

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 12-203
Competition in the Market for the)	
Delivery of Video Programming)	

COMMENTS OF COMCAST CORPORATION

Kathryn A. Zachem
James R. Coltharp
Regulatory Affairs

Lynn R. Charytan
Brian A. Rankin
Catherine Fox
Legal Regulatory Affairs

COMCAST CORPORATION
300 New Jersey Avenue, N.W., Suite 700
Washington, DC 20001

Daniel K. Alvarez
Mary Margaret Jackson
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006

Attorneys for Comcast Corporation

September 10, 2012

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	COMCAST IS DEVELOPING INNOVATIVE PRODUCTS AND SERVICES AND DELIVERING TO CONSUMERS MORE OF WHAT THEY DEMAND.	3
	A. Comcast Continues To Invest in Innovative New Services and Products.	5
	B. Comcast Utilizes Its State-of-the-Art Network To Deliver on the Promise of Broadband Internet Services.	14
	C. Product Bundles Allow Comcast and Other Competitors To Offer More Seamless Services To Meet Consumer Demands.	16
III.	COMCAST COMPETES AGAINST STRONG MVPD RIVALS WHO ARE ALSO INVESTING IN INNOVATIVE PRODUCTS AND SERVICES.	18
	A. DirecTV and Dish Network Have Established Themselves as Innovative, Nationwide Competitors.....	18
	B. Verizon and AT&T Have Become Major Competitive Factors in the Video Marketplace.....	21
IV.	ONLINE VIDEO IS AN INCREASINGLY POPULAR OPTION FOR MANY CONSUMERS.	24
V.	IN THIS COMPETITIVE ENVIRONMENT, REGULATORY DISPARITIES ARE UNJUSTIFIED AND SHOULD BE ELIMINATED.....	32
VI.	CONCLUSION	34

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 12-203
Competition in the Market for the)	
Delivery of Video Programming)	

COMMENTS OF COMCAST CORPORATION

Comcast Corporation (“Comcast”) hereby responds to the above-captioned Notice of Inquiry (“*Notice*”).¹ Competition, innovation, and change continue to be the hallmarks of a vibrant and dynamic video distribution marketplace. Viewers have never before had more choices for watching what they want, where they want, when they want, and on devices of their choosing. Comcast urges the Commission to report to Congress that competition in the video distribution marketplace is thriving, and that the time for removing antiquated video regulations has come.

I. INTRODUCTION AND SUMMARY

As measured by almost any metric, the marketplace for video distribution is intensely competitive and dynamic. Over 98 percent of Americans can choose from three or more multichannel video programming distributors (“MVPDs”); non-cable MVPDs gained over 1.8 million net subscribers over the course of the last 12 months; and online video consumption continues to increase at an unprecedented rate, with 184 million users watching nearly 37 billion online content videos in July 2012. Every MVPD has had to meet the competitive challenge by

¹ *In re Annual Assessment of the Status of Competition in the Market for Video Programming*, Notice of Inquiry, 27 FCC Rcd 8581 (2012) (“*Notice*”).

investing in and delivering innovative products and services to retain existing customers and attract new ones. The net result has been hugely beneficial to consumers. They have access to more content, and there are more ways to access that content and more providers distributing that content than ever before. It is a “golden age” for video.

Comcast has played a leading role in ushering in this golden age. Comcast is investing in new features and functionalities that deliver a seamless customer experience across multiple devices and platforms, all to stay competitive in this dynamic marketplace. Today, Comcast’s Xfinity cable subscribers can program their digital video recorders (“DVRs”) from their iPad, catch up on episodes of their favorite shows on their smartphones, watch live sports on their laptops, and much more. As Comcast’s President and CEO, Brian L. Roberts, noted earlier this year “[i]n 2011, we introduced more new products and features than in the prior two years combined. We have much more in store in 2012” Comcast is focused on developing innovative products and services, and making it easy for customers to take full advantage of them.

All of this innovation on Comcast’s part is both driving, and being driven by, other MVPDs’ innovations and investments. DBS and telco providers like DirecTV, Dish Network, Verizon, and AT&T all continue to invest in their services to compete with cable operators and each other. In the last year, each of these companies has *gained* subscribers, even during a slow economy and even as some traditional cable operators have *lost* video subscribers. Those four companies are now the second, third, sixth, and eighth largest MVPDs, respectively, by number of subscribers.

In addition to the fierce, facilities-based competition between and amongst MVPDs, online video distributors (“OVDs”) continue to grow in popularity. More Americans are

spending more time watching more video online than ever before. Established OVDs like Netflix and Hulu are household names nationwide; Amazon, Apple, and Google continue innovating to meet consumer demands; and low barriers to entry mean new OVDs enter the marketplace all the time, often using new technologies and experimenting with interesting new business models. Comcast has done as much as any company in the United States to help facilitate the growth and development of OVDs by developing and deploying a world-class broadband network and offering some of the fastest broadband Internet services in the United States.

Given the competitive and vibrant nature of the marketplace, now is the time for the Commission to revisit regulations adopted some twenty years ago when the only MVPD available to most Americans was the local cable operator. Many of these regulations impose burdens on cable operators that are unnecessary, impede even more robust investment and innovation, and skew marketplace competition. It is time to level the playing field. Comcast urges the Commission to report to Congress that competition in the marketplace for the delivery of video programming is thriving, and to begin the process of eliminating obsolete and competition-skewing regulations.

II. COMCAST IS DEVELOPING INNOVATIVE PRODUCTS AND SERVICES AND DELIVERING TO CONSUMERS MORE OF WHAT THEY DEMAND.

MVPDs are locked in a constant battle to provide the best services and the best value to consumers. In response to this highly competitive environment, Comcast has invested significant resources in the development and deployment of a world-class digital network that enables the delivery of innovative new products and services and improvements to its existing products and services. Toward that end, Comcast has been applying the operational efficiencies and flexibility of its digital platform to the benefit of its customers – new features and

capabilities, diverse programming, more On Demand content, and more HD channels for its cable service, and faster speeds for its broadband Internet service.²

Comcast's digitization efforts have helped drive increased subscribership to digital video and broadband services. The following chart provides subscriber information and penetration rates for the cable and broadband Internet services,³ as of June 30, 2011, and quarterly thereafter.⁴

Comcast Subscriber Data

Segment	2Q 2011	3Q 2011	4Q 2011	1Q 2012	2Q 2012
Homes and Businesses Passed (000's)	52,172	52,343	52,502	52,643	52,829
Video					
Total Video Subscribers (000's)	22,513	22,348	22,331	22,294	22,118
Video Penetration	43.2%	42.7%	42.5%	42.3%	41.9%
Digital Subscribers (000's)	20,109	20,251	20,551	20,737	20,896
Digital Penetration	89.3%	90.6%	92.0%	93.0%	94.5%
High-Speed Internet					
Subscribers (000's)	17,547	17,808	18,144	18,582	18,739
Penetration	33.6%	34.0%	34.6%	35.3%	35.5%

² See Comcast's CEO Discusses Q2 2012 Earnings Results – Earnings Call Transcript, Seeking Alpha, Aug. 1, 2012, <http://seekingalpha.com/article/770821-comcast-s-ceo-discusses-q2-2012-earnings-results-earnings-call-transcript?part=single>; Comcast Expands HDTV Lineup, Light Reading Cable, Nov. 8, 2011, http://www.lightreading.com/document.asp?doc_id=214392. Comcast has deployed 563,000 advanced boxes and has 11.2 million HD DVR customers, equal to 54 percent of its 21 million digital customers. See Comcast's CEO Discusses Q2 2012 Earnings Results – Earnings Call Transcript, Seeking Alpha, Aug. 1, 2012, *supra*.

³ To assist the Commission with its information gathering regarding MVPDs' financial performance, Comcast's most recent earnings release and trending schedule is available at <http://www.cmcsk.com/earnings.cfm>.

⁴ Notice ¶ 10.

A. Comcast Continues To Invest in Innovative New Services and Products.

The marketplace does not stand still. Competition is driving investment and innovation. To remain a leader in the video distribution marketplace, Comcast must invest and innovate in new products that deliver better services and more choice. One of the central pillars of this strategy is the evolution of the cable service: consumers want an intuitive, easy-to-use interface, they want to be able to access content on multiple devices, and they want products that easily integrate and work with their existing products and services. Consumers also want the ability to access their content over a variety of different platforms, and they want the ability to choose from a rich and diverse library of content. Comcast is working with partners throughout the industry to deliver the kind of seamless, multiplatform experience and robust content library that meets those demands.

1. *Comcast Customers Can View Their Cable Programming on a Variety of Different Devices*

Cable services have been evolving – and cable operators have been investing and innovating – ever since the first coaxial cable lines were strung. Comcast is proud to have been a leader in the cable industry’s remarkable story of investment and innovation. Since 1996, Comcast and other cable companies have invested nearly \$200 billion in converting the cable platform from one that could deliver only analog video, to one that can deliver digital video, high-definition video, 3D video, and On Demand content, in addition to new services like facilities-based voice services and broadband Internet services. Today, Comcast is focused on continuing to innovate and improve the cable service to meet customer demands for a seamless experience and the ability to use new and exciting device options.

At the heart of this effort is the cloud-enabled platform known as X1 (formerly Xcalibur). X1 is a next-generation television interface that “transforms the TV into an entirely new

integrated entertainment experience.”⁵ X1’s features include a sleek new user interface, as well as unified search and instant play of the content available on live TV, DVR recordings, and Xfinity On Demand. The companion X1 remote control app allows a customer to change channels and program a DVR with a smartphone or tablet.⁶ And, because X1 is a cloud-based platform, Comcast will have the ability to innovate faster; for example, Comcast will be able to add new features and functions without having to swap out a customer’s set-top box. Comcast has already launched X1 in Boston and Atlanta, and currently plans to deploy the platform in five additional markets by the end of 2012.⁷

Comcast also is working collaboratively with consumer electronics companies to expand the range of devices that can access linear and VOD cable programming without the need for a Comcast-supplied set-top box. Last year, Comcast reported to the Commission that it had reached an agreement with TiVo to enable TiVo’s Premiere retail CableCARD-enabled DVRs to access Comcast’s cable VOD programming.⁸ The service was launched in the Bay Area earlier this year, and will be rolled out to additional markets over time.

