

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 07-269
Competition in the Market for the)	
Delivery of Video Programming)	

**COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

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The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments on the Further Notice of Inquiry in the above-captioned proceeding. NCTA submitted comments and supplemental comments in this proceeding two years ago, when the Commission was seeking to incorporate data from 2007, 2008, and 2009 into a single *14th Report*. The Commission now requests 2010 data for inclusion in that report, along with new information regarding online video distribution. These comments accordingly supplement and update our earlier filings.

INTRODUCTION AND SUMMARY

Almost twenty years have passed since Congress enacted the Cable Consumer Protection and Competition Act of 1992 and directed the Commission to report annually on the status of competition in the video marketplace. The video marketplace that existed at that time would be unrecognizable to today’s young adults and children, just as today’s video marketplace would have been unimaginable then. The 1992 Act arose out of concerns that the video marketplace was dominated by a single provider of multichannel video programming – namely, local franchised cable operators. Congress enacted a spate of regulatory provisions aimed, on the one hand, at ensuring that cable operators did not abuse that single-provider status to the detriment of

consumers and program providers, and, on the other hand, at promoting and jump-starting new multichannel competition from the not-yet-launched direct broadcast satellite (DBS) service and other potential competitors.

For example, Congress sought to protect consumers by imposing comprehensive regulation of cable rates, it sought to protect independent cable program networks by adopting “program carriage” rules that prevented cable operators from discriminating against unaffiliated programmers, and it sought to protect and compensate television broadcasters by enacting new must-carry and retransmission consent requirements. And it sought to jump-start new competition by enacting “program access” requirements that required cable-owned satellite-delivered program networks to make their programming available to DBS and other competing multichannel video programming distributors (MVPDs).

It was to monitor the effectiveness and continuing need for these regulatory interventions in the video marketplace that Congress mandated the annual video competition reports. Regulations designed to substitute for and alleviate the absence of marketplace competition have no utility – and are, indeed, counterproductive – in a well-functioning, competitive marketplace. Annual assessments of the extent to which the video marketplace had become competitive should have ensured that such regulations lasted no longer than the conditions that justified them.

From the very start, the Commission’s annual reports showed a steadily accelerating growth in competition among MVPDs in the video marketplace and a corresponding erosion of cable’s share of MVPD customers. DBS began making inroads from the start, and as soon as some of its initial handicaps, including the inability to retransmit local broadcast stations, were overcome, its growth took off. And when, in 1996, Congress removed restrictions on the provision of video programming by local telephone companies, the choices available to

consumers were multiplied. By the end of the first decade of competition reports, the fact that competition had irreversibly taken hold was unmistakably clear. As these comments demonstrate, those trends have continued, if not accelerated, throughout the second decade as well.

But cable's diminishing market share is not the only indicator of vibrant marketplace competition. Competition is also evident from cable operators' behavior. Faced with the migration of customers to DBS, cable operators have responded by – *competing*. Two characteristics of DBS that historically enabled it to attract customers were its ability to offer more channels of programming than most cable systems and to transmit them digitally, resulting in high quality audio and video. To compete effectively with these enhancements, cable operators needed to rebuild or significantly upgrade their facilities, adding bandwidth and digital technology.

Cable operators could not, however, obtain sufficient financing to undertake such upgrades while they were still subject to the severe rate regulation imposed by the 1992 Act. Those rules severely restricted cable operators' ability to rebuild their facilities to provide not only improved digital video programming service but also competitive *telephone* service to consumers. After Congress eliminated most cable rate regulation in the Telecommunications Act of 1996 so that financing was once again available, the cable industry did exactly what Congress had hoped: It spent more than 170 billion dollars to upgrade its facilities, *and* it began offering the first fully competitive, facilities-based telephone alternative to the incumbent telephone companies.

The cable industry's response to competition from DBS and the telephone companies produced a multitude of benefits for consumers. The deployment of digital technology meant

more channels of programming, higher quality audio and video (including, of course, the introduction of high definition programming even before broadcasters' "digital transition"), video on demand, digital video recorders, and more optional programming tiers and mini-tiers. But it also resulted in a technological revolution that took video competition to an entirely new level – because the same digital facilities that enabled the provision of digital video and telephony services also made possible the provision of high-speed, always-on broadband Internet access service.

Indeed, cable operators were the *first* to offer broadband Internet access service, and consumers responded. In short, they loved the service from the start, and subscribership to high-speed Internet service grew at an astonishing rate. Before long, this service facilitated the explosion of a wide array of new Internet-based services that were unimaginable not only in the early days of cable television but even in the days – just a few years earlier – of dialup Internet. These services included voice-over-IP ("VoIP") telephone services and the streaming and downloading of video content and motion pictures – services that increasingly resembled the non-Internet services provided by cable operators themselves.

The proliferation of video content on the Internet has rendered the concerns animating the 1992 Cable Act antiquated and moot. Will video programming ever be available to consumers from sources other than their local broadcast stations and their (one) local cable system? Will a program provider be able to reach consumers if a cable system chooses not to carry it? The amount and diversity of video content currently offered to anyone with a high-speed Internet connection by program providers unaffiliated with cable operators is staggering. And it is being viewed by millions of consumers on their computers, on their wireless phones, and on their flat screen television sets.

Moreover, any content owner with an Internet connection can make its programming available on the Internet so that it will be viewable by any high speed Internet customer. While some observers have worried that cable operators and other ISPs might block or interfere with the transmission of Internet programming that competes with their own programming and services, there is no evidence to warrant such concerns. To the contrary, if cable operators wanted to thwart competition from online Internet video, the last thing they would do would be what they have done – to continue upgrading the quality, capacity and download speeds of their systems in a manner that now enables the rapid downloading of feature length movies and the streaming of high definition programming. In any event, the Commission has adopted prophylactic rules to ensure that the only roadblock to an Internet programmer will be its own inability to offer programming that consumers, in a highly competitive video marketplace, want to watch.

The multitude of competitors in that marketplace are choosing widely divergent approaches – and offering innovative new technologies – to help persuade consumers to choose their programming. Some content providers continue to rely on cable and DBS as the optimal way to distribute their material. Others make their video content available via MVPDs *and* on their own Internet websites, or on websites such as Hulu that aggregate and provide content from multiple sources, free or on a paid subscription basis. Still others provide video content solely on the Internet, on their own websites or using video distribution services and websites such as YouTube, Netflix and Amazon.

