June 14, 2016

Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*; MB Docket No. 14-261

Dear Commissioner Rosenworcel –

The undersigned companies, known as the "*TV Neutrality Alliance,*" are writing to urge the Federal Communications Commission ("FCC") to move forward with its proposal to classify online video distributors ("OVDs") of broadcast station signals as Multichannel Video Programming Distributors ("MVPDs"). Only with a level regulatory playing field – specifically the ability to acquire MVPD status – will OVDs be able to launch competitive service offerings to cable, satellite, and telco-based subscription video packages that include broadcast station programming.

Absent a retransmission consent mechanism available to other MVPDs, there is currently no way for the full 24-hour linear stream of local broadcast programming, including local news, sports, as well as advertisements, to be distributed over the Internet. Moreover, there is no way for broadcast stations to be compensated for that carriage. By creating a level regulatory playing field that gives OVDs the same rights and responsibilities as other MVPDs, consumers, broadcasters, and nascent OVDs alike will benefit from Internet-based distribution of broadcast stations.

The *TV Neutrality Alliance* acknowledges that, excluding local broadcast station retransmission, there are no regulatory or market barriers preventing OVDs from gaining access to the Internet. Such multi-channel content offerings that do not include broadcast station signals should not be subject to the regulatory burdens of the MVPD rules.

However, the regulatory privileges and obligations of the FCC's MVPD rules are of particular importance to entities seeking to retransmit local broadcast station signals – the full content of which is unavailable to consumers over the Internet via other sources. Similarly, OVDs interested in carrying cable-affiliated programming as part of their multi-channel offering should be able to take advantage of the program access rules, so long as such OVDs meet the requirements that other MVPDs face.

In the attached proposal, the *TV Neutrality Alliance* offers a small, but important, modification to the FCC's proposed interpretation of MVPD. All OVDs that offer multiple channels of prescheduled video programming would be deemed MVPDs, per the FCC's proposed interpretation. However, non-facilities based OVDs seeking to retransmit local broadcast signals will be required to certify to the FCC that they will comply with any statutory obligations and the Commission's regulations that apply to MVPDs, including retransmission consent requirements. Other non-facilities based OVDs that elect to certify to the FCC that they will comply with the MVPD obligations will also have the right to invoke the retransmission consent and/or program access rules. This certification process, which has its roots in the Commission's Open Video System rules, will make non-facilities based OVDs subject to both the privileges and obligations of MVPDs, while avoiding regulating OVDs that are not taking advantage of the FCC's rules.

In this way, an OVD-MVPD that seeks to invoke either the retransmission consent or program access rules can apply for certification from the FCC and will be subject to the obligations of the MVPD rules. If an OVD-MVPD does not, however, seek to carry broadcast station signals or to negotiate under the program access rules for access to vertically integrated programming, that OVD does do not need to certify with the FCC and the obligations of the MVPD rules would not be triggered.

By limiting the application of the MVPD rules to those entities seeking to retransmit local broadcast station signals or to negotiate under the program access rules, the *TV Neutrality Alliance* addresses concerns raised by Amazon that the Commission's proposal would inadvertently inhibit innovation in the development of OTT services that have otherwise been flourishing without government intervention.[1] Under the *TV Neutrality Alliance* proposal, OTT services that do not retransmit local broadcast station signals, such as Netflix or Amazon, would not be subject to the FCC's MVPD rules.

Furthermore, the *TV Neutrality Alliance* proposal also supports comments filed by the ABC, CBS, FOX, and NBC Affiliates Associations, which note that, "Treating broadcast-streaming OVDs as MVPDs would enhance competition, the diversity of sources of video programming, and the development of new technologies, all to the benefit of consumers…,"[2] but which raise concerns that, "OVDs should be required to satisfy certain threshold requirements before a broadcast station's duty to negotiate in good faith is triggered." By requiring OVDs that wish to avail themselves of the benefits of the MVPD rules to certify to the Commission their compliance with the MVPD obligations, the Commission can exercise its authority to ensure that new OVD-MVPDs and broadcasters are each meeting their good faith requirements under the retransmission consent rules.

The *TV Neutrality Alliance* urges the Commission to move forward as quickly as possible with its proposed reinterpretation of the MVPD definition to enable OVDs to launch Internet-based competitive video programming packages that include broadcast station signals in their entirety. Only with a level playing field that provides equal access to critical content will online distributors be able to offer meaningful competition in the provision of multichannel video programming. A copy of this letter is being filed simultaneously in the above-referenced docket.

