, substitutable paths to the

mobile broadband as fungible. Significantly, however, the Commission noted that only 27 percent of households have access to two service providers that satisfy the 25 Mbps/3 Mbps federal broadband benchmark, and only 12 percent of households have three or more options.[17] The Commission concluded that "[w]ithout multiple, substitutable paths to the consumer, and the ability to select the most cost-effective route, edge providers will be subject to the broadband gatekeeper's position,"[18] and therefore the Commission imposed a number of requirements, such as bans on blocking, throttling and paid prioritization, to prevent such an outcome.

2. For the Immediate Future, Successful Delivery of Video to Consumers Requires Access to Cable or Fiber BIAS.

In its recent approval of Charter Communications' acquisition of TWC and Bright House Networks, the Commission acknowledged that not all broadband providers are viewed as equal.[19] The Commission, correctly, noted:

> [b]ecause consumers subscribe to wired cable or fiber BIAS for its particular attributes, including its ability to distribute large quantities of high quality video traffic, OVDs and edge providers would not view interconnection with wireless or satellite BIAS providers as a substitute for wired BIAS providers to reach their customers. Access to cable and fiber wired BIAS is crucial to the newest and most innovative business models. . . .[20]

The Commission also noted that

> [t]he more BIAS subscribers that an edge provider can reach with its service, the more potential subscribers it can have, and in turn, the greater the potential revenues from subscriptions or

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consumer, and the ability to select the most cost-effective route, edge providers will be subject to the broadband provider's gatekeeper position. . . . The gatekeeper role could also be mitigated if a consumer could *easily* switch broadband providers. But . . . the evidence suggests otherwise." (emphasis added)). The Commission also noted that "many customers view fixed and mobile broadband services as distinct product offerings," s*ee id*. at n. 131.

[17] *See 2015 Open Internet Order* at n. 134.

[18] *Id.* at ¶ 80.

[19] *See Charter Merger Order* at ¶ 95.

[20] *Id.* at ¶ 104.

> advertising. Edge providers therefore view interconnection with *different* BIAS providers – whether directly or through transit or CDN services – as substitute sources of eyeballs . . . .[21]

Upon closing of the transaction, the Commission indicated that Charter would (and now has) become the "nation's second-largest residential BIAS provider,"[22] yet, only three percent of Charter customers will have more than one BIAS provider that offers download speeds that meet or exceed the federal broadband 25 Mbps download speed benchmark.[23] In approving the merger, the Commission concluded that with its new "valuable base of BIAS subscribers and . . . ab[ility] to act as a gatekeeper to those subscribers by virtue of its network structure and the limited number of BIAS alternatives available to consumers at the local level,"[24] Charter "would be able to extract higher interconnection fees."[25] The Commission relied on this finding as justification for placing conditions on Charter to ameliorate the potential harm to video competition posed by Charter's ability to discriminate against OVDs in the interconnection market and the potential harm to consumers that would result.[26]

3. What's Good for the Goose is Good for the Gander.

The same conclusion can be made with respect to Charter's ability to harm video competition vis à vis terrestrial MVPDs that compete directly against Charter but for different

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[21] *See Id.* at ¶ 106.
[22] *See Id.* at ¶ 103.
[23] *See Id.* at n. 364.
[24] *See Id.* at ¶ 118.
[25] *See Id.* at ¶ 121.
[26] *See Id.* at ¶ 122.

reasons. Cincinnati Bell is one of very few competitive terrestrial MVPDs that can offer consumers an alternative means of obtaining BIAS service that meets current federal benchmark speeds.

In its merger application, Charter acknowledged that its "future success depends far more on its broadband business than its video business, based on broadband's higher gross margin percentages and growth trajectory. . . ."[27] Although this is true for all terrestrial competitors, at least for the near-term future, video remains an essential component of a bundled offering for many broadband customers – and thus an essential service to provide a competitive offering.