Meanwhile, cable systems, often in partnership with program providers, are also developing new ways to use the Internet in offering the programming that they distribute to their customers. Some are exploring ways to enable their customers to view cable programming on

the Internet wherever they may be; others use Internet applications to enable their customers to use their smart phones or tablets as remote controls to select or record programming for viewing on their television sets.

Hardware manufacturers are developing equipment to facilitate the viewing of Internet-based programming on the same television receivers that are used to watch cable and broadcast services. The incorporation of HDMI outputs in computers and HDMI inputs in television sets and A/V receivers is sufficient to enable Internet viewing on television sets. But add-on set-top boxes such as those developed by Google, Roku, and Boxee offer interfaces and program guides that enable consumers readily to choose among various Internet program services. Some of these technologies are also increasingly being incorporated into television sets, DVD players and game machines, eliminating the need for an additional set-top box.

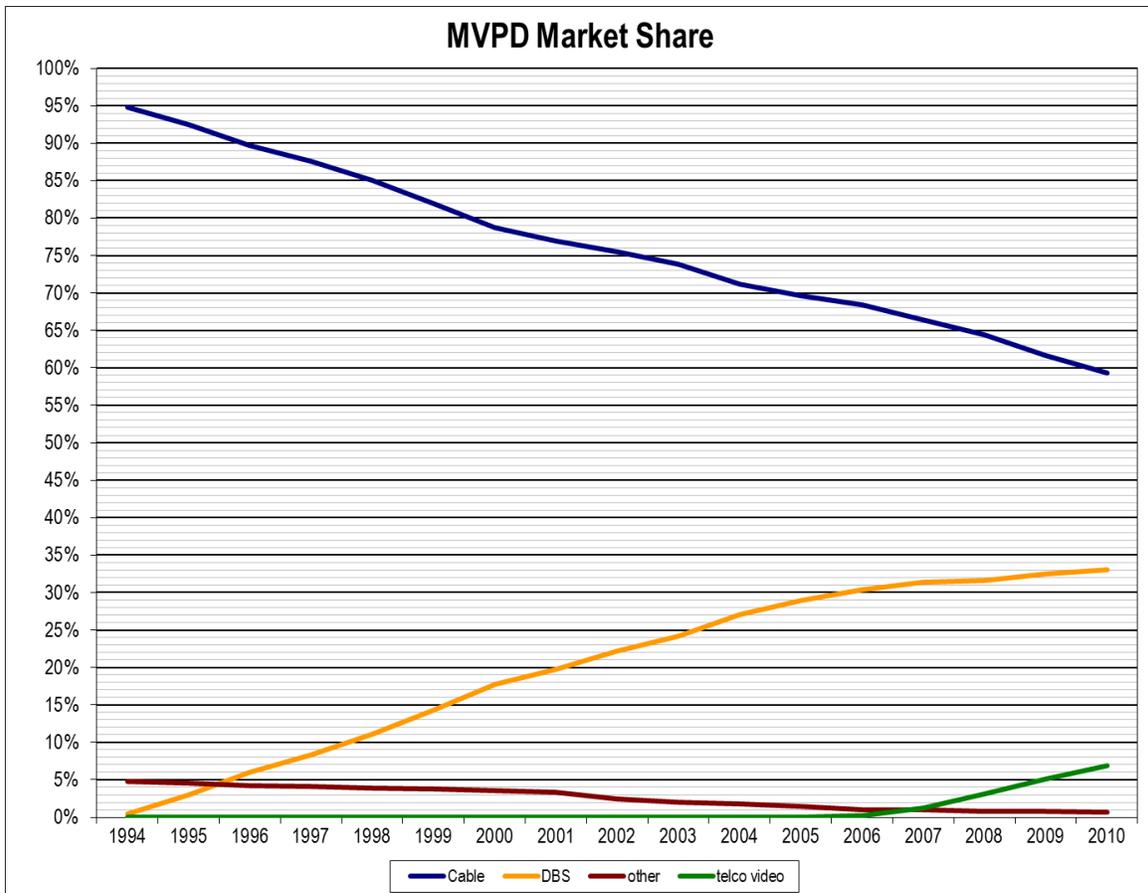
All these developments are the hallmark of a video marketplace in which competition has transcended the issues that Congress addressed in 1992 and that the Commission addressed in its previous video competition reports. Those reports documented the emergence of vibrant horizontal competition among cable operators, DBS, telephone companies and other MVPDs, as well as the disappearance of significant vertical integration between MVPDs and cable programming networks. But the difference between the competitive landscape that those reports addressed and the video marketplace that is emerging today is like the difference between checkers and three dimensional chess. While that marketplace is full of complexities, and the prevailing technologies of tomorrow are impossible to predict, there are two things that are simple and clear: Robust competition is pervasive in the video marketplace, and it is here to stay.

We believe it is time for the outdated Title VI regulatory regime to begin to reflect the realities of today's competitive marketplace. We therefore request that, as part of this Video Competition Report, the Commission take a fresh look at the provisions of Title VI that can and should be modified or repealed and make the appropriate recommendations to Congress. At a minimum, we would request that the Commission recommend that Congress expand the Commission's forbearance authority to cover Title VI cable services as well as telecommunications services.

I. THE MARKETPLACE PROBLEMS THAT CONCERNED CONGRESS IN 1992 HAVE VIRTUALLY DISAPPEARED.

A. Competition Continues To Flourish – And Intensify -- In The Multichannel Video Marketplace.

Two years ago, in its comments submitted in this proceeding, NCTA showed that while competition had irreversibly taken hold in the multichannel video marketplace years earlier, the choices available to consumers and the number of consumers choosing multichannel providers other than their incumbent cable operator were still, as of year-end 2008, continuing to grow. In these comments, as requested by the Commission, we provide updated data through the end of 2010. As in previous years, the growth and trend lines simply continue, uninterrupted:



As noted in our previous comments, cable’s share of MVPD customers had by the end of 2008 steadily diminished, from approximately 95% to 63.5%. By the end of 2010, that percentage had dipped to 59%. Meanwhile, the rapid growth rate of the two national DBS companies slowed only a bit. Their share of MVPD customers, which was 32% in 2008, climbed to 33%. One reason why DBS’s growth curve has become a little less steep is obvious from the chart: The telephone companies entered the MVPD marketplace in earnest in 2006, and their growth curve is as steep as DBS’s used to be. In 2008, they had a mere three percent of all MVPD customers. In two years, that percentage has more than doubled, to 7%.