Respectfully submitted,

The TV Neutrality Alliance

cc: Marlene H. Dortch
Marc Paul

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[1] *Ex Parte* presentation of Amazon.com Inc. in MB Docket Nos 15-64 and 14-261 (November 5, 2015).
[2] Comments of the ABC, CBS, FOX, and NBC Affiliates Associations in MB Docket No 14-261, at v. (March 3, 2015).

The TV Neutrality Alliance

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Proposed Rules

1. Amend § 76.5 to read as follows:

§ 76.5 Definitions.
* * * * *
(rr) *Linear Video*. A stream of video programing that is prescheduled by the programmer.

(ss) *Multichannel Video Programming Distributor* (MVPD).

(1) A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming. As used in this paragraph, channel means linear video without regard to the means by which the programming is distributed.

(2) A non-facilities based multichannel video programming distributor is a multichannel video programming distributor that does not own or otherwise have absolute control over the physical facilities over which the video programming is distributed, but provides such programming over dedicated distribution assets. For purposes of Part 76, this definition shall apply unless otherwise noted.

(a) A non-facilities based MVPD that retransmits one or more broadcast signals shall comply with the certification requirements § 76.2100(a), subjecting it to the jurisdiction of the Federal Communications Commission and requiring compliance with all obligations applicable to, and entitled to all the benefits given to, MVPDs.

(b) A non-facilities based MVPD that does not retransmit any broadcast signal may elect to become subject to the jurisdiction of the Federal Communications Commission, requiring compliance with all obligations applicable to, and entitled to all the benefits given to, MVPDs, upon complying with the certification requirements of § 76.2100(a).

2. Amend § 76.64(d) to read as follows:

§ 76.64 Retransmission Consent.
* * * * *
(d) [Reserved]
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3. Amend § 76.71(a) to read as follows:

§ 76.71 Scope of application.
(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a), all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video

programming distributor under § 76.5(ss). ~~For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee.~~ Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Notwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

4. Amend § 76.905(d) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.
* * * * *
(d) [Reserved]
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5. Amend § 76.1000(e) to read as follows:

§ 76.1000 Definitions.
* * * * *
(e) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity that falls under the definition provided in Section 76.5(~~rr~~ ss) ~~engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator,~~ as well as buying groups or agents of all such entities.

Note to paragraph (e): A video programming provider that provides more than one channel of video programming on an open video system is a multichannel video programming distributor for purposes of this subpart O and Section 76.1507.

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6. Amend § 76.1200(b) to read as follows:

§ 76.1200 Definitions.
* * * * *
(b) [Reserved]
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7. Amend § 76.1300(d) to read as follows:

§ 76.1300 Definitions.
* * * * *
(d) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity that falls under the definition provided in Section 76.5(~~rr~~ ss) ~~engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator,~~ as well as buying groups or agents of all such entities.

8. Amend Part 76 to read as follows:

Subpart Y Non-Facilities Based Multichannel Video Programming Distributors

§ 76.2100 Certification.

(a) A non-facilities based multichannel video programming distributor must certify to the Commission that it will comply with any statutory obligations or Commission's regulations that apply to multichannel video programming distributors. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

(b) Certifications must be verified by an officer or director of the applicant, stating that, to the best of his or her information and belief, the representations made therein are accurate.

(c) Certifications must be filed on FCC Form 1276 and must include:

(1) The applicant's name, address and telephone number;
(2) A statement of ownership, including all affiliated entities;
(3) A statement that the applicant agrees to comply and to remain in compliance with any statutory obligations or Commission's regulations that apply to multichannel video programming distributors; and

(c) If the Commission does not disapprove the certification application within ten days after receipt of an applicant's request, the certification application will be deemed approved. If disapproved, the applicant may file a revised certification or refile its original submission with a statement addressing the issues in dispute.

§ 76.2103 — Carriage of television broadcast signals.

(a) To the extent a non-facilities based multichannel video programming distributor is certified by the FCC in accordance with 76.2100 and complies with the obligations contained in Part 76, it may invoke the retransmission consent rules in Part 76.64.

§ 76.2104 — Competitive access to satellite cable programming.

(a) To the extent a non-facilities based multichannel video programming distributor is certified by the FCC in accordance with 76.2100 and complies with the obligations

contained in Part 76, it may invoke the protections under the program access rules under Part 76 Subpart O.