The recently released *Seventeenth Video Competition Report* echoes the competitive importance of, and consumer value derived from, bundling of video with broadband services. [28] In fact, the Commission Media Bureau noted that

> [d]ue to the revenue flow from existing subscribers and the cost of winning new subscribers, MVPDs have a strong incentive to retain customers for as long as possible. To retain customers, SNL Kagan maintains that MVPDs strategically promote bundles of video, Internet, and voice services. In addition to providing a better value than stand-alone services from multiple providers, SNL Kagan claims the bundle strategy has been highly successful in reducing customer losses. Bundling may alter the cost-savings analysis a consumer faces when considering an alternative provider or dropping a service, and therefore have a positive effect on service renewal rates.[29]

The Report further notes the advantage terrestrial providers have in offering bundles due to their ability to operate two-way systems that enable them to deliver video, Internet, and voice services

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[27] *See In the Matter of Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations*, Public Interest Statement (June 25, 2015) at 5-6.
[28] *See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventeenth Report, DA 16-510 (released May 6, 2016) ("*Seventeenth Video Competition Report*").
[29] *See Seventeenth Video Competition Report* at ¶ 58.

using their wireline systems compared to DBS providers that only have one-way systems that limit their ability to provide voice services and Internet without partnering with a terrestrial provider.[30]

For now, broadband customers frequently purchase bundled video services from their broadband provider.[31] Thus, today, the large terrestrial incumbents – like Comcast and Charter -- can treat video as a loss-leader to attract broadband customers,[32] stemming those video losses in the long-run as more and more video content is delivered over the Internet. The reality remains that purchasing decisions for many consumers are primarily still made by comparison of terrestrial video products and pricing and result in broadband being purchased from the consumer's preferred video provider. Thus, the selection of broadband and terrestrially-delivered video providers are inextricably linked for the foreseeable future.

It would therefore be counterintuitive for the Commission to take any action now that could threaten to decrease existing sources of fixed terrestrial broadband, yet that is precisely the effect any obligation such as that proposed by the Commission in this proceeding could have if applied to competitive terrestrial MVPDs. For the foreseeable future, only terrestrial BIAS providers can provide the speed and bandwidth to communities on a large-scale basis. Thus, the

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[30] *See Seventeenth Video Competition Report* at ¶ 58.

[31] Although cord-cutters and cord-shavers have dramatically decreased the number of cable video subscribers, the ability to provide competitively-priced double and triple-play offerings remains key to competitive viability in the short-term. However, as it imagines is similar for other smaller terrestrial competitors, Cincinnati Bell's video programming costs are 30-40% higher than those of TWC and likely even higher in the new Charter environment. *See* In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 15-149 (October 13, 2015) at 11.

[32] *See, .e.g.*, Ramachandran, Shalini, Comcast Profit Rises on More Video Customers, WALL STREET JOURNAL (April 27, 2016), at http://www.wsj.com/articles/comcast-profit-tops-estimates-1461754929 (last visited May 23, 2016) ("Cable companies are benefiting from pouring more investment into their cable TV products and bundling that alongside fast broadband, as well as offering cheaper, slimmed-down bundles of programming for more cost-conscious consumers").

long-term viability of terrestrial competitors is critical to avoid virtual monopolies by the giant MVPDs such as Charter.

D. Competitive Terrestrial Providers Need to Be Able to Innovate and Differentiate Their Products and Services to Remain Relevant.

Mandating that smaller competitive terrestrial providers provide the three information flows will serve to stymy the very innovation and differentiation upon which smaller, terrestrial-based competitors so heavily rely to compete with the largest incumbents whose entrenched position is supported by almost unimaginable scale and scope of resources.

1. Incumbent Terrestrial MVPDs Make Their Video Services Available to Customers in a Variety of Ways.

In head-to-head competition, Cincinnati Bell has had to be able to compete with the multitude of different ways in which viewers can access TWC's, and now Charter's, video programming. For example,

> TWC, through its TWC TV apps, enables in-home viewing of over 300 channels of live programming and over 16,000 choices of VOD programming on a variety of devices, including Apple iOS and Android tablets and smart phones, Amazon Kindle Fire tablets, Roku streaming players, Samsung Smart TVs, and Xbox One and Xbox 360 video game consoles, as well as on PC and Mac computers via www.twctv.com. These alternative viewing platforms act as a complement to a digital set-top box or digital adapter. In November 2015, TWC launched a trial of an IP video offering that eliminates the need for a leased set-top box.[33]

Similarly, Charter's Spectrum TV App allows viewers to search and find content on a variety of consumer devices, including many Apple products and most Android tablets, watch