⁵ Press Release, Comcast Corp., *Comcast Begins National Launch of X1: Next-Generation Cloud Enabled Television Platform and Introduces The X1 Remote Control App* (May 21, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1186&SCRedirect=true>. Brian Roberts has explained that X1 is Comcast’s “next-generation, cloud-based platform that will drive our ability to innovate at Internet speed” that over time “will let us offer our customers even more personalized viewing choices and enable us to propagate new services faster, to multiple devices.” Brian L. Roberts, 2011 Annual Review: Letter to Shareholders, Apr. 20, 2012, available at http://www.comcast.com/2011annualreview/pdfs/Comcast_AR11pdf_letter.pdf?SCRedirect=true.

⁶ Press Release, Comcast Corp., *supra* note 5.

⁷ *Comcast’s CEO Discusses Q2 2012 Earnings Results*, *supra* note 2.

⁸ Comcast Corp., Comments, MB Docket No. 07-269, at 17-18 (filed June 8, 2011) (“*Comcast 2011 Comments*”). Comcast and TiVo developed an innovative solution that allows the TiVo Premiere device to use a broadband Internet connection to request VOD assets from VOD servers in the Comcast head-end to deliver those assets to the customer’s TiVo device at home – similar to how the Xfinity Remote Control app for iOS and Android devices signals to the Comcast head-end to change channels or request VOD assets. The TiVo box is a unidirectional digital cable-ready product (“UDCP”) that already has the ability to access one-way cable programming over Comcast’s cable plant via the CableCARD. However, it cannot access the return path on the cable plant, necessitating the development of this solution.

Also, earlier this year, Comcast began offering the AnyPlay device in select markets. The AnyPlay device allows the customer to stream her Xfinity cable linear programming to an iPad or Android-based tablet in and around the home, even while someone else watches a different channel on the television.⁹ The customer plugs the AnyPlay device into her WiFi router, which streams programming to the iPad or Android-based tablet over the home network.¹⁰

More recently, Comcast introduced XfinityTV on Xbox 360, a feature that converts the Xbox 360 into the equivalent of an additional set-top box on which the customer can access his cable VOD programming.¹¹ This feature is particularly remarkable because it is Comcast's first nationwide deployment of an Internet Protocol ("IP")-based cable service.¹² The evolution to IP-based cable services will allow Comcast and other cable operators to deliver traditional cable services to customers' homes more efficiently, to more devices, in innovative ways.¹³ Over time,

⁹ Mark Hess, *AnyPlay Brings Live TV to the Tablet*, Comcast Voices, Jan. 10, 2012, <http://blog.comcast.com/2012/01/anyplay-brings-live-tv-to-the-tablet.html>.

¹⁰ *Id.*

¹¹ J T. Ramsay, *Xfinity TV Comes to the Xbox 360*, Comcast Voices, Mar. 28, 2012, <http://blog.comcast.com/2012/03/xfinity-tv-comes-to-the-xbox-360.html>.

¹² Tony Werner, *The Facts About Xfinity TV and Xbox 360: Comcast Is Not Prioritizing*, Comcast Voices, May 15, 2012, <http://blog.comcast.com/2012/05/the-facts-about-xfinity-tv-and-xbox-360-comcast-is-not-prioritizing.html>. Other cable operators, including Cablevision and Time Warner Cable, are also using IP-based transmission technologies to deliver their services to retail devices. See *Cablevision Launches Laptop App, HBO GO*, Broadband Tech. Report, Apr. 23, 2012, available at <http://broadbandgear.net/2012/04/cablevision-launches-laptop-app-hbo-go/>; Richard Lawler, *Samsung will offer access to TV, VOD from Time Warner & Comcast on its Galaxy Tab, TVs*, engadget.com, Jan. 6, 2011, available at <http://www.engadget.com/2011/01/06/samsung-teams-up-to-access-tv-vod-from-time-warner-and-comcast-on/>. And some MVPDs, like AT&T and hundreds of rural telcos, rely solely on IP for the delivery of their MVPD services. See, e.g., NECA, *Trends 2010: A Report on Rural Telecom Technology* 12 (2010), available at <https://www.neca.org/cms400min/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4892&libID=4912>.

¹³ Delivering cable services to more devices using IP has long been a policy goal of the Commission. See, e.g., *In re Video Device Competition*, Notice of Inquiry, 25 FCC Rcd 4275 ¶ 27 (2010) ("IP is the de facto standard protocol for data transmission, and current and next-generation audio-visual equipment is capable of handling IP communication. As a widely adopted protocol, IP is familiar to hardware and software developers, which would allow the retail market to flourish for smart video devices.").

this evolution will accelerate the rollout of new features, improve service reliability, and drive down costs, providing cable customers with more value for their entertainment dollar.¹⁴

2. Comcast Is Delivering More Content On A Multiplatform Basis.

In addition to investment and innovation aimed at improving the existing cable service, Comcast is developing new ways to satisfy consumers' demands to have access to video content across multiple platforms. Since the Commission last sought comment on the status of competition in the video distribution marketplace, Comcast has deployed a number of new products that allow consumers to tailor their viewing to their particular needs or preferences in simple, intuitive ways, delivering greater value to customers and driving competition in the marketplace.

In February 2012, Comcast launched Xfinity Streampix, a new, traditional VOD *and* Internet streaming video service that enables Comcast's cable customers to view movies and TV shows anytime as both a traditional cable VOD service on their TVs, and as streaming video on an authenticated basis on online platforms and mobile devices.¹⁵ The amount of television content available on Streampix has grown by almost 300 percent in the six months since it was launched.¹⁶ Today, customers can choose from thousands of popular television series and movies, all available instantly via their cable set-top box or on Internet-connected TVs,

¹⁴ Comcast is also integrating additional features and capabilities to the cable TV experience. For example, in May 2012, Comcast launched Skype on Xfinity – an HD video calling experience – across many major markets. Customers who subscribe to both Xfinity cable and Internet may make and receive video calls from their TV in HD picture quality, as well as send and receive instant messages via Skype while watching TV at the same time. Press Release, Comcast Corp., *Comcast Brings Family and Friends Closer Together with the Launch of Skype on Xfinity* (May 16, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1183&SCRRedirect=true>.

¹⁵ Press Release, Comcast Corp., *Comcast Launches New Streaming Video Service: Xfinity Streampix* (Feb. 21, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1156&SCRRedirect=true>.

¹⁶ Tony Lenoir, *Streampix Nearly Triples TV Catalog in First 6 Months*, SNL Kagan, July 27, 2012, available at <http://www2.snk.com/interactivex/article.aspx?id=15415699&KPLT=6>.

computers, tablets, and smartphones.¹⁷ Content partners for Streampix include Disney-ABC, NBCUniversal, Sony Pictures, Warner Brothers, and Cookie Jar Entertainment.¹⁸ Streampix is included as part of the package for many triple- and double-play subscribers, as well as separately for a monthly fee for customers subscribing to other video packages.¹⁹

Comcast also has expanded the amount of content available online on an authenticated basis as part of its TV Everywhere initiative. Today, Comcast offers more than 200,000 programming choices on XfinityTV.com, and 8,000 hours of video content is available through the XfinityTV App for iOS and Android-based devices.²⁰ Earlier this year, Comcast and Disney announced a collaborative effort to create exciting new viewing experiences across multiple platforms using the latest technology and cloud innovation.²¹ This collaboration is the first of its kind to combine both video on demand (“VOD”) and live linear network feeds. As a result of this joint effort, Xfinity cable customers can access linear and on-demand ESPN and Disney

¹⁷ *Id.*

¹⁸ Press Release, Comcast Corp., *supra* note 15.

¹⁹ *Id.*

²⁰ Press Release, Comcast Corp., *Xfinity TV Viewers Can't Get Enough Bridesmaids, Tosh.0, Spongebob Squarepants and Beyoncé* (Feb. 21, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1154&SCRedirect=true>. Additionally, Comcast and other cable operators have entered into a research and development joint venture with Verizon Wireless (the “Joint Venture”) aimed at developing products that could help to expand the universe of options for smartphones and other wireless and mobile devices. *See In re Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses*, Memorandum Opinion & Order and Declaratory Ruling, FCC 12-95, ¶ 143 (rel. Aug. 23, 2012) (noting that the Joint Venture “may create incentives for important innovations and integrated offerings – both by the parties to the [Joint Venture] and by their competitors in response – that might not be developed, or developed as quickly, in the absence of such focused collaboration”).

²¹ Press Release, Comcast Corp., *The Walt Disney Company and Comcast Corporation Announce a Long-Term, Comprehensive Distribution Agreement that Advances the Successful Multichannel Business Model* (Jan. 4, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1142&SCRedirect=true>.

programming across multiple platforms and on multiple devices;²² this includes access to programming from Disney Channel, Disney XD and Disney Junior.²³ More recently, Comcast announced that customers can watch CNN and HLN live online, and can watch Cinemax content on the Cinemax MAX GO website or on iOS and Android devices through the Cinemax MAX GO app.²⁴ And in July 2012, Comcast and Scripps announced a long-term distribution agreement that provides Xfinity cable customers with online and mobile access to content from popular networks like Food Network, HGTV, and Travel Channel.²⁵

Comcast showcased its commitment to providing easy access to popular content during the 2012 London Olympic Games. Comcast and other MVPDs partnered with NBCUniversal to offer MVPD subscribers the most Olympics coverage ever – “every minute of every medal on every screen” – with more than 5,535 hours of programming available live or on-demand, across multiple platforms, and, for the first time, in 3D.²⁶ Xfinity cable customers alone viewed nearly

²² Press Release, Comcast Corp., *WatchESPN Now Available to Comcast XFINITY TV Customers Through WatchESPN App and Soon On XFINITYTV.com* (May 8, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1181>; J T. Ramsay, *Xfinity TV Brings More of the Most Live Sports*, Comcast Voices (Aug. 10, 2012), <http://blog.comcast.com/2012/08/xfinity-tv-brings-more-of-the-most-live-sports.html>.

²³ Press Release, Comcast Corp., *Disney/ABC Television Group and Comcast to Premiere Innovative Disney-Branded Authenticated TV+ Services to Comcast Xfinity TV Customers* (June 14, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1191&SCRedirect=true>; J T. Ramsay, *Comcast Brings Live Disney Channels to Xfinity.com/tv*, Comcast Voices (Aug. 23, 2012), <http://blog.comcast.com/2012/08/comcast-brings-live-disney-channels-to-xfinitycomtv.html>.

