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	)	

REPLY COMMENTS OF COMCAST CORPORATION

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Comcast Corporation ("Comcast") hereby replies to the comments submitted in response to the above-captioned Further Notice of Inquiry ("*Notice*").[1] As the comments make clear, today's marketplace for video programming is more competitive than ever. The Commission should reject calls for increased regulation, and should instead begin the process to remove antiquated regulation.

I. INTRODUCTION AND SUMMARY

The video marketplace is vibrant, competitive, dynamic, and expansive. As many commenters highlighted, consumers have an ever-growing array of options for where, when, and how they watch video programming. Convergence is increasingly the norm as multichannel video programming distributors ("MVPDs"), broadcasters, online video distributors ("OVDs"), and consumer electronics manufacturers make video content available from multiple sources to a wide variety of devices. In such a competitive marketplace, it is in every participant's best interest to meet consumers' desire for an exemplary viewing experience.

Despite the existence of intense competition, certain commenters call for increased regulation of MVPDs, and even ask the Commission to apply obsolete legacy regulations to new

[1] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Further Notice of Inquiry, FCC 11-65 (Apr. 21, 2011) ("*Notice*").

OVD participants. The Commission should reject such proposals and, instead, accurately and impartially report to Congress on the extensive proliferation of video options for consumers in order to set the stage for reviewing outdated, unnecessary regulation.

II. THE COMMENTS MAKE CLEAR THAT THE VIDEO MARKETPLACE IS MORE VIBRANT AND COMPETITIVE THAN EVER BEFORE.

"Without question, the video marketplace is intensely competitive."[2] Almost every American household can choose from among at least three MVPDs, and an ever-increasing number of American households can choose from four or more facilities-based pay TV providers.[3] DBS providers continue to grow, steadily increasing their share of the MVPD marketplace,[4] and more and more consumers are subscribing to telephone companies' and other overbuilders' multichannel services.[5] Meanwhile, broadcasters continue to offer consumers additional options for how they obtain their video programming, and are uniquely positioned to provide local news, weather, and sports programming.[6] Consumers also have benefitted from increased video-on-demand ("VOD") libraries and new applications ("apps") that, among other things, allow customers to watch cable services on new devices, browse mobile channel guides,

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2 Nat'l Ass'n of Broad. ("NAB") Comments at 32; *see* Nat'l Cable & Telecomms. Ass'n ("NCTA") Comments at 8; Dish Network Comments at 4; Verizon Comments at 7 ("In all of these areas where Verizon offers its FiOS TV service, it faces stiff competition."). Unless otherwise noted, all citations to comments herein refer to comments filed in MB Docket No. 07-269 on or around June 8, 2011.

3 *See* NCTA Comments at 8; Verizon Comments at 7-8 (explaining that Verizon routinely enters a market as the fourth or fifth MVPD option).

4 *See* NCTA Comments at 8 (noting that cable operators' share of the MVPD marketplace is down to 59 percent from its share of 95 percent of the MVPD marketplace in 1994 and that DBS operators' market share is up to 33 percent); Dish Network Comments at 2, 4 (adding more than 600,000 subscribers from March 31, 2010 through March 31, 2011); DirecTV Comments at 9 (adding 750,000 customers from first quarter 2010 to first quarter 2011).

5 *See* NCTA Comments at 8 (noting that telco customers account for seven percent of all MVPD customers, more than double their share from 2008); AT&T Comments at 3-4 (reporting that its U-verse video service has expanded to an additional 43 MSAs (to 136 total) from early 2009 until the end of 2010, and climbing to nearly three million customers); Verizon Comments at 6 (reporting that its subscriber base grew by more than 20 percent in 2010 to 3.5 million customers).

6 *See* NAB Comments at 9-12.

and manage their DVRs from their mobile devices.[7] As Verizon explained, "[i]ncreased video competition also brings consumers the benefits of a broader, and more diverse, range of choices for video programming."[8]

The highly competitive MVPD marketplace continues to spur constant investment and innovation in new products and services. At the recent Cable Show, Comcast Chairman and CEO Brian Roberts unveiled the next-generation cable television experience, Xcalibur, that brings into one interface TV, VOD, DVR, and customized apps for cable including offerings from Pandora, Facebook, and Twitter.[9] For their part, other MVPDs are also innovating.[10]

The record also demonstrates that the marketplace for online video continues to grow, with providers innovating at a dizzying pace.[11] As several commenters noted, in the first quarter of 2011, Netflix became the largest subscription video provider in the United States.[12] Netflix added nine million subscribers in the past twelve months alone,[13] and many other OVDs are undergoing explosive growth as consumers continue to watch more video online – 172 million

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7 *See* NCTA Comments at 10.