The telcos' growth in market share has been accompanied by continued growth in the number of homes to which their service is available. This means that a growing number of households can choose from among at least *four* competitive providers of multichannel service.

And these are sturdy competitors: The two national DBS companies, DirecTV and Dish, rank second and third, respectively, in subscribership among all MVPDs. Meanwhile, Verizon and AT&T have in just a few short years climbed to seventh and ninth place, respectively.

Structurally, these are strong indicators of a vibrantly competitive marketplace. And the behavior of these companies bears out this conclusion. As ever-present print and television advertising makes clear, cable operators and their DBS and telco competitors are constantly seeking to attract new customers and keep existing customers through promotional offerings, discounts for “bundled” combinations of video, telephone and Internet offerings, and technological innovations and enhancements.

At the same time, cable operators and their competitors continue to compete through promotional offers and aggressively priced service bundles. For example, Cablevision recently offered a promotion to attract customers from local competitors by offering a twenty percent reduction on a new triple-play bundle to customers who switched from other services.¹ In January of last year, Verizon revised its triple-play bundles to offer higher broadband speeds and more HD programming for lower prices to lure new customers.² Verizon also eliminated early termination fees for some of its DSL bundles, continuing the trend it began last June when it eliminated early termination fees and contracts for all FiOS bundles.³

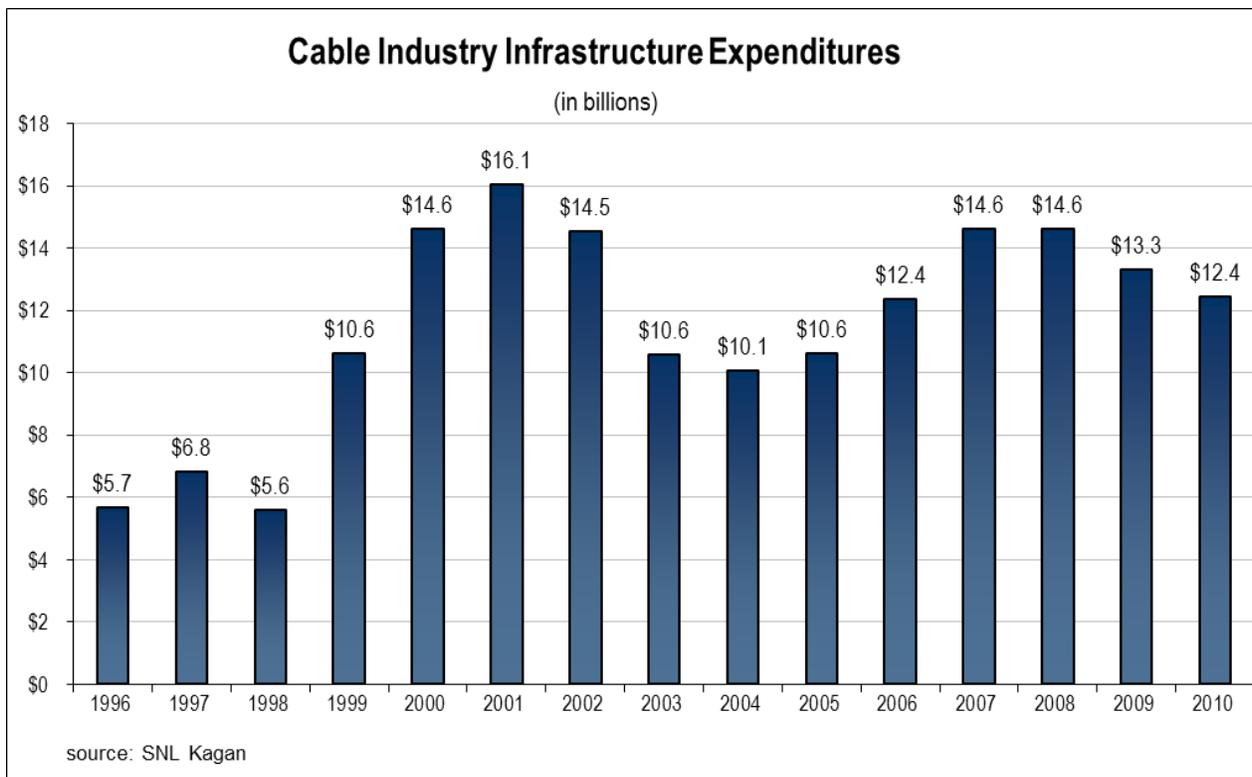
Cable operators continue to invest billions of dollars in infrastructure and facility rebuilds and upgrades to improve their video service offerings, as well as offer ever more robust Internet

¹ Todd Spangler, “Cablevision Aims Discounted ‘Ultimate’ Bundle at Telco, Satellite TV Subs,” Multichannel News, May 6, 2011, http://www.multichannel.com/article/467915-Cablevision_Aims_Discounted_Ultimate_Bundle_At_Telco_Satellite_TV_Subs.php.

² Todd Spangler, “Verizon Sets New FiOS Bundles, Hikes Early Termination Fee,” Multichannel News, January 15, 2010, http://www.multichannel.com/article/444522-Verizon_Sets_New_FiOS_Bundles_Hikes_Early_Termination_Fee.php.

³ Todd Spangler, “Verizon Eliminates Early Termination Fees For DSL,” Multichannel News, April 18, 2011, http://www.multichannel.com/article/466970-Verizon_Eliminates_Early_Termination_Fees_For_DSL.php.