²⁴ J T. Ramsay, *Xfinity Customers Get Live CNN and HLN on Xfinity.com/tv and Access to Cinemax MAX GO*, Comcast Voices (June 1, 2012), <http://blog.comcast.com/2012/06/xfinity-customers-get-live-cnn-and-hln-on-xfinitytvcom-and-access-to-cinemax-max-go-app.html>.

²⁵ Press Release, Comcast Corp., *Comcast and Scripps Networks Interactive Reach Long-Term, TV Everywhere Distribution Agreement for Xfinity TV Customers* (July 16, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1201>.

²⁶ Press Release, Comcast Corp., *Comcast's Xfinity TV Brings Customers NBCUniversal's Coverage of 2012 London Summer Olympic Games July 25 – August 12* (July 23, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1204&SCRedirect=true>. Importantly, the benefits of that effort accrued to the customers of every single MVPD that partnered with NBCUniversal, not just Comcast's customers.

50 million streams, 22 million of which were On Demand, representing a nearly 700 percent increase compared to the 2010 Vancouver Games.²⁷ And Xfinity cable customers who viewed Olympic coverage online used an average of 2.4 different devices.²⁸

Comcast's Xfinity On Demand platform continues to grow, both in terms of the number of titles that consumers view and the number of titles that are available. Xfinity cable customers viewed nearly five billion On Demand titles in 2011 alone, making 2011 the year with the most On Demand views in the service's history.²⁹ In less than a decade, customers have viewed over 23 billion On Demand titles.³⁰ Comcast continues to increase the number of choices available, from about 740 selections when the service was first introduced to more than 30,000 choices available at any given time today.³¹

3. Comcast is Delivering More Diversity in Programming Content.

As part of its efforts to build attractive products and services, Comcast is constantly seeking to expand the diversity of its offerings. Since its last report to the Commission, Comcast has announced the launch of several independent and diverse networks, and expanded its carriage of other independent networks.

Comcast announced in July 2011 that it had expanded carriage of eight Hispanic networks by about 14 million subscribers.³² Comcast currently provides more than 60 Hispanic

²⁷ Matt Strauss, *The London Games: Memorable Moments on Many Devices*, Comcast Voices (Aug. 15, 2012), <http://blog.comcast.com/2012/08/the-london-games-memorable-moments-on-many-devices.html>.

²⁸ *Id.*

²⁹ Press Release, Comcast Corp., *supra* note 20.

³⁰ *Id.*

³¹ *Id.*

³² Press Release, Comcast Corp., *Comcast To Expand Carriage of Hispanic Networks to Additional 14 Million Subscribers* (July 26, 2011), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1104&SCRedirect=true>. The

or Spanish-language networks on most of its major cable systems.³³ Comcast also has announced carriage of a new independent network, BBC World News,³⁴ and increased the carriage of diverse networks such as Africa Channel, Mnet, MYX TV, and TVOne.³⁵

This past February, Comcast announced that it had reached carriage agreements with two majority African-American-owned networks and two majority American Hispanic-owned networks to be launched between now and January 2014.³⁶ Two of those networks – BabyFirst Americas and Magic Johnson’s ASPIRE Network – have already launched, and are broadly carried on Comcast systems across the country.³⁷ Comcast also recently announced new carriage agreements to expand distribution of the Oprah Winfrey Network, OWN, by three million viewers and gmc TV (formerly Gospel Music Channel), and to launch both the Spanish- and English-language versions of beIN Sport, a soccer-focused network.³⁸

networks are: Azteca America, Galavision, Hispanic Information & Telecommunications Network, LATV, mun2, Telefutera, Telemundo, and Univision.

³³ *Id.*

³⁴ Comcast Corp. and NBCUniversal Media, LLC, Annual Report of Compliance with Transaction Conditions, MB Docket No. 10-56, at 7 (filed Feb. 28, 2012) (“2012 Annual Compliance Report”).

³⁵ *Id.* at 38. Comcast expanded carriage of Africa Channel to two million homes, Mnet to three million homes with a further planned expansion to another one million subscribers in 2012, and TVOne to 600,000 homes. *Id.*

³⁶ Press Release, Comcast Corporation, *Comcast Announces Agreements with Four New Minority-Owned Independent Networks* (Feb. 21, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1155&SCRedirect=true>.

³⁷ Press Release, BabyFirst Americas, *BabyFirst Americas Launches on Comcast’s Xfinity TV* (May 17, 2012), available at <http://finance.yahoo.com/news/babyfirst-americas-launches-comcasts-xfinity-120300870.html>; J. T. Ramsay, *Magic Johnson’s ASPIRE Network Goes Live*, Comcast Voices (June 28, 2012), <http://blog.comcast.com/2012/06/magic-johnsons-aspire-network-goes-live.html>.

³⁸ Todd Cunningham, *Oprah Winfrey Network, Comcast Cut New Distribution Deal*, The Wrap, Apr. 1, 2012, available at <http://www.thewrap.com/tv/article/oprah-winfrey-network-comcast-cut-new-distribution-deal-report-36696>; Press Release, GMC TV, *gmc Announces Time Warner Cable and Comcast Launches* (June 30, 2011), available at <http://www.watchgmctv.com/news/press/gmc-announces-time-warner-cable-and-comcast-launches>. *Comcast Agrees To Carry New beIN Sport Network*, Associated Press Sports, Aug. 23, 2012, available at <http://nbcsports.msnbc.com/id/48772406/ns/sports-soccer/>.

In addition to offering a growing and diverse number of linear programming options, Comcast continues to showcase diverse and niche programming on its Xfinity On Demand and other platforms:

- Comcast has increased the number of Telemundo and mun2 programming choices available on Xfinity On Demand, including access to popular full-length episodes of programs like *12 Corazones*, *Casa Cerrado*, *La Casa de al Lado*, *Mi Corazón Insiste*, *Decisiones*, and *Pa'lante con Cristina*.³⁹
- In September 2011, Comcast introduced its first multiplatform Hispanic film festival in celebration of Hispanic Heritage Month, featuring award-winning, Spanish-language independent films from Latin America and Spain, available via Xfinity On Demand and online.⁴⁰
- Comcast recognized LGBT Pride Month with a collection of LGBT programming, including award-winning movies, documentaries, and TV shows, available to all Xfinity TV subscribers across Comcast's On Demand and online platforms.⁴¹
- Comcast supported the Tribeca Film Festival by making films set to be screened at the festival available On Demand and online, sometimes even before the films had debuted at the Festival.⁴²
- Comcast also helped celebrate Asian-Pacific America Heritage Month with a collection of 350 entertainment choices that highlight Asian American and Pacific Islander culture and contributions, available On Demand and online.⁴³

³⁹ 2012 Annual Compliance Report, *supra* note 34, at 15.

⁴⁰ Press Release, Comcast Corp., *Comcast Introduces Its First Multiplatform Hispanic Film Festival, Offering Award-Winning Movies for Free to Xfinity Digital Customers on Xfinity On Demand and Xfinity.com/LatinoTV* (Sept. 15, 2011), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1116&SCRedirect=true>.

⁴¹ Press Release, Comcast Corp., *Xfinity TV Launches New LGBT On Demand Destination in Celebration of Pride Month* (June 1, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1190&SCRedirect=true>.

⁴² Press Release, Comcast Corp., *Comcast and Tribeca Film Bring Xfinity TV Customers Special Access to 11th Annual Tribeca Film Festival* (Apr. 11, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1172&SCRedirect=true>.

⁴³ Press Release, Comcast Corp., *Xfinity TV Celebrates Asian-Pacific American Heritage Month* (May 7, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1180&SCRedirect=true>.

Comcast continues to find ways to expand the growing library of content that is available to its customers.

Even as Comcast adds new content to increase the diversity of its content library, its overall level of vertical integration declined when NBCUniversal completed the sale of A&E Television Networks.⁴⁴ Upon completion of the transaction, the number of national programming networks that are deemed to be affiliated with cable operators fell, the number of cable-affiliated networks in the top 20 by subscribership fell to four, and the number of cable-affiliated networks in the top 20 by average prime-time ratings fell to three.⁴⁵

B. Comcast Utilizes Its State-of-the-Art Network To Deliver on the Promise of Broadband Internet Services.

Since broadband Internet services were first introduced, Comcast has been an industry leader in providing among the fastest, most reliable broadband Internet services in the United States. As part of its commitment to delivering the best broadband Internet experience, Comcast has increased available speeds seven times in the last nine years, all while the price of the service has declined in real terms.⁴⁶ Comcast recently *doubled* the speeds for two of its existing speed tiers in certain markets – from 25 to 50 Mbps and from 50 to 105 Mbps – at no additional cost.⁴⁷

⁴⁴ See generally NBCUniversal Media, LLC, *SEC Form 8-K Current Report* (Aug. 22, 2012), available at http://www.sec.gov/Archives/edgar/data/902739/000095010312004308/dp32389_8k.htm; Comcast Corp., *SEC Form 8-K Current Report* (July 10, 2012), available at <http://www.cmcsa.com/secfiling.cfm?filingid=950103-12-3539>.

⁴⁵ Using the Commission's methodology in the *Notice*, which treats HD feeds as if they were separate networks, there are seventeen A&E networks that are no longer vertically integrated with NBCUniversal post-transaction. See *Notice*, app. B, Table B-1; see also Comcast Corp. and NBCUniversal Media, LLC, Reply Comments, MB Docket. Nos. 12-68, 07-18, 05-192, at 5 n.12 (filed July 23, 2012) (noting that the percentage of cable-affiliated networks would drop from 14.4 percent to 12.3 percent).

⁴⁶ Comcast's CEO Discusses Q2 2012 Earnings Results – Earnings Call Transcript, *supra* note 2.

⁴⁷ Press Release, Comcast Corp., *Comcast Doubles Speeds of Two Xfinity Internet Speed Tiers at No Additional Cost to Consumers* (July 24, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1205&SCRedirect=true>.