8 Verizon Comments at 11.

9 Press Release, Comcast Corp., *Comcast Chairman and CEO Brian L. Roberts To Unveil Next Generation Television Experience and New Broadband Speeds* (June 14, 2011), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1097. Comcast also recently partnered with Skype to demonstrate HD video calling over customers' televisions. Press Release, Comcast Corp., *Comcast and Skype Announce Agreement To Bring a New HD Video Calling Experience to the Television* (June 14, 2011), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1096.

10 *See* AT&T Comments at 5; DirecTV Comments at 4-8; Dish Network Comments at 4; Verizon Comments at 12-14.

11 *See, e.g.*, Comcast Corp. Comments at 31-36; DirecTV Comments at 20-21, 22-24; Dish Network Comments at 7-8; Google Comments at 1-4; NAB Comments at 31-32; NCTA Comments at 19-25; Verizon Comments at 8.

12 Brian Stetler, *For Netflix, Higher Earnings and a Milestone*, N.Y. Times Media Decoder Blog (Apr. 25, 2011), http://mediadecoder.blogs.nytimes.com/2011/04/25/for-netflix-higher-earnings-and-a-milestone/.

13 *See* Netflix Comments at 2.

"unique viewers" watched video content online in April 2011 alone.[14] OVDs like Amazon, Hulu, iTunes, Vudu, Sezmi, Vimeo, and YouTube are experimenting with various business models as a way of meeting consumer demand to provide "more choices than ever before to consume video programming."[15] Indeed, the leaders in online video viewing are not traditional MVPDs but Google, VEVO, Yahoo!, Facebook.com, Viacom Digital, and Microsoft sites.[16]

Even with the immense growth in the OVD marketplace, the majority of commenters, including OVDs, agree with Comcast that OVD service is a complement to traditional MVPD service – a view shared by the Commission itself.[17] Netflix emphasized that "the overwhelming majority of its subscribers continue to rely on their MVPD subscriptions for sports, current season TV shows, news and other entertainment."[18] But it is undeniable that millions of consumers are availing themselves of the myriad choices that OVDs offer.

Commenters also highlighted how content providers, software developers, and consumer electronics manufacturers are all having a dramatic impact on the video landscape by offering

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14 *See* Google Comments at 2; Netflix Comments at 4; NCTA Comments at 20 (citing press Release, comScore, Inc., *comScore Releases April 2011 U.S. Online Video Rankings* (May 18, 2011)). According to comScore, the number U.S. Internet users who watched online video content grew from 172 million in April 2011 to 176 million in May 2011, with "more than 5.6 billion viewing sessions" being watched during May. *See* Press Release, comScore, Inc., *comScore Releases May 2011 U.S. Online Video Rankings* (June 17, 2011), *available at* http://www.comscore.com/Press_Events/Press_Releases/2011/6/comScore_Releases_May_2011_U.S._Online_Video_Rankings.

15 Netflix Comments at 4; s*ee* Verizon Comments at 8 ("[C]onsumers also are increasingly turning to the Internet for some or all of their video programming.").

16 *See* Press Release, comScore, Inc., *comScore Releases May 2011 U.S. Online Video Rankings* (June 17, 2011) *available at* http://www.comscore.com/Press_Events/Press_Releases/2011/6/comScore_Releases_May_2011_U.S._Online_Video_Rankings.

17 *See* Netflix Comments at 4; Google Comments at 2; Public Knowledge Comments at 6; Consumer Elec. Ass'n & Consumer Elec. Retailers Coal. ("CEA & CERC") Comments at 5; American Cable Ass'n ("ACA") Comments at 2; *see also Notice* ¶ 5 & nn.16, 38; *In re Application of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent To Assign Licenses or Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd. 4238, ¶¶ 79-85 (2011).