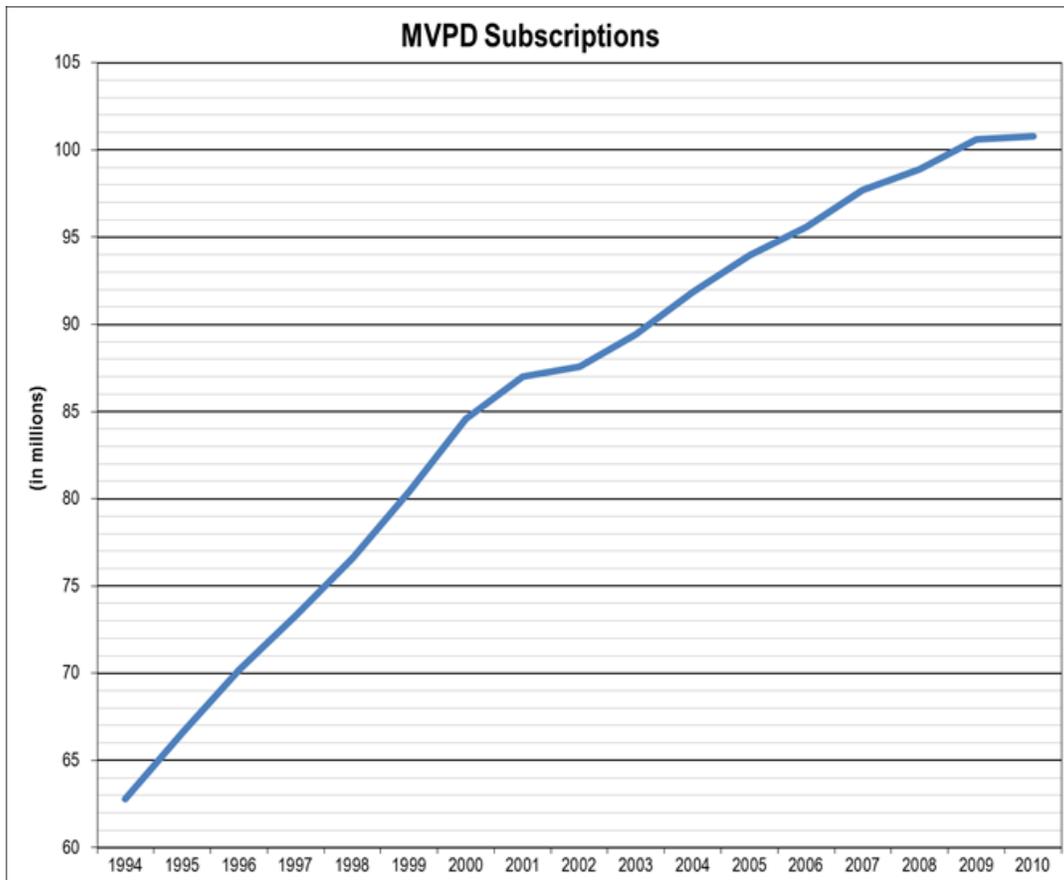
and digital telephone services. Since 1996, cable companies have invested over \$170 billion in infrastructure, including \$12 billion in 2010 alone.



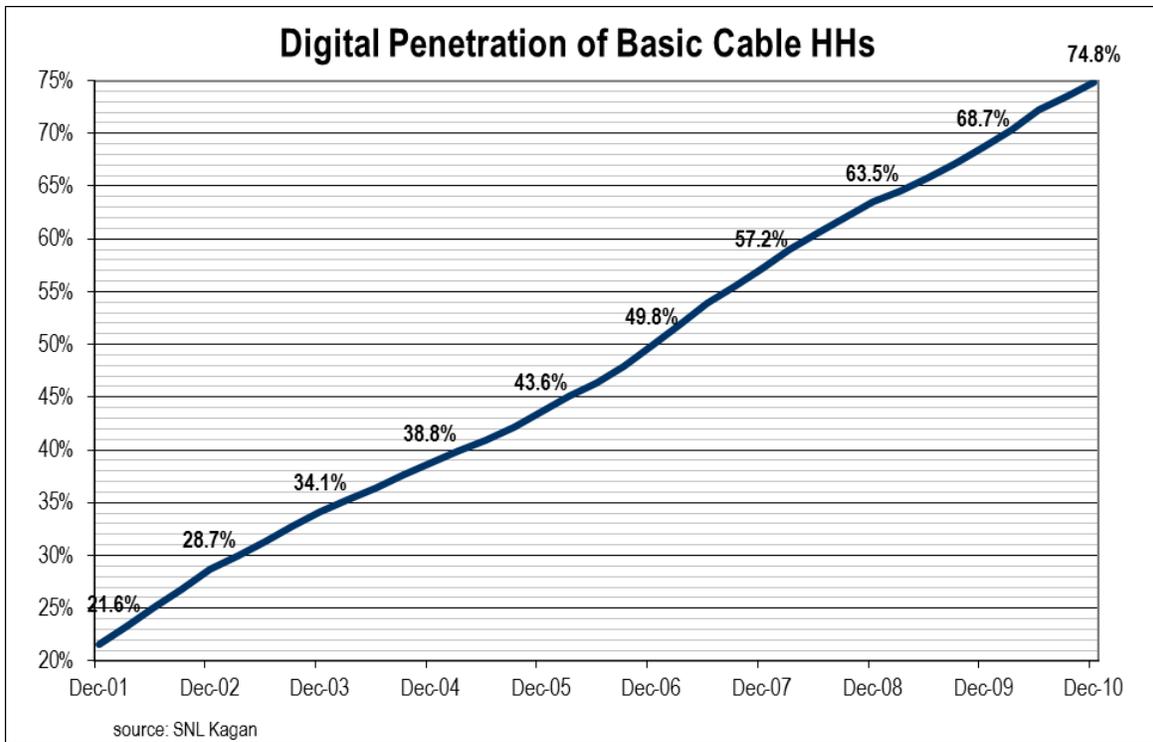
Cable operators and their competitors have also offered much in the way of technological innovation and enhancements in order to entice and retain customers. Multiple operators, including Comcast, Time Warner Cable, Cablevision, DirecTV and AT&T, have released applications allowing customers to navigate their channel guides and video-on-demand libraries and often to view streaming video on additional devices. Each of these options expands consumers' ability to access video programming how and when they choose and provides new battlegrounds for competition.

Perhaps the best evidence of the pro-competitive effects of all these initiatives and innovations is that consumers have responded positively. As we showed in our initial comments in this proceeding in 2009, overall subscribership to MVPD services had increased consistently

ever since cable operators responded to DBS by upgrading and rebuilding their facilities almost two decades ago – and that trend has continued despite the recent economic downturn:



In addition, more and more customers are using the optional digital services being introduced by MVPDs. First, the percentage of cable households that purchase digital tiers has continued to increase between year-end 2008 and 2010:



Moreover, usage of the new digital services, such as DVRs and video on demand has also increased dramatically. In the first quarter of 2011, 18.7 million cable households subscribed to DVR services, up from 16.9 million at the same time in 2010.⁴ DVR penetration of digital cable households is at 41%. It is estimated that 41.3 million U.S. households had DVRs as of the end of the first quarter of 2011.⁵

As cable operators have greatly increased the amount of programming available via video on demand, their subscribers are watching more programming on demand. Last year SNL Kagan estimates cable customers purchased 308 million on-demand movies. Most cable operators offer between 3,000 and 18,000 titles through their VOD services.⁶ Comcast launched its VOD service in 2003 and recently announced that in the seven years since then its customers have

⁴ Ian Olgeirson, "DVR Base Grows in Q1, Multiroom Improvements Take Hold," SNL Kagan, May 26, 2011.