And Comcast has announced plans to launch Xfinity Platinum Internet, an ultra-fast speed tier, throughout its northeast division footprint. This tier will allow customers to enjoy download speeds of 305 Mbps and upload speeds of 65 Mbps.⁴⁸

In addition to improving the services available within its existing footprint, Comcast is committed to increasing the deployment of its state-of-the-art network and the adoption of its industry-leading broadband Internet services. In 2011, Comcast expanded its existing broadband network by 2,044 miles, and extended its broadband plant to nearly 200,000 homes.⁴⁹ Comcast also upgraded its infrastructure to provide broadband Internet service to 33 rural communities in California, Florida, Michigan, New Mexico, Pennsylvania, and Virginia.⁵⁰ And, through July, Comcast's 2012 broadband expansion has added 957 miles and an additional 106,531 homes passed.

Comcast's adoption efforts are second-to-none. Comcast's Internet Essentials program is a groundbreaking effort to address the most common problems associated with lack of broadband adoption – digital literacy, relevance, and affordability⁵¹ – and it has become a model that others are emulating.⁵² In its first year, Internet Essentials has helped almost 100,000 families – an estimated 400,000 individuals – adopt broadband.⁵³

⁴⁸ *Id.*

⁴⁹ *2012 Annual Compliance Report, supra* note 34, at 29.

⁵⁰ *Id.*

⁵¹ *See* Federal Communications Commission, Connecting America: The National Broadband Plan (2010); Comcast Corp., Annual Compliance Report on *Internet Essentials*, The Comcast Broadband Opportunity Program, MB Docket No. 10-56, at 2 (filed July 31, 2012) (“*Annual Compliance Report on Internet Essentials*”).

⁵² *See, e.g.*, Chairman Julius Genachowski, Remarks on Broadband Adoption (Nov. 9, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310918A1.pdf (describing Comcast as “an early and important leader with their Internet Essentials Initiative” and outlining the Connect To Compete program, which mirrors Internet Essentials with \$10 per month broadband Internet service and reduced rates for equipment and software); Chairman Julius Genachowski, Remarks at Comcast Internet Essentials Event (Sept. 20, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309693A1.pdf (“The program will prepare the next

As the Internet Essentials program enters its second year, Comcast is working to make sure even more Americans adopt broadband. In April 2012, Comcast announced that it would expand the initial eligibility criteria to include families with children eligible to receive reduced price school lunches – an additional 300,000 families.⁵⁴ This brings the total number of families eligible for the program up to 2.3 million.⁵⁵

Comcast also is improving the service that it is offering as part of the Internet Essentials program. Earlier this year, Comcast doubled the speed of the broadband Internet service from 1.5 Mbps to 3 Mbps without an adjustment in price.⁵⁶ And in July 2012, Comcast launched a redesigned “Learning Center,” which provides customers with basic resources and tools on how to explore and use the Internet, taking advantage of such on-air talent as NBC’s Al Roker, and Telemundo’s Jose Dias-Balart.⁵⁷

C. Product Bundles Allow Comcast and Other Competitors To Offer More Seamless Services To Meet Consumer Demands.

Comcast, like most other cable operators, offers its services both on a standalone basis and as a part of product bundles.⁵⁸ As Comcast has explained in the past, promotional and

generation, create new opportunities for more jobs and will make a positive difference in the lives of many Americans. . . . I challenge other service providers . . . to take concrete steps to promote broadband adoption.”).

⁵³ David L. Cohen, *Nearly 100,000 Families or 400,000 Low-Income Americans Are Now Online Thanks to Internet Essentials*, Comcast Voices (Aug. 15, 2012), <http://blog.comcast.com/2012/08/nearly-100000-families-or-400000-low-income-americans-are-now-online-thanks-to-internet-essentials.html>.

⁵⁴ The original eligibility criteria was limited to families with children eligible to receive *free* school lunches. See *Annual Compliance Report on Internet Essentials*, *supra* note 51, at 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at 4.

⁵⁷ Press Release, Comcast Corp., *Comcast Launches New Internet Essentials Online Learning Center, Adds New Social Media Section, Navigation Enhancements and Educational Videos* (July 19, 2012), available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=1203&SCRedirect=true>,

⁵⁸ The *Notice* seeks information about promotional pricing practices and bundling of services, asking how bundles affect competition and the price charged for video services. *Notice* ¶¶ 14, 28. The *Notice* also seeks

bundled pricing is commonplace in the MVPD marketplace – as in every other competitive industry – and it benefits consumers.⁵⁹

Customers who buy multiple services enjoy significant savings. At the end of 2011, 37 percent of video customers purchased cable, Internet, and voice services.⁶⁰ At the end of the second quarter 2012, almost 40 percent of video customers purchased all three services, and almost 75 percent took at least two.⁶¹ And Comcast’s agreement with Verizon Wireless will allow it to offer consumers “quad-play” bundles – TV, Internet, digital voice, and wireless.⁶² By introducing a high-quality mobile option for its customers, Comcast can compete more effectively with other MVPDs that are able to offer consumers a similar one-stop-shop option for all of their communications needs.⁶³

information about wholesale pricing practices such as volume discounts. *Notice* ¶ 25. As Comcast has made clear, volume discounts in general are a healthy and positive marketplace practice – one that is extremely common in the video distribution marketplace and has Congress’s blessing. *See* Comcast Corp. and NBCUniversal Media, LLC, Reply Comments, MB Docket. Nos. 12-68, 07-18, 05-192, at 19-21 (filed July 23, 2012).

⁵⁹ *See Comcast 2011 Comments, supra* note 8, 18-19.

⁶⁰ Comcast Corp., 2011 Annual Review Highlights, Cable Communications, at 3, *available at* http://www.comcast.com/2011annualreview/pdfs/Comcast_AR11pdf_highlights.pdf?SCRedirect=true.

⁶¹ *Comcast’s CEO Discusses Q2 2012 Earnings Results – Earnings Call Transcript, supra* note 2.

⁶² Initially, Comcast will act as a sales agent for the mobile wireless service, but, in the future, Comcast may exercise an option to offer a mobile wireless service of its own as a mobile virtual network operator (“MVNO”). *See* Jeff Baumgartner, *Q&A: Comcast’s Cathy Avgiris, Hooking up with Verizon Wireless*, Light Reading Cable, Feb. 29, 2012, *available at* http://www.lightreading.com/document.asp?doc_id=217927&site=lr_cable; Comcast Corp., Xfinity and Verizon Wireless Offers, Frequently Asked Questions, <http://www.comcast.com/corporate/vanity/wirelessfaqs.html> (last visited Sept. 10, 2012); Press Release, Verizon Wireless, *Verizon Wireless and Comcast Team Up in Illinois and Northwest Indiana To Deliver Great Video Entertainment, Communications and Internet Experiences* (Apr. 30, 2012), *available at* <http://news.verizonwireless.com/news/2012/04/pr2012-04-27b.html>.

⁶³ DirecTV has partnered with telecommunications providers, including AT&T and CenturyLink, to provide customers with triple- and quad-play offerings. Dish has similar partnerships, even while it is exploring offering its own bundled services using repurposed satellite spectrum and satellite-based high-speed broadband. Triple- and quad-play packages have also proven popular with telco consumers; as of the second quarter of this year, Verizon and AT&T have both reported that nearly three fourths of their subscribers take triple- or quad-play packages. *See* Press Release, DirecTV, Inc., *AT&T and DIRECTV Sign Three-Year Extension Agreement to Deliver AT&T / DIRECTV Service to AT&T Customers* (Nov. 3, 2011), *available at* <http://news.directv.com/2011/11/03/att-and-directv-sign-three-year-extension-agreement-to-deliver-att-directv-service-to-att-customers/>; CenturyLink, Inc.,

III. COMCAST COMPETES AGAINST STRONG MVPD RIVALS WHO ARE ALSO INVESTING IN INNOVATIVE PRODUCTS AND SERVICES.

Today, Comcast faces competition from a variety of different players, using different technologies and offering different features and different content, in a marketplace that has changed radically since 1992. DBS providers DirecTV and Dish Network have maintained their status as the second and third largest MVPDs in the country. And telephone companies, including Verizon and AT&T – today the sixth and eighth largest MVPDs, respectively – offer video services in much of the country. Tellingly, total subscriptions for DBS and telco MVPD services increased in each of the last two years, while overall cable subscribership has declined.⁶⁴

A. DirecTV and Dish Network Have Established Themselves as Innovative, Nationwide Competitors.

DirecTV and Dish Network, the two largest DBS providers, offer their services throughout the United States. For several years now, the number of consumers subscribing to DBS services has increased; DirecTV and Dish Network today serve approximately 33.8 percent of MVPD subscribers nationwide.⁶⁵ And the individual company numbers also reflect the competitive nature of the marketplace. In 2011, DirecTV added nearly 700,000 net customers,

DirecTV Through CenturyLink, <http://www.centurylink.com/home/tv/> (last visited Sept. 10, 2012); DISH Network Corp., *High-Speed Internet Services Offered*, <http://www.dishconnectcenter.com/> (currently listing Verizon, AT&T, Clear, EarthLink, CenturyLink, Windstream, Frontier, and TDS Telecom); Alex Sherman, *Dish Network Said to Plan Nationwide Satellite Broadband*, Bloomberg (Aug. 16, 2012), <http://www.bloomberg.com/news/2012-08-15/dish-network-said-to-plan-nationwide-satellite-broadband-service.html>; *Verizon Wireless Posts Record-High Margin*, *infra* note 83, and *AT&T Reports 10 Percent Earnings Growth*, *infra* note 84.

⁶⁴ The top two DBS providers, DirecTV and Dish Network, added 897,000 subscribers between Q2 2010 and Q2 2012, and the top two telco providers, Verizon and AT&T, added 2,912,000 subscribers during the same time. See tables *infra* at 20 and 23.

⁶⁵ See Ian Olgeirson, Mari Rondeli, & Tony Lenoir, *Video Losses Moderate in Q2, Multichannel Penetrations Dip*, SNL Kagan (Aug. 13, 2012) (estimating 33.9 million DBS subscribers and 100.45 million total multichannel video subscriptions in Q2 2012).

despite a lackluster economy.⁶⁶ And DirecTV has experienced more net subscriber gains in 2012, and now reports nearly 20 million subscribers.⁶⁷ For its part, Dish Network has added almost 100,000 new subscribers between the fourth quarter 2011 and the second quarter 2012.⁶⁸

To assist the Commission in its information gathering, the chart below summarizes DBS subscriber counts since the second quarter 2011, and includes the most recent 2012 data:⁶⁹

DBS Subscribers

Subscribers (000's)	2Q 2011	3Q 2011	4Q 2011	1Q 2012	2Q 2012
DirecTV	19,433	19,760	19,885	19,966	19,914
Dish Network	14,056	13,945	13,967	14,071	14,061
Total DBS	33,489	33,705	33,852	34,037	33,975

DirecTV continues to use programming and other features to distinguish itself from competitors. For example, DirecTV claims to have the most HD programming of any MVPD, offering over 170 HD channels.⁷⁰ And the company has rolled out a variety of innovative

⁶⁶ Press Release, DirecTV, Inc., *DIRECTV Announces Fourth Quarter and Full Year 2011 Results* (Feb. 16, 2012), available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=649162>.