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[33] *See* Time Warner Cable Inc., Annual Report, Form 10-K, for fiscal year ended December 31, 2015 (February 12, 2016), at http://ir.timewarnercable.com/investor-relations/financial-reports-and-filings/sec-filings/default.aspx (last visited April 20, 2016).

more than 150 channels of cable TV and use their devices as a remote for their digital set-top box in the home, as well as control their viewing choices for recording while on the go. Viewers can also view OnDemand within the Spectrum TV App and download programming to their devices for watching at their convenience. In addition, generally Charter customers with a Roku device can now watch live, linear programming via the Spectrum TV App.[34]

To remain relevant, Cincinnati Bell similarly must have offerings that satisfy customers' viewing preferences. That the Commission seeks to divert attention away from competitive terrestrial providers' ability to engage in the development of precisely these innovative, **marketplace** solutions to instead focus on compiling and distributing information to third parties for a device that the industry as a whole, and Cincinnati Bell in particular, is moving away from altogether is a step in the wrong direction. So long as the marketplace allows for innovative ways to deliver programming, which it is already doing as evidenced by the variety of new video services launching regularly, there is no need, in fact, no justification, for government intrusion with respect to the competitor.

2. Differences in System Infrastructure Requires Creativity in Ensuring that All Consumers Receive Today's Viewing Features and Enhancements.

Like many terrestrial video providers, Cincinnati Bell's video delivery facilities are not one-size fits all. Cincinnati Bell's customers are served by a variety of technologies, including legacy QAM and IPTV (fiber-to-the-home and copper depending on the area served). An Commission mandate that competitive terrestrial MVPDs provide the three information flows for

[34] *See* Charter Communications, Inc. Form 10-K for the fiscal year ended December 31, 2015 (filed February 10, 2016) at [7-8], http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-SEC10K (last visited May 16, 2016).

support of third-party navigation devices could have an altering affect on Cincinnati Bell's current plans for extending commonly expected video programming features and desirable enhancements to all of its customers, and not simply those fortunate enough to be served by IPTV technology.

Where Cincinnati Bell has legacy QAM facilities, it is working diligently to extend to those customers a similar experience that its IPTV customers receive. Through innovative solutions that require significant capital investment, Cincinnati Bell is working to make available the option of receiving certain programming in the home via means of the Watch Fioptics App, as well as more consumer-friendly features such as its IPTV user interface, the ability to pause programming and resume watching it in another room, and restart, to name a few. The simple fact remains that the costs and time needed to comply with the Commission's sought-after information flows could require Cincinnati Bell to alter (temporarily or permanently) many of its current plans for these customers.

The cost to competitive terrestrial providers that use IPTV technology for delivery of video programming to comply with an Commission mandate as proposed in this rulemaking could be even higher than those that use QAM solutions. IPTV does not currently support CableCards and therefore third party devices and would need to put into place solutions for which traditional cable providers have already made the investment when they had to comply with the CableCard mandate many years ago (*e.g.*, adjustments to billing systems to incorporate customer use of third party devices). Moreover, an IPTV provider likely would have to install a gateway at each customer premises, which it estimates would cost $100 per unit. While incumbent MVPDs may have to do the same,[35] given larger MVPDs ability to obtain volume discounts, the per-unit equipment costs would be significantly less.[36]

Cincinnati Bell presumes that Charter will move forward with TWC's "transformative" TWC Maxx rollout for Northern Kentucky and Cincinnati,[37] which is scheduled for this Spring, and promises to "reinvent[] the [customer] experience" by means of offering "a slate of next-generation video features," "ultrafast Internet speeds" that in some cases will boost speeds to more than 6 times the speeds customers currently receive at no additional charge, and "best-in-class reliability.[38] In such a cutthroat competitive environment, the ability for competitive terrestrial providers to continue to differentiate their offerings is imperative to their ability to maintain and gain customers, which serves to ensure the continued availability of multiple paths of terrestrial broadband into customers' homes. Imposition of any additional cost, particularly something that is wholly unjustified like that which the Commission proposes in this proceeding, makes that proposition much more challenging. To exempt competitive terrestrial providers from any obligations imposed by the instant proceeding will not harm consumers who would have the option to obtain third party navigation devices by subscribing to the incumbent provider's service, and protect consumer interests by preserving a competitive environment that allows for multiple broadband paths to their homes.