⁵ *Id.*

⁶ *Id.*

accessed 20 billion entertainment selections through the service. In contrast, it took McDonald's 27 years to sell the same number of hamburgers.⁷

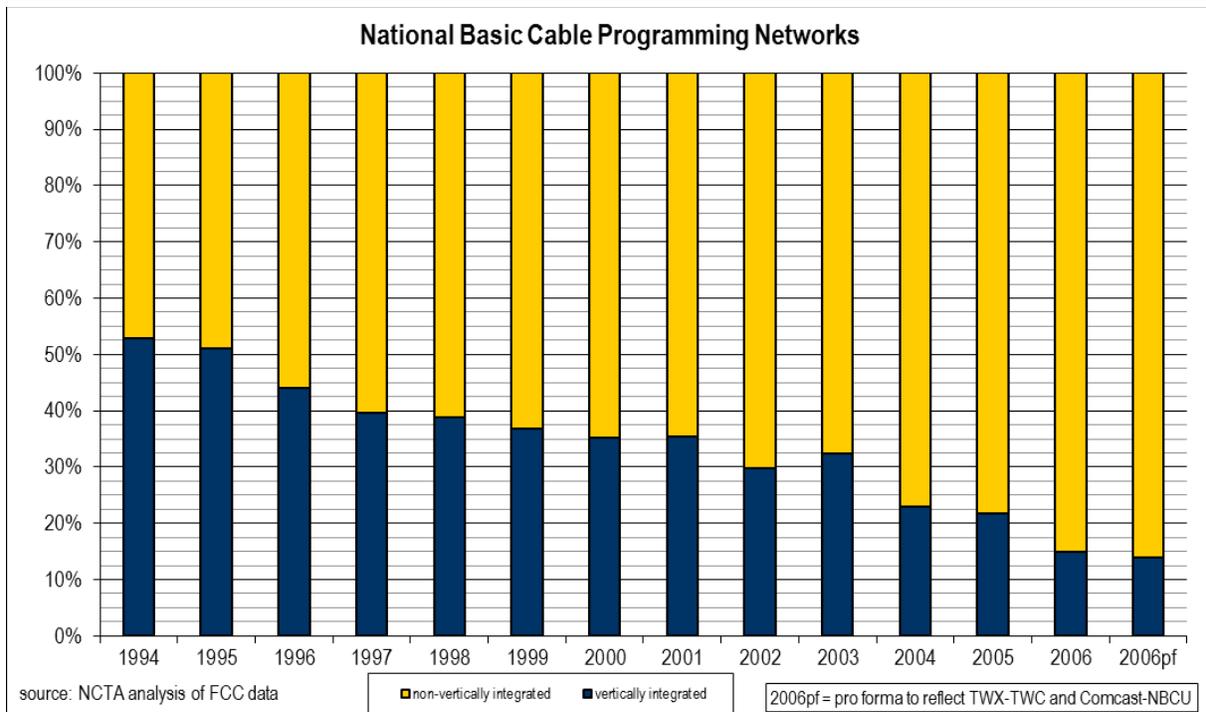
In sum, cable operators (and their competitors) are competing by continually improving their product and offering new innovations. And the result is that the product is becoming more valuable to consumers. That's the result that competition is supposed to produce, and it is further evidence of the competition that is here to stay in the video marketplace.

B. The Vertical Integration Between Cable Operators and Program Networks That Existed at the Time of the 1992 Act Has Largely Disappeared.

When Congress enacted the 1992 Cable Act, it was concerned not only with the scarcity of competitive alternatives to incumbent cable operators but also with the fact that a large number of the most popular cable program networks were owned by cable operators. Congress was concerned that cable operators had the power and incentive to thwart the competitive development of additional program networks by refusing to carry unaffiliated networks or by insisting on an ownership stake in return for carriage. But, as has been clear for many years, the vertical integration concerns that underlay the program carriage and vertical ownership provisions of the Act have largely disappeared.

Of the vastly increased number of channels and program networks – not to mention the thousands of programs offered via video on demand – only a very few are vertically integrated with cable operators. And, notwithstanding Comcast's recent acquisition of NBC-Universal, the number of vertically integrated program networks in the two years since our last filing has gone *down* – partly because of the corporate uncoupling of Time Warner Inc. and Time Warner Cable.

⁷ Mike Reynolds, Comcast Celebrates 20 Billion On-Demand Views," Multichannel News, May 25, 2011, http://www.multichannel.com/article/468767-Comcast_Celebrates_20_Billion_On_Demand_Views.php.; McDonald's, "McDonald's History," last visited May 26, 2011, available at http://www.mcdonalds.ca/pdfs/history_final.pdf.



Today, only two of the 25 most viewed cable networks are wholly owned by cable operators, while cable operators own small minority interests (less than 20%) in three others. Whatever potential threat that Congress might once have believed that cable operators posed to the development of competition in the MVPD marketplace by withholding the most popular satellite programming networks from potential competitors is largely non-existent today. They no longer own, jointly or separately, a significant number of the most popular networks, and, in any event, it's far too late in the day to alter what has become an irreversibly competitive marketplace.

C. The Commission Should Report to Congress That the Requirements of the 1992 Act Are No Longer Necessary To Protect Consumers From Anticompetitive Conduct or To Jump-Start Competition in the MVPD Marketplace.

How does the competitive landscape described above compare not only to what existed in 1992 but also to what Congress hoped for when it enacted the 1992 Cable Act and required the

Commission to report annually on the status of competition in the video marketplace? The bottom line is that it is hard to imagine that Congress would have enacted *any* of the regulatory requirements of that statute if the competition in the MVPD marketplace alone resembled what existed ten years after its enactment – much less what exists today. And that’s not even taking into account the effects of the Internet.