⁶⁷ Press Release, [DirecTV](http://www.directv.com), Inc., *DIRECTV Announces Second Quarter 2012 Results* (Aug. 2, 2012), available at <http://investor.directv.com/releasedetail.cfm?ReleaseID=697550>.

⁶⁸ Compare Press Release, DISH Network Corp., *DISH Network Reports Fourth Quarter and Year End 2011 Financial Results* (Feb. 23, 2012), available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=650844> with Press Release, DISH Network Corp., *DISH Network Announces Second Quarter 2012 Financial Results* (Aug. 8, 2012), available at <http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=699102>.

⁶⁹ See Ian Olgeirson, Mari Rondeli, & Tony Lenoir, *supra* note 65.

⁷⁰ DirecTV, Inc., *DISH Network Claims They Have More HD Channels Than DIRECTV? Is This True?*, http://support.directv.com/app/answers/detail/a_id/2783/~/~dish-network-claims-they-have-more-hd-channels-than-directv%3F-is-this-true (last visited Sept. 10, 2012).

technologies, including a DVR that can record five programs concurrently,⁷¹ an online service that gives customers the ability to watch certain programming remotely on a variety of devices,⁷² and an app that allows customers to watch certain programming live via an iPad.⁷³

DirecTV also has invested in exclusive programming to differentiate itself from its competitors. For example, DirecTV is experimenting with original programming, announcing in May that it has ordered ten episodes of the drama *Rogue* that will be available only on DirecTV's Audience Network.⁷⁴ DirecTV also continues to have an exclusive relationship with NFL Sunday Ticket, giving it the only license for out-of-market NFL games. DirecTV lowered the price of its Sunday Ticket package this year, and is offering it free to new customers for a year in an attempt to broaden its audience.⁷⁵

Dish Network also is responding to marketplace competition with improved products and services. Dish Network claims to offer over 200 HD channels.⁷⁶ It has integrated Sling Media technology into its devices, enabling customers to view all of the programming available to them

⁷¹ DirecTV, Inc., *Home Media Center HD DVR*, http://www.directv.com/DTVAPP/content/technology/hmc_receiver (last visited Sept. 10, 2012).

⁷² DirecTV, Inc., *DIRECTV Everywhere – Watch Online*, http://www.directv.com/entertainment/watch_online (last visited Sept. 10, 2012).

⁷³ DirecTV, Inc., *Technology – iPad App*, http://www.directv.com/DTVAPP/content/technology/mobile_apps/ipad (last visited Sept. 10, 2012).

⁷⁴ Press Release, DirecTV, *DirecTV's Audience Network Goes 'ROGUE'* (May 10, 2012), available at <http://news.directv.com/2012/05/10/directvs-audience-network-goes-rogue/>.

⁷⁵ Alex Sherman, *DirecTV Lowering Price of NFL Sunday Ticket to Lure Users*, Bloomberg, Apr. 19, 2012, available at <http://www.bloomberg.com/news/2012-04-19/directv-lowering-price-of-nfl-sunday-ticket-to-lure-users.html>.

⁷⁶ DISH Network Corp., *Over 200 HD Channels on DISH*, DISHTV Blog (July 2, 2012), <http://dishtv.com/blog/2012/07/02/over-200-hd-channels-on-dish/>. However, DirecTV and some commentators have disputed Dish's methodology. See, e.g., *supra* note 70; Phillip Swann, *Dish Network Gets Caught In '200 Channel' Scam*, TVPredictions.com (Apr. 20, 2010), <http://www.tvpredictions.com/dishbozle042010.htm>.

at home, whether stored on a DVR or airing live, over any Internet connection on their computer, tablet, or smartphone.⁷⁷

Both DirecTV and Dish Network also have continued to increase their movie and television offerings online. DirecTV advertises online access to over 7,000 shows and movies,⁷⁸ and Dish Network advertises over 28,000 shows and movies through its Dish Online product⁷⁹ available via both computer and mobile devices.⁸⁰

B. Verizon and AT&T Have Become Major Competitive Factors in the Video Marketplace.

In parallel with the strong growth experienced by DBS providers, telco MVPDs have continued to expand and draw customers at a rapid pace. The two largest telco providers, Verizon and AT&T, are now the sixth and eighth largest MVPDs in the United States.⁸¹ As of the second quarter of 2012, the two companies provided service to over 8.6 million subscribers.⁸²

⁷⁷ DISH Network Corp., *TV Everywhere Technology*, <http://www.dish.com/technology/tv-everywhere/> (last visited Sept. 10, 2012). Dish has also introduced a new DVR functionality – called “Hopper” – that, among other things, offers viewers the ability to watch programs with or without commercials. DISH Network Corp., *Hopper*, <http://www.dish.com/technology/hopper/> (last visited Sept. 10, 2012). However, numerous content producers, including NBCUniversal, have pursued legal action against Dish Network on the grounds that the Hopper violates their copyrights. *See e.g., NBC Studios L.L.C. v. Dish Network Corp.*, No. 12-04536 (C.D. Cal. May 24, 2012); *Fox Broad. Co. v. Dish Network L.L.C.*, No. 12-04529 (C.D. Cal. May 24, 2012); *CBS Broad. Inc. v. Dish Network Corp.*, No. 12-04551 (C.D. Cal. May 24, 2012).

⁷⁸ DirecTV, Inc., *DIRECTV Everywhere*, http://www.directv.com/DTVAPP/content/technology/directv_everywhere (last visited Sept. 10, 2012).

⁷⁹ DISH Network Corp., *Movies*, <http://www.dish.com/entertainment/movies/> (last visited Sept. 10, 2012).

⁸⁰ *See supra* notes 78-79.

⁸¹ NCTA, *Top 25 Multichannel Video Programming Distributors as of Mar. 2012*, <http://www.ncta.com/Stats/TopMSOs.aspx> (last visited Sept. 10, 2012). Although AT&T and Verizon are the two biggest telcos offering MVPD services, a number of other telcos, such as CenturyLink, also provide MVPD services and have reported varying levels of success. For example, CenturyLink noted that in the 2nd quarter of 2012 it “[e]xpanded the number of Prism TV subscribers by 11% in second quarter 2012 from first quarter 2012 and increased penetration of available homes in our markets to more than 9%.” CenturyLink, News Release, *CenturyLink Reports Second Quarter 2012 Earnings*, at 2 (Aug. 8, 2012), available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDc2MjgwIENoaWxkSUQ9NTA4NzY4fFR5cGU9MQ==&t=1>.

⁸² *See table infra* at 23.

Verizon added over 700,000 video subscribers in 2011 and 300,000 video subscribers in the first half of 2012, resulting in a subscriber base of 4.5 million video customers, and increased its penetration rate from 29.9 percent in the second quarter 2011 to 32.6 percent in the second quarter 2012.⁸³ AT&T also experienced strong growth over the last year, adding over 800,000 video subscribers in 2011 and over 350,000 video subscribers in the first half of 2012, resulting in a subscriber base of 4.1 million video customers.⁸⁴ AT&T increased its penetration rate to 17.3 percent in the second quarter 2012,⁸⁵ up from 15.5 percent in the second quarter 2011.⁸⁶

To assist the Commission in its information gathering, the chart below summarizes telco subscriber counts since the second quarter 2011, and includes the most recent 2012 data:⁸⁷

⁸³ Press Release, Verizon Commc'ns Inc., *Verizon Reports Double-Digit Earnings Growth and Increased Operating Cash Flow in First-Quarter 2012* (Apr. 19, 2012), available at <http://newscenter.verizon.com/press-releases/verizon/2012/verizon-reports-double-digit.html>; Press Release, Verizon Commc'ns Inc., *Verizon Reports Continued Double-Digit Earnings Growth and Strong Operating Cash Flow in Second-Quarter 2012* (July 19, 2012), available at http://www22.verizon.com/investor/news_verizon_reports_continued_doubledigit_earnings_growth_and_strong_operating_cash_flow_in_secondquarte.htm.

⁸⁴ Press Release, AT&T Inc., *Solid Growth in Earnings, Revenues and Margins, and \$4.7 Billion Returned to Shareholders Highlight AT&T's First-Quarter Results* (Apr. 24, 2012), available at <http://www.att.com/gen/press-room?pid=22629&cdvn=news&newsarticleid=34116&mapcode=corporate|financial>; Press Release, AT&T Inc., *AT&T Reports 10 Percent Earnings Growth, Strong Revenue and Margin Gains and Best-Ever Wireless Margins and Churn In Second-Quarter Results* (July 24, 2012), available at <http://www.att.com/gen/press-room?pid=23091&cdvn=news&newsarticleid=34898&mapcode=corporate|financial>.

⁸⁵ See *AT&T Reports 10 Percent Earnings Growth*, *supra* note 84.

⁸⁶ Press Release, AT&T Inc., *AT&T Reports Strong Wireless Gains, Record Mobile Broadband Sales and Continued Strength in U-verse and Strategic Business Services in Second-Quarter Results* (July 21, 2011), available at <http://www.att.com/gen/press-room?pid=20404&cdvn=news&newsarticleid=32231>.

⁸⁷ See Ian Olgeirson, Mari Rondeli, & Tony Lenoir, *supra* note 65.