18 Netflix Comments at 4; *see* Google Comments at 2 ("Internet video provides a complement to expand consumer choice.").

consumers various technologies to receive Internet content on broadband-capable devices, including TVs and TV-connected devices such as Blu-ray players, game consoles, and standalone devices like those provided by Apple, Roku, Boxee, and Google.[19] Taken together, these various products and services are having an exciting effect on the way high-quality content is consumed, and as Comcast has made clear, it and other MVPDs are enabling these technologies and services.[20] Comcast's own commitment to the continued improvement of the online environment is reflected not only in Comcast's widespread deployment of DOCSIS 3.0 High-Speed Internet and offerings of 50 and even 100-plus megabit-per-second services, but also in Comcast's recent demonstration of the ability of the cable plant to power a one gigabit-per-second download connection – capable of downloading an entire season of *30 Rock* in just over 90 seconds.[21]

The competition, diversity, and choice that have emerged in today's marketplace go far beyond anything that Congress or the Commission could have imagined in 1992 or 1996. Comcast respectfully requests that the Commission's report to Congress reflect the incredible dynamism of the video marketplace and refrain from lending any sense of legitimacy to certain commenters' claims that additional regulation is needed.

III. THE COMMISSION SHOULD REJECT CERTAIN COMMENTERS' REQUESTS THAT IT INTERFERE IN THE VIDEO MARKETPLACE.

Despite the highly competitive and dynamic marketplace, certain commenters continue to use this proceeding to call for monopoly-era regulations that have no place in the Commission's

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[19] *See, e.g.*, NCTA Comments at 24.

[20] *See* Comcast Comments at 36.

[21] Press Release, Comcast Corp., *Comcast Chairman and CEO Brian L. Roberts Demonstrates 1Gbps Broadband Connection* (June 16, 2011), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1099.

report to Congress. Rather, as is clear from the record in this proceeding, in a marketplace such as this, the Commission should be looking to shed outdated regulations, not add new ones. Comcast addresses some of these ill-conceived calls for regulation in turn.

A. The Commission Should Reject Calls for New MVPD Regulations.

A La Carte. The New Jersey Division of Rate Counsel ("NJRC") once again urges the Commission to consider imposing mandatory a la carte regulations on cable operators.[22] NJRC's proposal ignores the realities of the marketplace. As Comcast, other MVPDs and programmers, and the Commission itself have found, government mandates for a la carte would result in higher prices and less program diversity for consumers.[23] NJRC does not even offer any evidence of why a la carte should be a regulatory requirement (demonstrating neither a policy need nor statutory authority), much less attempt to refute evidence of the anti-consumer impact such regulations would have. Needless to say, the Commission should ignore this proposal.

Rate Reporting and Cable Prices. Anne Arundel and Montgomery Counties, MD, along with two other Local Franchising Authorities ("LFA Commenters"), complain about cable prices, and NJRC calls for extensive reporting requirements that recall monopoly-era telephone regulation.[24] Such proposals, however, are clearly out of step with a marketplace where three,

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22 New Jersey Division of Rate Counsel ("NJRC") Comments at 8.

23 *See, e.g.*, Comcast Comments, MB Docket No. 04-207, at 23-30 (July 15, 2004); Time Warner Cable Comments, MB Docket No. 04-207, at 7-9 (July 15, 2004); A&E Television Networks Comments, MB Docket No. 04-207, at 19 (July 15, 2004); FCC, *Report on the Packaging and Sale of Video Programming Services to the Public*, Report, MB Docket No. 04-207, at 62 (Nov. 18, 2004) (after a thorough, rigorous, and objective analysis and an open and inclusive process, the Commission concluded that "government intervention through a la carte regulation likely will harm MVPDs, program networks, and especially MVPD consumers"); *cf.* Wayne Friedman, *Senate Committee Rejects McCain's A La Carte Cable Provision*, Media Daily News, June 29, 2006 (describing how the Senate Commerce Committee rejected – by a vote of 20-2 – Senator McCain's amendment that would have imposed retail a la carte, citing concerns that educational networks would be forced off the air), *available at* http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=45098.