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[35] *See, e.g.*, Comcast Comments at 66.
[36] *See* Charter Merger Order at n. 1384 (noting how "the Applicants state that increased scale would enable the firm to purchase inputs such as co-axial cable, construction services, and modems at large volumes thereby realizing volume discounts").
[37] *See* Press Release, *Time Warner Cable Takes Next Step to Transform TV and Internet Experience in Cincinnati and Northern Kentucky* (February 22, 2016), at http://www.timewarnercable.com/en/about-us/press/twc-to-transform-tv-internet-experience-cincinnati-northern-ky.html (last visited May 23, 2016).
[38] *See id*.

3. A Requirement to Provide the Sought-After Information Flows Would Compromise Competitive Terrestrial MVPDs' Ability to Ensure a Quality Customer Experience.

Cincinnati Bell remains very concerned about the negative consequences (even if perhaps unintended) of an Commission mandate for supporting third-party navigation devices – disruption of a quality viewing experience for its customers. To Cincinnati Bell's knowledge, it would not be able to extend Quality of Experience monitoring or apply in-home live stream video quality management to third-party equipment or software applications – measures designed to ensure that the subscriber has the best viewing experience possible by monitoring usage among various devices in the home and managing it in such a way as to ensure that all connected devices receive optimal video quality. It is this type of innovative, enhanced performance offerings that lead dissatisfied viewers to abandon incumbent providers in favor of competitive terrestrial MVPDs such as Cincinnati Bell. The loss of such performance measures could undermine the positive reputation hometown providers like Cincinnati Bell have worked so hard to build.[39]

Imagine the customer that goes to a retailer or online to purchase a navigation device – only to find subsequently that the quality of its video viewing experience no longer rivals that it previously received from Cincinnati Bell, through no fault of Cincinnati Bell,[40] because the

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[39] Furthermore, in the absence of being able to monitor streaming quality remotely, MVPDs would have to perform in-home service calls to address potential issues. This presents a significant step backwards insofar as the industry has worked over the last several years to be able to address numerous technical issues and service changes remotely. With an average service call cost of $150 (excluding the cost of handling calls) and inconvenience to subscribers of in-home service calls, the FCC's proposal poses significant costs beyond the initial expense of developing the capability to provide, and the ongoing expense of providing, the information flows necessary to support third party navigation devices. Then, to add insult to injury, the issue might not be one for which the MVPD could provide a satisfactory resolution since it may relate to the subscriber's third party navigation device over which the MVPD has no control. *See also* Comcast Comments at 24-25.

[40] Cincinnati Bell certainly would try to educate its subscribers about the loss of certain features before they make purchasing decisions; however, this assumes that subscribers even would consult Cincinnati Bell, a highly unlikely

measures available through Cincinnati Bell equipment and apps cannot be supported on devices purchased elsewhere. Even something as simple as a whole-home DVR experience would not work in all instances because consumers cannot use a combination of leased and retail boxes.

After having made the purchase, the disappointed subscriber, who has since learned that it can no longer receive all the features it wants or had received with leased equipment, will assume the worst of its video provider, even though the loss of those features is not the provider's fault. In today's day and age where people frequently take to a public forum like the Internet to air their complaints – legitimate or not – any attempt by the provider to defend itself is often seen as self-serving and fruitless. In other words, to the terrestrial competitor, the entire objective of providing innovative services and quality customer care as an alternative to its larger, incumbent competitors is now lost since now the customer feels the same dissatisfaction. What has the Commission then accomplished with any requirement for competitive terrestrial MVPDs to support providing information flows to third-party navigation devices – stifling of the exact competition that the Commission looks to foster in terms of offering consumers a multiplicity of viewing sources. Where is the logic (or success) in that?

4. To Foster Change in the Market for Navigation Devices, the Commission Need Not Require That Every Cable Operator Adopt Such Requirements, Only Those Necessary to Move the Market.