Telco Subscribers

Subscribers (000's)	2Q 2011	3Q 2011	4Q 2011	1Q 2012	2Q 2012
Verizon	3,848	3,979	4,173	4,353	4,473
AT&T	3,407	3,583	3,791	3,991	4,146
Total Telco	7,255	7,562	7,964	8,344	8,619

The speed with which Verizon and AT&T have grown is a reflection of their marketing muscle and competitive offerings. Verizon offers over 145 HD channels and over 35,000 VOD titles.⁸⁸ Verizon's "Flex View" feature allows subscribers to download or stream over 20,000 on-demand titles to a computer or mobile device, and to upload their own audiovisual content for remote viewing as well.⁸⁹ Verizon also provides streaming of a selection of live channels to game consoles, like the Xbox, and other Internet-connected devices, such as Samsung's Smart TV and Smart Blu-ray player.⁹⁰

Likewise, AT&T continues to expand its offerings. Today, AT&T offers over 170 HD channels and on-demand access to over 250,000 programs, movies, and music videos.⁹¹ And AT&T's customers can access this content on smartphones, tablets, and computers.⁹² Like Verizon, AT&T has developed a feature that allows customers to use their Xbox 360s to watch

⁸⁸ Verizon Commc'ns Inc., *FiOS TV Channels*, <http://www22.verizon.com/home/fiostv/channels/> (last visited Sept. 10, 2012).

⁸⁹ Verizon Commc'ns Inc., *Watch On Demand & Stream TV and Movies*, <http://www22.verizon.com/home/fiostv/channels/#ondemand> (last visited Sept. 10, 2012).

⁹⁰ Verizon Commc'ns Inc., *Compare FiOS TV to Cable TV Providers*, <http://www22.verizon.com/home/fiosTV/> (last visited Sept. 10, 2012).

⁹¹ AT&T Inc., *AT&T U-verse*, <http://uverseonline.att.net/uverse/tv> (last visited Sept. 10, 2012).

⁹² AT&T Inc., *App for Smartphones*, <http://uverseonline.att.net/uverse/uverse-mobile-app> (last visited Sept. 10, 2012).

linear channels and view VOD selections.⁹³ AT&T also offers set-top boxes with a feature called Multiview which allows the concurrent display of four channels on the screen,⁹⁴ as well as set-top boxes that communicate with the television wirelessly.⁹⁵

IV. ONLINE VIDEO IS AN INCREASINGLY POPULAR OPTION FOR MANY CONSUMERS.

The video distribution marketplace continues to be influenced and affected by the proliferation of online video in ways that Congress never could have envisioned when it passed the 1992 Cable Act. Online video enables the consumption of a vast amount of content in innovative ways, with relatively low barriers to entry and significant flexibility to experiment with innovative business models and take advantage of new technologies and devices.⁹⁶

More and more Americans are turning to online video, largely to supplement their traditional video viewing. In July 2012 alone, 184 million users watched nearly 37 billion online content videos.⁹⁷ Netflix, the largest OVD with almost 24 million subscribers, added almost 2.3

⁹³ AT&T Inc., *AT&T U-verse TV for Xbox 360*, <http://www.att.com/u-verse/explore/xbox-receiver.jsp> (last visited Sept. 10, 2012). AT&T temporarily suspended its Xbox 360 service, in October 2011, saying that it was revamping the product to “improve and enhance this functionality.” Todd Spangler, *AT&T Suspends U-verse TV on Xbox Option To Re-Engineer Kit*, Multichannel News, May 13, 2012, available at [http://www.multichannel.com/article/484484-AT T Suspends U verse TV On Xbox Option To Re Engineer Kit.php](http://www.multichannel.com/article/484484-AT-T-Suspends-U-verse-TV-On-Xbox-Option-To-Re-Engineer-Kit.php).

⁹⁴ *AT&T U-verse TV Multiview*, <http://www.att.com/u-verse/explore/multiview-landing.jsp#fbid=gzukHziXVoV> (last visited Sept. 10, 2012).

⁹⁵ AT&T Inc., *AT&T U-verse Wireless Receiver*, <http://www.att.com/u-verse/explore/wireless-receiver.jsp> (last visited Sept. 10, 2012).

⁹⁶ Nielsen, *The Cross-Platform Report, Quarter 4 2011-US*, at 6 (2012).

⁹⁷ Press Release, comScore, Inc., *comScore Releases July 2012 U.S. Online Video Rankings* (Aug. 17, 2012), [http://www.comscore.com/Press Events/Press Releases/2012/8/comScore Releases July 2012 U.S. Online Video Rankings](http://www.comscore.com/Press%20Events/Press%20Releases/2012/8/comScore%20Releases%20July%202012%20U.S.%20Online%20Video%20Rankings). The record for the number of online videos viewed was set in December 2011, when users watched 43.5 billion online videos. Screen & Stream, *Another Viewing Record*, <http://screenandstream.com/2053/jan-2012-comscore/> (Jan. 18, 2012).

million subscribers in the first half of 2012.⁹⁸ Netflix's subscriber count eclipses that of the largest MVPD, Comcast, by almost two million subscribers.

Other OVDs continue to grow, both in terms of the number of users and the amount of usage they are experiencing. In January 2012, Hulu reported that it attracted 30 million unique monthly users,⁹⁹ and its Hulu Plus offering had more than 1.5 million paying subscribers.¹⁰⁰ By March, Hulu attracted over 31 million unique viewers who watched over 1 billion videos.¹⁰¹ And in April, Hulu Plus had more than 2 million paying subscribers.¹⁰² Amazon, Google, and others continue to grow, as well.¹⁰³

⁹⁸ See Netflix, Inc., *Q1 2012 Letter to Shareholders*, at 1 (Apr. 23, 2012), available at [http://ir.netflix.com/common/download/download.cfm?companyid=NFLX&fileid=562104&filekey=9ebb887b-6b9b-4c86-aeff-107c1fb85ca5&filename=Investor Letter Q1 2012.pdf](http://ir.netflix.com/common/download/download.cfm?companyid=NFLX&fileid=562104&filekey=9ebb887b-6b9b-4c86-aeff-107c1fb85ca5&filename=Investor+Letter+Q1+2012.pdf); Netflix, Inc., *Q2 2012 Letter to Shareholders*, at 2 (July 24, 2012), available at [http://ir.netflix.com/common/download/download.cfm?companyid=NFLX&fileid=585175&filekey=818f7f39-011e-4227-ba2f-7d30b8ad3d23&filename=Investor Letter Q2 2012 07.24.12.pdf](http://ir.netflix.com/common/download/download.cfm?companyid=NFLX&fileid=585175&filekey=818f7f39-011e-4227-ba2f-7d30b8ad3d23&filename=Investor+Letter+Q2+2012+07.24.12.pdf).

⁹⁹ Hulu, *Hulu – About*, http://www.hulu.com/about/executive_team (last visited Sept. 10, 2012); Jake Coyle, *Internet To Get A Lot More Interesting*, Wash. Times, Jan. 29, 2012, available at <http://www.washingtontimes.com/news/2012/jan/29/internet-to-get-a-lot-more-entertaining/?page=all>.

¹⁰⁰ Jason Kilar, *2011, 2012 and Beyond*, Hulu Blog (Jan. 12, 2012), <http://blog.hulu.com/2012/01/12/2011-2012-and-beyond/>. Hulu announced that, in reaching 1.5 million paying subscribers, Hulu Plus became the fastest video subscription service to reach this milestone in U.S. history. Hulu Plus' rate of growth continues to soar, attracting on average more than 2 times the number of subscribers each day when compared to 2010. *Id.*

¹⁰¹ Press Release, comScore, Inc., *ComScore Releases March 2012 U.S. Online Video Rankings* (Apr. 9, 2012), available at [http://www.comscore.com/Press Events/Press Releases/2012/4/comScore Releases March 2012 U.S. Online Video Rankings](http://www.comscore.com/Press+Events/Press+Releases/2012/4/comScore+Releases+March+2012+U.S.+Online+Video+Rankings).

¹⁰² Amy Chozick & Brian Stelter, *An Online TV Site Grows Up*, N.Y. Times, Apr. 16, 2012, available at http://www.nytimes.com/2012/04/17/business/media/hulu-the-online-tv-site-adds-original-programming.html?_r=2&pagewanted=all.

¹⁰³ Compare Press Release, comScore, Inc., *comScore Releases July 2011 U.S. Online Video Rankings* (Aug. 22, 2011), available at [http://www.comscore.com/Press Events/Press Releases/2011/8/comScore Releases July 2011 U.S. Online Video Rankings](http://www.comscore.com/Press+Events/Press+Releases/2011/8/comScore+Releases+July+2011+U.S.+Online+Video+Rankings) with Press Release, comScore, Inc., *comScore Releases July 2012 U.S. Online Video Rankings* (Aug. 17, 2012), available at [http://www.comscore.com/Press Events/Press Releases/2012/8/comScore Releases July 2012 U.S. Online Video Rankings](http://www.comscore.com/Press+Events/Press+Releases/2012/8/comScore+Releases+July+2012+U.S.+Online+Video+Rankings) (showing that in July 2012, visitors to Google sites, including YouTube, spent an average of nine hours watching almost 20 billion videos, compared with an average of less than six hours watching just over 3 billion videos).

Customers are viewing online video on a wide array of devices and platforms. Nearly one-third of broadband households are using their televisions to view online videos, according to a recent report.¹⁰⁴ The same report observed that 4 percent of U.S. households purchased a video media receiver – such as an Apple TV or Roku device – for online video consumption over the 2011 holiday season.¹⁰⁵ Cisco reported that mobile video traffic was more than half of all wireless data traffic by the end of 2011 and is expected to soar 25-fold between 2011 and 2016.¹⁰⁶

The marketplace is driving parties to innovate and invest in more content and new device options for consumers viewing content online. Examples of such developments include:

- **Netflix.** Netflix has been focused on building its content library, announcing a number of content deals last fall, including with DreamWorks Animation,¹⁰⁷ Discovery Communications,¹⁰⁸ AMC Networks,¹⁰⁹ Disney,¹¹⁰ and the CW network,¹¹¹ in addition to

¹⁰⁴ Mike Reynolds, *Study: One-Third of U.S. Households Watch TV Via Internet*, Multichannel News, Feb. 17, 2012, available at http://www.multichannel.com/article/480725-Study_One_Third_of_U_S_Households_Watch_TV_Video_via_Internet.php.

¹⁰⁵ *Id.*

¹⁰⁶ Todd Spangler, *Mobile Video Now More Than Half of Wireless Traffic: Cisco*, Multichannel News, Feb. 14, 2012, available at http://www.multichannel.com/article/480529-Mobile_Video_Now_More_Than_Half_Of_Wireless_Traffic_Cisco.php.