The United States Court of Appeals for the District of Columbia Circuit has already found that competition in the video marketplace has essentially vitiated the need for limits on how many subscribers a single cable operator may serve, and its findings implicate the underpinnings of most of the other statutory provisions aimed at remedying the lack of competitive choices that existed in 1992. In *Comcast Corporation v. FCC*, [cite], the Court rejected the 30% cap that the Commission had imposed on cable ownership, finding that

First, the record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992. Second, over the same period there has been a dramatic increase both in the number of cable networks and in the programming available to subscribers.

In view of the overwhelming evidence concerning “the dynamic nature of the communications marketplace,” 47 U.S.C § 533(f)(2)(E), and the entry of new competitors at both the programming and the distribution levels, it was arbitrary and capricious for the Commission to conclude that a cable operator serving more than 30% of the market poses a threat either to competition or to diversity in programming. Considering the marketplace as it is today and the many significant changes that have occurred since 1992, the FCC has not identified a sufficient basis for imposing upon cable operators the “special obligations,” *Turner I*, 512 U.S. at 641, represented by the 30% subscriber limit.

In such a dynamic marketplace, the rate regulation, program access, program carriage, and leased access provisions of Title VI are anachronisms addressing the perceived problems of another era. By 1996, Congress had already determined that regulation of everything but the

basic tier of cable service would be unnecessary and should come to an end in 1999. Meanwhile, the resources of cable operators, local franchising authorities and the Commission have been burdened for the last decade by a steady stream of petitions – virtually all granted – to deregulate systems subject to “effective competition.” The most commonly relied upon prong of that test requires, in effect, that at least 15% of the homes in a franchise area subscribe to MVPDs other than the incumbent cable operator.

When it first promulgated rules implementing the rate regulation provisions of the 1992 Act, the Commission established a presumption that cable systems are *not* subject to effective competition, thereby requiring every cable system to demonstrate – and obtain a Commission ruling – that, among other things, the penetration of DBS and other competitors warranted deregulation under the 15% test. Two decades later, when cable’s competitors serve 33% of all MVPD customers nationwide (and approximately 86% of all households subscribe to MVPD service),⁸ that presumption makes no sense. At the very least, if there are exceptional cases in which combined DBS and telco video penetration is far below the national average and below the 15% standard, it should be up to the franchising authority to show that these unusual circumstances exist.

Similarly, fierce competition among MVPDs, two large and ubiquitously available DBS companies, and the large incumbent telephone companies – along with the much diminished amount of vertically integrated programming – should by now have removed any reasonable concerns that cable operators might be able to foreclose competition in the video marketplace by refusing to make their affiliated programming available to competing MVPDs. When the Commission last considered, in 2007, whether the statutory prohibition against exclusive

⁸ NCTA analysis of SNL Kagan estimates.

contracts between cable-affiliated program networks and cable operators should be allowed to sunset pursuant to the provisions of Section 628 of the Communications Act, it concluded for the second time that the rules were still “necessary to preserve and protect competition and diversity in the distribution of video programming.”⁹ The D.C. Circuit, giving substantial deference to the Commission, upheld the determination as reasonable. But it recognized and clearly signaled to the Commission that such a determination would not be sustainable for much longer:

We anticipate that cable’s dominance in the MVPD market will have diminished still more by the time the Commission next reviews the prohibition, and expect that at that time the Commission will weigh heavily Congress’s intention that the exclusive contract prohibition will eventually sunset. Petitioners are correct in pointing out that the MVPD market has changed drastically since 1992. We expect that if the market continues to evolve at such a rapid pace, the Commission will soon be able to conclude that the exclusivity prohibition is no longer necessary to preserve and protect competition and diversity in the distribution of video programming.¹⁰

For similar reasons, the program carriage provisions of the Act have no positive role to play and are only a source of mischief in today’s video marketplace. Those provisions were meant to ensure that cable operators do not condition a program network’s carriage on providing an equity interest or discriminate against unaffiliated program networks *on the basis of their non-affiliation*. They were enacted at a time when cable operators offered far fewer channels than they offer today and had an ownership interest in a far greater percentage of the networks carried on those channels. In today’s competitive marketplace, only a very small number of channels – if any – on a cable operator’s channel lineup are occupied by networks owned by that operator or any other cable operator. The remaining *hundreds* are filled by networks unaffiliated with any cable operator..

⁹ Report and Order, MB Docket 07-29, 22 FCC Rcd 17791, 17792 (2007).

¹⁰ *Cablevision Sys. Corp. v. FCC*, 597 F.3d 1306, 1314 (2010).

In these circumstances, non-affiliation with a cable operator is no longer likely to be the reason why a network is unable to gain carriage on any operator's system. It's more likely that the network's offerings are perceived by the operator as adding little additional value or diversity to the array of programming already being carried. In a perverse twist, the rules now effectively require program networks seeking to demonstrate discrimination on the basis of affiliation to prove that their programming is *similar* to the programming of one of the very few networks that is affiliated with, and being carried by, a cable operator – and preferably one that is carried on a widely available tier, so that they can allege discrimination if they are not carried on the same tier. Thus, at a time when it is difficult for *any* new network to gain carriage on cable systems, much less to gain widespread penetration, the program carriage rules create perverse incentives for new networks to develop – and, worst case, require cable operators to carry –programming categories like those provided by cable-affiliated program networks that are already available to most subscribers. This is a far cry from the “diversity in information and entertainment programming” that Congress sought to promote in 1992.¹¹

The point is that Congress required these annual video competition inquiries and reports for a reason. Most of the provisions of the 1992 Act were enacted to deal with problems and concerns specifically related to the perceived lack of competition in the MVPD and video programming marketplaces at the time of enactment. The video competition reports were meant to let Congress know whether those conditions continued to exist and whether those provisions were still necessary or helpful. What they are consistently showing – and what the Commission should report to Congress – is that competition far beyond what Congress could have expected

¹¹ Report of the Committee on Energy and Commerce of the House of Representatives, H.R. Rep. 102-628, 102^d Cong., 1st Sess. (1992).

has taken hold and that the provisions of the Act meant to deal with a lack of competition have outlived their usefulness.

At a minimum, the Commission should recommend to Congress that it expand the Commission's forbearance authority to cover Title VI cable services as well as telecommunications services.