24 *See* Anne Arundel and Montgomery Counties, Maryland et al. Comments at 10-11; NJRC Comments at 5-6, 8.

four, or even five MVPDs are competing – tooth and nail – to attract and retain subscribers. As Comcast previously has explained, a multitude of factors go into Comcast's decisions about packaging and pricing, all with an eye towards effectively competing in the marketplace.[25] Comcast continuously has improved the value proposition for its customers. As NCTA has explained, when adjusted for inflation, the "price per viewing hour" of cable service has decreased 26 percent over the last 10 years.[26] The LFA Commenters' generalized attack on cable prices as a proxy for criticizing the effective competition rules is clearly misplaced. Further, NJRC's proposals to require MVPDs to submit detailed data about rates and to have the Commission investigate every price increase would impose highly intrusive and completely unjustified regulations, given the highly competitive marketplace and Congress's express decision to largely deregulate cable services.[27]

AllVid. As explained in the comments and reply comments in response to the Commission's "AllVid" Notice of Inquiry last summer, MVPDs and consumer electronics manufacturers are already meeting the Commission's video device goals even in the absence of government mandates by innovating to meet consumers' growing demand for video on any device, over any platform.[28] This is even more true now than it was a year ago, with an

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[25] Comcast Corporation, General Electric Company, and NBC Universal, Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56, at 295 (July 21, 2010) ("Comcast-NBCUniversal Opposition and Response").

[26] *See* NCTA, *The Proper Measure of Cable's Value* (Feb. 2, 2009), *available at* http://www.ncta.com/PublicationType/MiscellaneousPublication/The-Proper-Measure-of-Cables-Value.aspx.

[27] NJRC Comments at 6-8. The Commission should similarly reject Writers Guild of America, West's ("WGAW") proposed requirement that broadband ISPs report on their bandwidth capping and management practices, "with special attention placed on those firms integrated with a cable provider." WGAW Comments at 19. The Commission already requires broadband ISPs to disclose significant information about their services and network management practices, rendering WGAW's proposal redundant at best.

[28] *See, e.g.*, Comments of NCTA, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, at 1, 6-12 (July 13, 2010) (highlighting the cable industry's initiatives to "promote investment, competition, innovation, and consumer choice in the video device marketplace, including making it easier for consumers to watch video

increasing number of applications and services that allow consumers to access video content from multiple sources on a myriad of devices.[29] Proposals by certain parties, such as the AllVid Tech Company Alliance, CEA & CERC, Google, and Writers Guild of America, West ("WGAW"),[30] for a one-size-fits-all AllVid mandate ignore the explosion of innovation in the video device marketplace in recent years, and would entangle the Commission in a regulatory morass that would increase consumer costs and delay service improvements.

Retention Marketing. Verizon once again resurrects its calls for the FCC to regulate retention marketing practices in the video business.[31] As Comcast has explained in the past, the Commission already has rebuffed Verizon on this issue in a decision that was upheld by the U.S. Court of Appeals for the D.C. Circuit and the Commission should pay no heed to it here.[32]

B. The Commission Should Reject Calls for Programming-Related Regulations.

Program Access and Program Carriage. Some commenters make general statements that the program access and program carriage rules should be expanded because vertical

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content from various sources"); Comments of Motorola, Inc., MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, at 4-10 (July 13, 2010) (describing how the marketplace "already is moving steadily toward achieving the Commission's and Congress's goals in this area" and how "technology enables[] services and devices that deliver the capability to view whatever content consumers want, when they want, on whatever device they want").

29 *See, e.g.*, NCTA Comments at 23-24 (discussing the growing array of equipment and technology for viewing Internet content on TV sets); *id.* at 21-22 (highlighting how cable operators are enabling customers to view cable programming on the Internet and on new devices); Verizon Comments at 24 ("[V]ideo service providers are all rushing to get their services on [] devices as quickly as possible, in order to better meet the growing consumer demand. The result is that consumers have a large and growing number of ways to access and consume video programming, often on multiple devices and from multiple different providers.").

30 *See* AllVid Tech Company Alliance Comments at 7-9; CEA & CERC Comments at 4; Google Comments at 7-9; WGAW Comments at 17-18.

31 *See* Verizon Comments at 20-22.