¹⁰⁷ Netflix's deal with DreamWorks was heralded by the companies as "the first time a major Hollywood supplier has chosen Web streaming over pay television." Brooks Barnes & Brian Stelter, *Netflix Secures Streaming Deal with DreamWorks*, N.Y. Times, Sept. 25, 2011, available at <http://www.nytimes.com/2011/09/26/business/media/netflix-secures-streaming-deal-with-dreamworks.html?pagewanted=all>.

¹⁰⁸ Paul Thomasch, *Netflix, Discovery in Streaming Deal for TV Shows*, Reuters, Sept. 21, 2011, available at <http://www.reuters.com/article/2011/09/21/us-netflix-discovery-idUSTRE78K1W620110921> (noting that the deal was the "first major move by Discovery to make full episodes of its TV shows available for instant streaming").

¹⁰⁹ Jennifer Saba, *Netflix Strikes Agreement with AMC for Zombie Show*, Reuters, Oct. 7, 2011, available at <http://www.reuters.com/article/2011/10/07/us-netflix-idUSTRE7963K520111007>.

¹¹⁰ In its deal with Disney, Netflix acquired streaming rights for additional TV shows from ABC Studios, Disney Channel, and ABC Family in addition to renewing rights for every episode of ABC shows like "Lost," "Ugly Betty," "Grey's Anatomy," and "Desperate Housewives." Maneesha Tiwari & Alistair Barr, *Netflix, Amazon Sign Content Deals with Disney*, Reuters, Oct. 31, 2011, available at <http://www.reuters.com/article/2011/10/31/us-netflixdisney-idUSTRE79U0O420111031>.

its agreement with NBCUniversal. Netflix has an estimated 60,000 titles available for streaming.¹¹² In addition to licensing content, Netflix is also devoting resources to producing new, exclusive content, including a new season of *Arrested Development*.¹¹³

- **Hulu.** Hulu has dramatically expanded the content available to both Hulu and Hulu Plus users, adding 40 percent more and 105 percent more content, respectively.¹¹⁴ Like Netflix, Hulu has commissioned original series and licensed 13 television series that will only be available on Hulu.¹¹⁵ In addition to an expanded content library, Hulu Plus users are now able to stream content to a variety of screens, including smart TVs, and popular devices like Apple's iPad, iPhone, and iPod Touch; Microsoft's Xbox 360; Amazon's Kindle Fire; Barnes and Noble's Nook Tablet; and multiple Android tablets.¹¹⁶ Hulu Plus users are also able to stream content to their TVs through Nintendo's Wii game console, with plans to make Hulu Plus available to the Nintendo 3DS later this year.¹¹⁷
- **Amazon Prime.** Amazon announced several content deals to expand its Amazon Prime Instant Video service, including with CBS, Disney, Viacom, and Discovery,¹¹⁸ in

¹¹¹ Tim Molloy, *Netflix, CW Sign 4-Year Deal to Stream Shows*, Reuters, Oct. 13, 2011, available at <http://www.reuters.com/article/2011/10/13/idUS77575804120111013>.

¹¹² Daniel Frankel, *Amazon Adds Depth to Prime with MGM Deal*, Paid Content, June 13, 2012, available at <http://paidcontent.org/2012/06/13/amazon-adds-depth-to-prime-with-mgm-deal/>.

¹¹³ Ryan Lawler, *The Future of Netflix Isn't Just Streaming – It's Original Programming*, Gigaom, Apr. 17, 2012, available at <http://gigaom.com/video/netflix-original-programming/>. Other original programming series available only on Netflix include *Lillyhammer*, a story about a New York City gangster who ends up in the Witness Protection Program in Norway, *House of Cards*, a David Fincher-Kevin Spacey project based on the British novel and miniseries; *Orange is the New Black*, a series by *Weeds* creator Jenji Kohan about a woman in a minimum security prison; and *Hemlock Grove*, led by Eli Roth and starring Famke Janssen. *Id.*

¹¹⁴ Kilar, *supra* note 100.

¹¹⁵ Chozick & Stelter, *supra* note 102.

¹¹⁶ Rajiv Makhijani & Zachary Pinter, *Hulu Plus Arrives on Seven Android Tablets. With a Brand New Style*, Hulu Blog (Mar. 29, 2012), <http://blog.hulu.com/2012/03/29/hulu-plus-arrives-on-seven-android-tablets-with-a-brand-new-style-2/>; Dallas Mahrt, *Hulu Plus Arrives on Apple TV*, Hulu Blog, July 31, 2012, available at <http://blog.hulu.com/2012/07/31/hulu-plus-arrives-on-apple-tv/>.

¹¹⁷ George Winslow, *Hulu Plus Plays on Wii Console*, Multichannel News, Feb. 16, 2012, available at http://www.multichannel.com/article/480678-Hulu_Plus_Plays_on_Wii_Console.php.

¹¹⁸ Under its agreement with CBS, Amazon now licenses older CBS-owned television shows like "Frasier," "Cheers," and "Star Trek," and makes them available to Amazon Prime customers. Meg James & Ben Fritz, *CBS Corp. Licenses Older Shows to Amazon.com*, L.A. Times Company Town (July 20, 2011), <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2011/07/cbs-corp-licenses-older-shows-to-amazon.html>. And its deal with Discovery Communications provides content from Discovery Channel, TLC, Animal Planet, Investigation Discovery, Science, and Military Channel. *Id.* Amazon also has recently announced partnerships with Warner Brothers and MGM. See Jon Fox, *Exclusive Content Coming to Amazon Prime Instant Video*, IGN Entertainment, July 20, 2012, available at <http://www.ign.com/articles/2012/07/20/exclusive-content-coming-to-amazon-prime-instant-video>.

addition to a content deal with NBCUniversal that allows Amazon Prime customers to stream popular Universal Pictures movies.¹¹⁹ Amazon recently announced that its Prime Instant Video library has reached 22,000 titles, an increase from 5,000 titles at launch and a 70 percent increase in titles this year alone, with 96.4 percent of its titles viewed each week.¹²⁰ This is in addition to the over 120,000 movies and TV episodes available for rent or purchase on Amazon.¹²¹ And Amazon recently announced that Prime members will now be able to access Amazon Prime's Instant Video service on the iPad.¹²²

- **Roku.** Roku has announced that it will use a \$45 million investment round to develop new digital media devices and services. Roku has also launched the Roku LT, a streaming-media set-top box that costs \$49.¹²³ It has access to over 300 'channels' (such as Amazon Instant Video, Disney, Netflix, Hulu Plus, and HBO Go). Roku is launching the Roku Streaming Stick in Fall 2012.¹²⁴ The Streaming Stick plugs into TVs and has built-in WiFi to allow customers to connect it to a wireless network in order to access Roku's channels and control Roku with the TV remote.¹²⁵
- **Apple.** Earlier this year, Apple introduced a new iteration of its Apple TV device, "featuring 1080p programming including iTunes movies and TV shows, Netflix, Vimeo, photos and more in HD."¹²⁶ And Apple's iCloud service, introduced in October 2011, allows consumers to purchase a video on one device, such as the Apple TV, and watch

¹¹⁹ Press Release, Amazon.com, Inc., *Amazon Announces Digital Video License Agreement with NBCUniversal Domestic TV Distribution* (July 28, 2012), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1590224>.

¹²⁰ Press Release, Amazon.com, Inc., *Amazon Prime Crosses Big Milestone: More Items Are Now Shipped with Prime Free Two-Day Shipping Than with Free Super Saver Shipping* (Aug. 27, 2012), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1728753>.

¹²¹ Amazon.com, Inc., *Amazon Instant Video on Playstation 3*, <http://www.amazon.com/gp/feature.html?ie=UTF8&docId=1000778121> (last visited Sept. 10, 2012).

¹²² Brian Barrett, *Why Apple TV Just Became Apple's Most Important Product*, Gizmodo, Aug. 2, 2012, available at <http://gizmodo.com/5931185/why-apple-tv-just-became-apples-most-important-product>.

¹²³ See Carol Mangis, *Roku Announces \$49 Box with HBO Go*, ConsumerReports.org, Oct. 11, 2011, available at <http://news.consumerreports.org/electronics/2011/10/roku-announces-49-box-with-hbo-go.html>.

¹²⁴ "Roku's first step in expanding its platform from streaming players to Smart TVs and other devices connected to the TV." Press Release, Roku, *Roku Raises \$45 Million from News Corporation, BSKyB and Others* (July 26, 2012), available at http://www.roku.com/Libraries/Press_Releases/Roku_Series_E_Press_Release.sflb.ashx?download=true.

¹²⁵ See Roku, *The Roku Streaming Stick*, <http://www.roku.com/streamingstick> (last visited Sept. 10, 2012).

¹²⁶ Press Release, Apple, Inc., *Apple Brings 1080p High Definition to New Apple TV* (Mar. 7, 2012), available at <http://www.apple.com/pr/library/2012/03/07Apple-Brings-1080p-High-Definition-to-New-Apple-TV.html>

the video on any other device, including iPads and iPhones.¹²⁷ Apple's iTunes Store now provides customers with access to 45,000 movies¹²⁸ and 90,000 TV episodes.¹²⁹

- **Google.** Google is working across a variety of platforms to bring more content to more screens. It utilizes Google Play, a cloud-based entertainment store with more than 600,000 choices including movies, music, books, magazines, and games.¹³⁰ In mid-July, Google announced that it was adding thousands of episodes of cable and broadcast TV shows from top studios, including NBCUniversal, ABC Studios, and Sony Pictures.¹³¹ And Google's YouTube appears fully committed to its shift from user-generated content to more long-form, traditional video content, including by funding its own, original content.¹³²
- **Vudu.** In March 2012, Walmart and Vudu announced an in-store "disc-to-digital" service, allowing customers to bring DVD and Blu-ray movies from participating studios (including Paramount, Sony, Fox, Universal, and Warner Brothers) to Walmart stores and, for a small fee, receive digital access to their titles on any Internet-connected device through vudu.com. For an additional fee, customers can "upgrade" their DVD movies to HD digital copies.¹³³
- **Paramount.** Paramount launched an online UltraViolet streaming and download service, which allows customers to purchase or rent films and store a copy in the cloud. Movies may be streamed from the cloud to Internet-connected Apple iOS phones and tablets.¹³⁴
- **DISHWorld.** In May 2012, Dish Network began offering an over-the-top Internet service that delivers a package of international channels to users' Roku devices or their

¹²⁷ *Id.* ("With iCloud, you can buy movies and TV shows on Apple TV and watch them on your iPhone, iPad, iPod touch, Mac, or PC.").