II. THE INTERNET HAS CREATED AN ENORMOUS NUMBER OF NEW WAYS FOR VIDEO CONTENT TO REACH CONSUMERS.

All the dramatic changes described above – the proliferation of competition among MVPDs, the sharp decline in vertical integration, and the technological upgrades that have resulted in not only more channels but also an array of digital enhancements – would have transformed the video marketplace even if there had been no such thing as the Internet. And, indeed, the dial-up Internet that existed in 1992 when Congress mandated these video competition inquiries had virtually nothing to do with video content. But the introduction and continual upgrading – by cable operators – of broadband high-speed Internet access service has made video content a major use and attraction of today's Internet.¹²

While it is still the case that the large (and still growing) majority of television households subscribe to cable or a competing MVPD service, more and more of these subscribers are also viewing video content delivered over the Internet. Since virtually anyone with an Internet connection can make video content available to anyone else with an Internet connection, the amount of available online video and the diversity of sources is already beyond measure. As a result, content providers are competing to make their programming and video clips attractive and readily accessible on the Internet, cable operators and other MVPDs are

¹² Notably, the National Academy of Television Arts & Sciences presented CableLabs with a Technology & Engineering Emmy® Award for enabling the delivery of television via broadband through its development of the DOCSIS standard. DOCSIS has been critical to the growth of Internet-connected devices at retail.

competing to make *their* service offerings accessible over the Internet in the most attractive ways, and equipment and technology providers are competing to offer consumers attractive and easy ways to enable consumers to select and view Internet content on their television sets. While MVPDs provide hundreds of channels -- and thousands of video-on-demand programs -- available to their customers, the Internet now provides even further assurance that programmers can reach prospective and interested viewers.

A. Content Providers – Large and Small – Are Successfully Reaching Internet Viewers.

The array of video content available on the Internet is already far too large to catalogue. But there is ample evidence that not only the major producers of television and feature films are launching sites and reaching viewers on the Internet but also that consumers are finding and watching all sorts of other video material, long-form and short-form, from all sorts of program producers.

In a recent press release, comScore reported that in April of this year, 172 million unique viewers in the United States watched video content over the Internet, averaging 14.9 hours per viewer during 5.1 billion viewing sessions.¹³ Several of the websites owned by and providing content of the major studios and broadcast and cable networks (Viacom Digital, NBC Universal, Turner Digital, and Hulu) ranked among the top ten in number of unique viewers. The top five, however, were comprised of other sites whose diverse video content, including user-generated content, comes from a wide variety of sources., including user-generated content.^{14 15}

¹³ “comScore Releases April 2011 U.S. Online Video Rankings,” comScore Press Release, May 18, 2011, [http://www.comscore.com/Press Events/Press Releases/2011/5/comScore Releases April 2011 U.S. Online Video Rankings](http://www.comscore.com/Press%20Events/Press%20Releases/2011/5/comScore%20Releases%20April%202011%20U.S.%20Online%20Video%20Rankings).

¹⁴ *Id.* (“Google Sites, driven primarily by video viewing at YouTube.com, ranked as the top online video content property in April with 142.7 million unique viewers, followed by VEVO with 55.2 million viewers and Yahoo! Sites with 53.2 million viewers. Facebook came in fourth with 46.7 million viewers, while Microsoft Sites ranked fifth with 46.5 million viewers.”)

Moreover, it's not only single programs and clips but also "regular series" that are gaining viewership (and creating "Internet celebrities") on the broad array of video-oriented websites.¹⁶ The viewership of all these sites demonstrates that video program providers can reach consumers via the Internet – and that consumers will find and watch content that appeals to them – even if such content is not provided on major broadcast or cable networks or carried on cable systems.

B. Cable Operators Are Seeking Ways To Enhance the Value of Their Service By Enabling Their Customers To View Cable Programming on the Internet and on New Devices.

Just as content providers compete to find the most effective means to provide their programming to consumers and derive sufficient revenues to support such programming, cable operators and other MVPDs are competing to ensure that delivery on their networks provides maximum value both to programmers and consumers. As more and more consumers use the Internet to access and view video material, cable operators and other MVPDs are developing ways to enable their customers to view cable programming over the Internet.

Many MVPDs, for example, offer services that enable their customers to watch over the Internet some of the same subscription video programs that they receive over their home cable or DBS service.¹⁷ Cable operators are also developing Internet applications for mobile phones and tablets that allow their customers to use such devices as remote controls to identify and select

¹⁶ "Friday Five: Internet Video Series/People," murfStuff, May 27, 2011, <http://www.murfstuff.com/2011/05/27/friday-five-internet-video-series-people/> ("Over time, video has become a highly prevalent part of the internet with regular series or 'internet celebrities' becoming more commonplace.")

¹⁷ See, e.g., Todd Spangler, "Cox Opens 'TV Online' Portal," Multichannel News, May 16, 2011, [available at http://www.multichannel.com/article/468296-Cox_Opens_TV_Online_Portal.php](http://www.multichannel.com/article/468296-Cox_Opens_TV_Online_Portal.php); Ryan Lawler, "Comcast Opens Up TV Everywhere Service," Gigaom, December 15, 2009, [available at http://gigaom.com/video/comcast-opens-up-tv-everywhere-service/](http://gigaom.com/video/comcast-opens-up-tv-everywhere-service/); Todd Spangler, "Suddenlink Launches 'TV Everywhere' Site with HBO, Turner, Hulu," Multichannel News, June 8, 2011, [available at http://www.multichannel.com/article/469414-Suddenlink_Launches_TV_Everywhere_Site_With_HBO_Turner_Hulu.php](http://www.multichannel.com/article/469414-Suddenlink_Launches_TV_Everywhere_Site_With_HBO_Turner_Hulu.php).

programming on their television sets, to record programming on their DVRs from remote locations, and even to view cable programming on their iPads and tablets.¹⁸

Similar applications are being developed for a new generation of “Smart TVs.” For example, Samsung, Comcast, and Time Warner Cable recently demonstrated an application for Samsung’s new “Smart TVs” that will present consumers with a cable icon alongside icons for Netflix, Hulu, home network devices and other video sources, in a shopping mall application format similar to smart phones.¹⁹ Customers will be able to access their cable subscription content by clicking on the cable icon, much as they can access Netflix content today by clicking on a Netflix icon on an Internet-connected TV, tablet, or other device. The Samsung platform has the capacity to search across all sources, including linear and VOD cable content, as well as recorded content and the Internet. Time Warner Cable also announced a similar agreement to deliver its content directly to Sony televisions.²⁰ Home networks themselves are being harnessed

¹⁸ See, e.g., Todd Spangler, “Comcast to Flip Video to iPad,” Multichannel News, November 15, 2010, available at http://www.multichannel.com/article/459893-Comcast_To_Flip_Video_To_iPad.php.