32 *See* Reply Comments of Comcast Corporation, MB Docket No. 07-269, at 28 (Aug. 28, 2009) (citing *In re Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 10704 (2008) and *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009)).

integration has increased, often referring to the Comcast-NBCUniversal transaction.[33] These statements are not based on marketplace facts, and the Commission should not heed them as a substitute for a data-driven analysis in the proceedings that already have been initiated specifically to address these issues. As NCTA explained, the percentage of vertically integrated programming networks has decreased greatly since the 1992 Cable Act.[34] Despite the combination of Comcast and NBCUniversal, and Commission attribution rules that deem a small ownership holding to create affiliation, the number of vertically integrated cable networks has declined even in the two years since the Commission sought comment in this docket.[35] Fully six out of seven of the hundreds of networks on Comcast's cable systems are unaffiliated with Comcast and NBCUniversal.[36] Moreover, there is no evidence of marketplace failure to support any additional regulation; if anything, the contrary is true. As Comcast and others have

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[33] These commenters continue to point to the Comcast-NBCUniversal transaction as somehow indicative of a decrease in the competitiveness of the video programming marketplace, threatening reasonably priced and diverse programming and increasing Comcast's and NBCUniversal's incentives to raise prices for popular programming. *See* WGAW Comments at 1-2, 13-15; NJRC Comments at 2, 9-10; *see also* Dish Network Comments at 5; Hiawatha Broadband Corp. et al. Comments at 6. The Commission, however, imposed extensive conditions (and Comcast agreed to significant commitments) that are more than sufficient to address these issues. As Comcast explained in its initial comments, in the five months since the Commission approved the transaction, the companies are fulfilling their commitments to increase diversity, innovate, and benefit consumers. To the extent that commenters like Dish Network insinuate that Comcast has anticompetitive incentives as a result of the transaction, *see, e.g.*, Dish Network Comments at 5, they are simply rehashing the same arguments they made during the transaction review proceeding, notwithstanding that the Commission has approved the transaction. NBCUniversal has every incentive to sell its programming to competitors on reasonable terms in order to get its high-quality programming to the broadest possible audience.

[34] NCTA Comments at 13.

[35] *Id.*

[36] Comcast Comments at 7. WGAW's complaint about the companies' quarterly filing on independent programming – that certain programming cited as independent comes from Warner Brothers – is completely irrelevant. For purposes of these quarterly reports, the Commission specifically (and correctly) defined independent programming as programming that is "produced by an entity unaffiliated with Comcast and/or NBCU." Further, even when the Financial Interest and Syndication rules (on which WGAW so fondly looks back) were in place, they only prevented a broadcaster from airing programming that was produced by an affiliated studio. They did not apply when the programming was produced by other vertically integrated studios, which is essentially the point that WGAW is making with respect to Warner Brothers.

demonstrated both here and in several other Commission proceedings, the marketplace evidence weighs heavily in favor of less regulation.

Bundling/Tier Placement. Certain commenters representing small and rural telco MVPDs complain that programmers "require that the telco distributors contract for carriage of all of the programmers' channels" and that programmers issue "specific mandates . . . requiring carriage on a designated level of service."[37] Comcast and NBCUniversal have described at length the benefits and efficiencies of wholesale packaging and confirmed that the companies neither engage in unlawful "tying" nor "force" MVPDs to select any particular combination or bundle of channels.[38] Upon any MVPD's request, NBCUniversal will offer any of its cable networks on a standalone basis (except with respect to the HD simulcast version of the SD networks) and will negotiate a rate that reflects the value of any such networks on a standalone basis. In fact, most MVPDs choose to carry only a subset of NBCU networks.[39] Further, these bundled packages are pro-competitive and beneficial to consumers. As the U.S. Court of Appeals for the Ninth Circuit recently found, the pervasive use of bundled discounts throughout American industries shows that they are an essential, arm's-length bargaining tool for both buyers and sellers.[40] Tier placement likewise is part of the bargained-for exchange that takes place between private parties during intense, complicated, and multifaceted negotiations. Despite claims by the National Rural Telecommunications Cooperative and the National

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37 Hiawatha Broadband Corp. et al. Comments at 3, 9; Nat'l Telecomms. Coop. Ass'n ("NTCA") et al. Comments at 5-6, 8.