Requiring smaller competitive terrestrial providers to adopt the Commission's proposed regime will not impact whether industry standards are developed or whether manufacturers choose to develop and make third-party retail products available. When negotiating equipment

proposition when one considers that the consumer is looking to replace Cincinnati Bell's equipment in the first place.

contracts, competitive terrestrial providers must choose between existing offerings.[41] If the dominant incumbent providers such as Comcast and Charter, which serve nearly two-thirds of cable households, adopt them, then the market will move.[42] Thus, the Commission need only require adoption by incumbent MVPDs to change the market.

5. Waiver for Smaller Terrestrial MVPD Competitors Will Not Deprive Consumers of Choice.

While Cincinnati Bell agrees with the many other commenting parties that the Commission should not act to require MVPDs to share information flows with third-party navigation devices, if the Commission decides it must, it should also exempt (or implement a long-term waiver for) smaller competitive terrestrial providers who compete with the industry giants from the Commission's proposed requirements. Such steps would not deprive consumers in the areas these smaller, competitive providers serve of their availability to obtain third-party retail navigation devices. They simply can buy video services from the dominant incumbent provider.

If the benefits of such devices are as attractive to consumers as the Commission believes they will be, then competitive terrestrial providers will be driven by market forces to either adopt the same standards or, more likely, develop and offer a more innovative and consumer friendly alternative. The Commission can still support its goal for a competitive broadband environment but simultaneously drive innovation and competition for the benefit of consumers. This is clearly a situation where a one-size fits all approach does not work when applied to markets where

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[41] It is only where products are primarily software-based that Cincinnati Bell has meaningful development opportunities.

[42] According to the latest FCC Video Competition Report, Comcast serves about 38.5% of cable subscribers and New Charter will serve about 31.8% of the cable MVPDs after its acquisition of TWC. *See* In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Sixteenth Report, FCC 15-41, 30 FCC Rcd 3253, n. 39 (2015).

terrestrial competition between a dominant incumbent and a much smaller video competitor does not optimize outcomes for consumers. The Commission can and should exempt or provide long-term deferral of any navigation device mandate for smaller competitive terrestrial providers.

III. EXEMPTING SMALLER COMPETITIVE TERRESTRIAL PROVIDERS WILL NOT IMPAIR THE IMPACT OF ANY NEW RULES MANDATING ADOPTION BY LARGE INCUMBENT PROVIDERS.

As noted in these Reply Comments, the Commission should not require smaller competitive terrestrial video providers that compete against the largest dominant traditional cable providers to incur the costs or requirements of the NPRM. While accomplishing the Commission's articulated goals in the NPRM, an exemption or long-term waiver for such providers would:

1. Protect the viability of meaningful terrestrial video competition
2. Exempting the competitor from the rules will require additional innovation by the competitor to offer a better alternative, especially if the consumer has purchased a next generation navigation device that won't work on the competitor's system.
3. Preserve multiplicity of substitutable terrestrial broadband providers.

The analysis contained in these Reply Comments uniquely applies to a situation where a dominant incumbent video provider, one with formidable size and scale, faces direct competition from a smaller terrestrial video provider. To ensure that this balanced approach remains properly focused, the Commission should establish appropriate parameters relative to the size of the respective competing terrestrial video operations, which would consist of the following limitations:

1. The incumbent terrestrial provider should serve at least 5 million video subscribers nationally; and

2. The competitive terrestrial provider should serve less thanto 1 million total video subscribers.

Taking the suggested actions would serve to advance consumer interests without sacrificing a competitive broadband environment. Cincinnati Bell therefore respectfully requests that the Commission either decline to impose the requirements outlined in its NPRM or adopt the suggested modifications made in these Reply Comments.

VERIFICATION

I have read the foregoing Reply Comments, and to the best of my knowledge, information and belief, there is good ground to support them and they are not interposed for delay.

Respectfully submitted,

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May 23, 2016

EXHIBIT A

DECLARATION OF MICHAEL MORRISON

1. I am currently Director of Video & Entertainment Product Development at Cincinnati Bell Extended Territories, LLC ("Cincinnati Bell").

2. I have principal responsibility for the planning and procurement of content for Fioptics, our multichannel video cable business.

3. I have read the foregoing Reply Comments of Cincinnati Bell and all factual information relating to Cincinnati Bell is true and correct to the best of my knowledge, information and belief.

May 23, 2016

Michael Morrison