¹⁹ See Ian Sherr, *Samsung Partners With Content Providers*, WALL ST. J., Jan. 7, 2011, available at <http://online.wsj.com/article/SB10001424052748704739504576067531727973032.html> (“Yoon Boo-Keun, Samsung’s visual display division president, said Thursday that his company is working with Comcast Corp. and Time Warner Cable Inc. to deliver content to its ‘Smart TVs’ with an Internet connection. Both cable operators demonstrated specialized applications to browse and watch video on Samsung’s Smart TV and ‘Galaxy Tab’ touchscreen tablet, which runs Google Inc.’s Android operating system.”).

²⁰ See Todd Spangler, *CES: Sony Plans IPTV Hookup With Time Warner Cable*, MULTICHANNEL NEWS, Jan. 5, 2011, available at http://www.multichannel.com/article/461932-CES_Sony_Plans_IPTV_Hookup_With_Time_Warner_Cable.php (“Time Warner Cable will deliver its entire video programming lineup to customers with Sony’s Internet-connected Bravia HDTVs this year, the consumer-electronics giant announced at the Consumer Electronics Show.”); Brian Stelter, *A TV-Internet Marriage Awaits Blessings of All Parties*, N.Y. TIMES, Jan. 9, 2011, available at <http://www.nytimes.com/2011/01/10/business/media/10tv.html> (“Time Warner Cable, one of the biggest cable operators, announced that it would start delivering programming via its network straight into some Sony and Samsung television sets, removing the need for a set-top cable television box.”).

as a way to navigate and combine video content from a variety of sources and make such content available to devices connected to the home network.²¹

The economic model for distributing programming via cable television has been enormously successful in supporting a vast array of high-quality networks. By creating a robust high-speed Internet access service and developing new ways to deliver cable programming to Internet-connected devices, cable operators have provided an alternative (and increasingly popular) means of viewing MVPD, Internet, and other video content on a wide and growing array of devices. In this highly dynamic video marketplace, cable operators, like programmers, will continue to explore new business models that further expand consumer options for accessing high-quality programming.

C. The Marketplace Is Producing a Growing Array of Equipment and Technology for Viewing Internet Content on Television Sets.

As noted above, Internet-delivered video content can now be viewed on laptops and large computer monitors in full-screen high-definition format. That's still how most consumers view such content, and it seems to have been no impediment to rapid growth in such viewership. Nevertheless, competitors in the marketplace – content distributors, software developers, and equipment providers – are offering consumers an ever-growing array of options for viewing Internet content on the same television sets that they use to watch programming delivered by MVPDs or by broadcasters over the air.

Viewing Internet content on a television set Can be as simple as connecting a cable between the HDMI output of a computer and the HDMI input of a television set. While such direct PC-to-TV connection “has been perceived as infrequent [and] confined to tech-inclined

²¹ See Letter from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, to Chairman Julius Genachowski, FCC, MB Docket No. 10-91, CS Docket No. 97-80 (Jan. 26, 2011) (describing marketplace developments and innovation over the past year)

Early Adopters,”²² a recent study found that it is much more common. “According to a new report from The Diffusion Group (TDG), approximately *one-third* of broadband users connect a PC to their TV specifically to enjoy PC or online video on the ‘big screen’ at least once a year.”²³ Consumers can install software, such as Boxee, on their computers to help find streaming content on the Internet and downloaded content on their computers for viewing on their TV sets.

But for those who do not want to attach their computers to their television sets in order to watch Internet video on those sets, the marketplace is already providing a range of alternative equipment and technology to stream content directly from the Internet – or from a networked computer – to television sets. Many devices used with television sets for other purposes – such as gaming devices, DVRs, and Blu-ray players – enable consumers to find and stream Internet content to their sets without requiring the use of a computer at all. And, as noted above, television sets themselves are increasingly incorporating such Internet access. Sales of such sets are rapidly increasing and are projected to exceed 118 million only a few short years after their introduction.²⁴ Similarly, iPads and other tablets have emerged as highly popular alternatives for watching online video.

In addition to these Internet-accessible television sets and multipurpose devices, an increasing number of standalone devices dedicated to receiving Internet content on TV sets are also available. Some, like VeeBeam, enable consumers to transmit anything that is on their computer screens wirelessly to their television set. Others, like Apple’s, Roku’s, Boxee’s and Logitech’s GoogleTV devices, provide direct and easy-to-access links to major sources of

²² The Diffusion Group, “PC-to-TV Connectivity More Widespread Than Perceived,” March 1, 2011 *available at* <http://tdgresearch.com/blogs/press-releases/archive/2011/03/01/pc-to-tv-connectivity-more-widespread-than-perceived.aspx>.

²³ *Id.*

²⁴ *See* Letter from Kyle McSillarow, *supra*.

Internet content (such as Hulu, Netflix and Amazon), which themselves are increasingly securing content rights directly from program providers in order to offer consumers extensive libraries of on-demand content as alternatives to the libraries available from MVPDs.

This is obviously a marketplace in transition – one that, along with the Internet itself, is evolving at breakneck speed. The Commission is right to take these new developments into account in reporting on the status of video competition but should recognize that today’s landscape, today’s Internet products and services, and even today’s definitions (“Internet TV,” “dedicated devices,” “Internet video content”) are only snapshots in time and likely to change. Nobody can predict with any confidence the technologies that will emerge, much less those that will prevail, even in the near term. All the stakeholders – content producers, content distributors, and software and hardware industries – need to make their best guesses. But fortunately, regulators and policymakers do not, because, with an abundance of choices available in a vibrantly competitive marketplace, consumers will decide.

CONCLUSION

Competition in the video programming marketplace is flourishing. Consumers can choose among a multitude of video providers and a virtually unlimited array of programming content. Today's marketplace far exceeds anything that Congress could have envisioned when it enacted the 1992 Act and directed the Commission to report annually on the status of video competition. It is time not only to report that the video marketplace is vibrantly competitive but also that those regulations intended to remedy a perceived lack of competition are no longer necessary or appropriate.

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