38 Comcast-NBCUniversal Opposition and Response at 211-218.

39 *Id.* at 213.

40 *Cascade Health Solutions v. PeaceHealth*, 515 F.3d 883, 894 (9th Cir. 2008).

Telecommunications Cooperative Association,[41] the Commission has no authority to impose regulations on these private contractual arrangements.

C. The Commission Should Reject Calls for Regulation of Online Video.

Regulation of the OVD Marketplace. The FCC should reject proposals by DirecTV and others to impose legacy regulations, such as carriage of public interest programming, must-carry, and political advertising requirements on OVDs.[42] There is no record of any marketplace failure to warrant regulation, and the Commission has not asserted any justifiable bases of authority to impose such regulations. Comcast agrees with DirecTV that the online video marketplace is thriving, but it disagrees with DirecTV that the existence of this new marketplace gives the Commission any authority to apply, or indeed any factual support for applying, outdated regulations either to OVDs themselves,[43] or to MVPDs that interact with OVDs, as Public Knowledge suggested.[44] Other commenters seek to expand regulation of MVPDs based on the concern over MVPDs' alleged "incentive and ability" to thwart the online video marketplace and discriminate against OVDs.[45] Such fears are unfounded,[46] and the Commission should not rely on such conjecture to impose new regulations on MVPDs. As NCTA explained

41 Hiawatha Broadband Corp. et al. Comments at 9-11; NTCA et al. Comments at 8.

42 *See, e.g.*, DirecTV Comments at 20-24; Public Knowledge Comments at 8.

43 DirecTV Comments at 20-24.

44 Public Knowledge Comments at 7-8.

45 Rovi Corp. Comments at 3; Netflix Comments at 5-6.

46 As Rovi even admits, ISPs have *not* degraded OVD service. *See* Rovi Corp. Comments at 3 ("Aside from some rare cases, ISPs have not yet succumbed to this incentive."). Rovi's concern that the Commission's Open Internet rules will not prevent OVD services from being hindered are similarly unfounded. Again, there is no evidence of this occurring in the marketplace, even *without* the Open Internet rules in effect. There is similarly no evidence to support Netflix's claim that vertically integrated MVPDs simply deny OVDs access to their content. Netflix Comments at 6-7. Existing arrangements with Netflix for NBC programming demonstrate that Netflix's claim is false. *See* Don Reisinger, *NBC Brings Slew of Shows to Netflix Streaming*, Cnet, Sept. 24, 2010, *available at* http://news.cnet.com/8301-13506_3-20017517-17.html.

in its comments, and as the continued entry of online video providers and expansion of online video offerings show, cable operators are embracing – and enabling – the development of online video by providing faster download speeds and high-quality broadband service.[47]

The Commission should similarly reject Public Knowledge's proposal that the Commission extend to OVDs the rights of traditional MVPDs by issuing a declaratory ruling that MVPDs may not engage in "unfair methods of competition or deceptive acts and practices" with regard to OVDs.[48] Although facially such a regulation would seem to be relatively innocuous, the similar language in Section 628(b) of the Communications Act has been interpreted broadly and in unpredictable ways. The Commission should not subject this new, multifaceted video marketplace to such far reaching, potentially interventionist regulation in the absence of a demonstrated need that does not exist.

As explained above and as has been demonstrated in the record, the marketplace for online video is thriving; entry is easy for OVDs, and content producers have many third-party portals as well as self-distribution options from which to choose.[49] There is absolutely no record of any "unfair methods of competition or deceptive acts and practices" in the OVD marketplace.

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47 *See* NCTA Comments at 5. If MVPDs had the incentive to harm OVDs, they would not spend the time and money upgrading their broadband networks to provide the best-quality online video possible, which is exactly what Comcast and other MVPDs have done. *E.g.*, Comcast Comments at 36; NCTA Comments at 5. Indeed, every action by broadband providers over the last 15 years has *facilitated* the emergence of innovative service providers like Netflix. For example, some reports indicate that Netflix has been able to take advantage of broadband providers' networks to reduce the delivery costs of a single movie from $1 when using the U.S. Postal Service to $0.05 when delivered via broadband. *See* Emily Protalinski, *Mail Service Costs Netflix 20 Times More Than Streaming*, TechSpot, Jan. 18, 2011, *available at* http://www.techspot.com/news/42036-mail-service-costs-netflix-20-times-more-than-streaming.html.

48 If Public Knowledge wanted to *actually* seek a declaratory ruling on this issue, it knows well that the proper path is to file a petition under the Commission's rules, where such a petition could be put out for notice and public comment.

49 *See* Comcast Comments at 31-36; Verizon Comments at 8; Netflix Comments at 4 ("The OVD market is intensely competitive and subject to rapid change."); Public Knowledge Comments at 2 ("Today, consumers can access more, better content than ever before.").

Further, the Commission's authority to impose regulations pertaining to online video, a platform that was not envisioned in 1992, based on a law drafted in 1992 applying to cable operators (when DBS satellites had not yet launched, and telcos were statutorily prevented from providing video programming), is questionable, at best. Netflix correctly recognized that, if anything, the Commission should monitor the online video industry, but refrain from regulation.[50] As commenters point out, MVPDs are saddled with regulations that do not apply to OVDs, and cable operators are saddled with regulations that do not apply to DBS.[51] The Commission should respond to this situation not by extending its regulatory reach but by promptly removing regulations that have been overtaken by marketplace competition or technological change or that are otherwise obsolete or unwarranted.

"Tying" of Online Video to Cable. Claims that the TV Everywhere model "bundles" MVPD service with Internet content and negatively affects competitive online video offerings are baseless.[52] As Comcast explained in its initial comments, TV Everywhere is a pro-consumer initiative, providing more options to meet customers' viewing habits and more access to the content that customers already pay for.[53] Rather than "bundling" Internet video to a cable subscription, initiatives like Comcast's Xfinity TV online take one product – cable service – and provide subscribers with multiple formats to access that service – on TV, on demand, and online – generally at no additional cost.[54] Such arrangements, which are increasingly used by organizations such as The New York Times and The New Yorker, enable *more* content to be

[50] Netflix Comments at 1-2.

[51] *E.g.*, DirecTV Comments at 24; Comcast Comments at 38-39; NCTA Comments at 18-19.

[52] *See* Netflix Comments at 6.

[53] *See* Comcast Comments at 14.

[54] *See id.*

made available online by providing content producers with a sustainable business model to support the hefty production costs of high-quality content.[55]

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The Commission should reject these various, unwarranted calls for regulatory action, especially given that many of these issues are being addressed in pending proceedings. If anything, the Commission should be scaling back regulation, not increasing it further, so that all players in the expanding video marketplace can offer their services in a streamlined way, free of outdated and needlessly cumbersome requirements. In fact, President Obama repeatedly has called on Federal agencies to reduce unnecessary regulation, and the Commission has agreed to do its part.[56] As NCTA Chief Michael Powell recently said at the 2011 Cable Show, the cable industry "will always urge a little regulatory humility," and the Commission should "spend as much time pruning old [regulations] as . . . planting new seeds."[57]

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55 *See id.*

56 Comcast Comments at 37-38 & n.163. Chairman Genachowski recently told Chairmen Fred Upton and Greg Walden that he has initiated an effort within the Commission to "eliminate antiquated and outmoded rules that unnecessarily burden business, stifle investment and innovation, or confuse consumers and licensees." *See* Letter from Julius Genachowski, Chairman, FCC, to Fred Upton, Chairman, House Committee on Energy and Commerce & Greg Walden, Chairman, House Subcommittee on Communications and Technology 1 (June 6, 2011).

57 Michael Powell, President & CEO, NCTA, Opening Remarks at the 2011 Cable Show (June 14, 2011), *available at* http://www.ncta.com/Event/Event/Michael-Powell-Remarks-at-The-Cable-Show-2011.aspx.

IV. CONCLUSION

As Comcast stressed in its initial comments, and as the record in this proceeding confirms, the marketplace for video programming is offering more ways to access video content than ever before – for both traditional cable programming and online video content. Competition is thriving as all industry players are rapidly innovating to meet consumers' growing video needs. Comcast renews its call for the Commission to report to Congress on the extraordinary variety and ever-proliferating options available to consumers in the video marketplace and to commit itself to removing antiquated regulations that burden the cable industry.

Respectfully submitted,

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