¹²⁸ *Apple's CEO Discusses Q2 2012 Results – Earnings Call Transcript*, Seeking Alpha, Apr. 24, 2012, <http://seekingalpha.com/article/524451-apple-s-ceo-discusses-q2-2012-results-earnings-call-transcript>.

¹²⁹ Press Release, Apple, Inc., *supra* note 126.

¹³⁰ Andy Rubin, *Android @I/O: the playground is open*, Google Official Blog, (June 27, 2012), <http://googleblog.blogspot.com/2012/06/android-io-playground-is-open.html#!/2012/06/android-io-playground-is-open.html>.

¹³¹ *Id.*

¹³² Francis Bea, *Google goes 'all in' on original TV content with funding for Machinima*, DigitalTrends, May 22, 2012, available at <http://www.digitaltrends.com/home-theater/google-goes-all-in-on-original-web-tv-content-with-funding-for-machinima/>.

¹³³ Press Release, Vudu, Walmart to Unlock America's Favorite Movies with Exclusive Disc-to-Digital Service (Mar. 13, 2012), available at http://www.vudu.com/disc_to_digital_press_release.html.

¹³⁴ See Jeff Chabot, *Paramount Launches Online UltraViolet Streaming and Download Service*, HDReport, Jan. 26, 2012, available at <http://www.hd-report.com/2012/01/26/paramount-launches-online-ultraviolet-streaming-download-service>.

PC or Macs.¹³⁵ Subscribers can access popular programming in the Arabic, Bangla, Brazilian, Hindi, Tamil, Telugu, and Urdu languages. Notably, this is an online-only offering; no authentication or satellite subscription is required.

Emerging online video services continue to push the envelope to deliver content to consumers. Some of the more aggressive models have given rise to legal challenges, but nevertheless demonstrate that low barriers to entry and innovation strongly characterize this marketplace. Examples of these emerging services include:

- **Aereo.** Despite substantial questions regarding the legality of the service, Aereo, an Internet television service backed by Barry Diller and IAC/InterActiveCorp, announced that it launched a service in New York City that streams live and recorded broadcast television to phones, tablets, and Internet-connected TVs.¹³⁶
- **Redbox.** Redbox has announced that it is partnering with Verizon to launch an online media-streaming service called Redbox Instant.¹³⁷ The multiplatform subscription service will have both an online streaming and download component. It will offer access to newly released movie DVDs and Blu-Rays through Redbox's 36,800 nationwide kiosks.
- **FreeCast.com.** FreeCast.com now offers Facebook users an app to watch web-based television channels directly within Facebook for free. According to FreeCast.com, the content originates from TV and cable networks, YouTube, Vimeo, movie channels, and

¹³⁵ Haseeb Ali, *DISH Expands IPTV Services*, SNL Kagan, Aug. 28, 2012, available at <http://www.snl.com/InteractiveX/article.aspx?CDID=A-15711151-12600&KPLT=4>; Jim Funk, *DISHWorld Launches on Roku*, Roku Blog, May 22, 2012, available at <http://blog.roku.com/blog/2012/05/22/dishworld-on-roku/>.

¹³⁶ Brian Stelter, *New Service Will Stream Local TV Stations in New York*, N.Y. Times Media Decoder, Feb. 14, 2012, <http://mediadecoder.blogs.nytimes.com/2012/02/14/new-service-will-stream-local-tv-stations-in-new-york/> (quoting IAC/InterActiveCorp's Barry Diller); Todd Spangler, *Aereo Wait-Lists New Yorkers on Internet TV Service*, Multichannel News, Mar. 14, 2012, available at <http://www.multichannel.com/article/481827-Aereo-Wait-Lists-New-Yorkers-On-Internet-TV-Service.php>. NBCUniversal is one of a number of plaintiffs who have sued Aereo, arguing that the streaming service violates their copyrights. *See id.* In July, a federal judge denied plaintiffs' request for a preliminary injunction; plaintiffs filed an expedited appeal before the U.S. Court of Appeals for the Second Circuit. *See CBS Broadcasting, Inc. v. Aereo, Inc.*, No. 12-2807 (2d Cir. July 30, 2012) (order granting expedited appeal schedule), available at <http://www.ipinbrief.com/wp-content/uploads/2012/08/2d-circuit-expediting.pdf>.

¹³⁷ *See* Lauren Indvik, *Look Out, Netflix: Verizon and Redbox Gear Up to Launch Competitor*, Mashable, July 24, 2012, available at <http://mashable.com/2012/07/24/redbox-instant-by-verizon>.

radio stations.¹³⁸ The company has subsequently announced plans to begin offering paid programming and a set-top box.¹³⁹

- **Intel.** Even companies that are well-established in other industries see an opportunity to provide video services online. According to the *Wall Street Journal*, Intel is planning to become a “virtual cable operator,” with a service that would offer consumers a bundle of TV channels over the Internet. Intel is reportedly developing its own set-top box to deliver the service.¹⁴⁰

Today, online services primarily complement, rather than supplement, traditional MVPD services.¹⁴¹ For example, Netflix has asserted that its licensing of back seasons of TV programs can dramatically increase the audience for a new premiere, noting that the audience for AMC’s *Mad Men* premiere was 20 percent higher than the prior season’s following the introduction of the back seasons on Netflix.¹⁴² Comcast welcomes new participants into the online video space, and it helps to enable their success by offering a robust broadband Internet service, as well as through the licensing deals offered by NBCUniversal to OVDs on a commercial basis (and pursuant to the NBCUniversal conditions).

¹³⁸ Wayne Friedman, *Facebook App Screens Web TV*, Online Media Daily, Dec. 8, 2011, available at <http://www.mediapost.com/publications/article/163804/facebook-app-screens-web-tv.html>.

¹³⁹ Kyle Moulder, *FreeCast.com Grows, Readies Launch of “a la carte TV”*, FreeCast.com Blog (July 18, 2012), <http://freecast.com/news-blog/2012/07/18/freecast-com-grows-readies-launch-of-%E2%80%9Ca-la-carte-tv%E2%80%9D/>.

¹⁴⁰ Sam Schechner & Don Clark, *The New Cable-TV Guy: Intel*, Wall St. J., Mar. 13, 2012. “The entry of Intel – with its large bankroll – into over-the-top video would add another potentially serious competitor to the traditional pay-TV services, as consumers face a growing number of options for receiving video content over broadband from the likes of Netflix, Apple, Amazon.com and others.” Todd Spangler, *Intel Cooking Up Internet TV Service: Report*, Multichannel News, Mar. 12, 2012, available at <http://www.multichannel.com/article/481728-Intel-Cooking-Up-Internet-TV-Service-Report.php>.

¹⁴¹ See *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4269 ¶ 79 (2011).

¹⁴² See Netflix, Inc., *Q2 2012 Letter to Shareholders*, *supra* note 98, at 3.

V. IN THIS COMPETITIVE ENVIRONMENT, REGULATORY DISPARITIES ARE UNJUSTIFIED AND SHOULD BE ELIMINATED.

The Commission's 15th Report to Congress will describe the status of the marketplace in 2012 – twenty years after Congress passed the 1992 Cable Act. That legislation was designed to regulate a marketplace perceived by many to be dominated by monopoly cable operators providing shoddy service to customers and demanding anticompetitive concessions from partners and affiliates.¹⁴³

The Commission itself has recognized the complete transformation that the marketplace has experienced since that time. In 1992, “most consumers had the limited choice of receiving over-the-air broadcast television stations or subscribing to service from their local cable provider.”¹⁴⁴ Today, 98.5 percent of consumers can choose from three or more MVPDs, in addition to traditional broadcast stations, and some consumers even have access to as many as five MVPDs.¹⁴⁵ As the Commission's recent competition report attests, all of those MVPDs are being driven by competitive forces to innovate and invest in services and products that give consumers more choice, more control, and more ease of use. This is the competitive marketplace at work.

Reexamining and removing antiquated regulation to more accurately align with today's competitive marketplace is precisely what President Obama has instructed the Commission to

¹⁴³ See H.R. Rep. No. 102-628, at 25 (1992) (“Since passage of the [1984] Cable Act, however, competition to cable from alternative multichannel video technologies largely has failed to materialize. At the same time, consumer complaints about high and rising cable rates and poor customer service practices have become widespread. . . . The [current] legislation will protect consumers by preventing unreasonable rates, by improving the cable industry's customer service practices, and by sparking the development of a competitive marketplace.”).

¹⁴⁴ Notice ¶ 3.

¹⁴⁵ *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, ¶¶ 27, 40 (2012).

do, and what the Commission has committed to doing.¹⁴⁶ In light of the robust and competitive marketplace that exists today, rules that encumber MVPDs are due for review. In particular, the Commission should review whether regulations that apply solely to cable operators but not to other MVPDs – like program access, leased access, channel occupancy, multiple dwelling units, basic tier rates, encryption, and navigation devices – need to be rescinded. The U.S. Court of Appeals for the D.C. Circuit observed over three years ago that: “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.*”¹⁴⁷ In other words, these regulations are increasingly outdated and unnecessary, as the underlying justification for regulating cable operators differently has eroded.

¹⁴⁶ On three separate occasions, President Obama has issued Executive Orders that seek to eliminate unnecessary regulation. *See* Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011); Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 14, 2011); Exec. Order No. 13,610, 77 Fed. Reg. 28,467 (May 14, 2012). Chairman Genachowski has stated that he will respect and support Executive Order 13,579 (Regulation and Independent Regulatory Agencies). *See* News Release, FCC, *Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies* (July 11, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachment/DOC-308340A1.pdf. On May 18, 2012, the Commission adopted its Final Plan for Retrospective Analysis of Existing Rules in compliance with Executive Order 13,579.

¹⁴⁷ *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009) (emphasis added).

VI. CONCLUSION

For the foregoing reasons, Comcast urges the Commission to report to Congress that competition in the marketplace for video distribution is thriving, and the time is right for Congress and the Commission to revisit outdated rules and regulations designed for an entirely different marketplace.

Daniel K. Alvarez
Mary Margaret Jackson
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006

Attorneys for Comcast Corporation

Respectfully submitted,

/s/ Kathryn A. Zachem
Kathryn A. Zachem
James R. Coltharp
Regulatory Affairs

Lynn R. Charytan
Brian A. Rankin
Catherine Fox
Legal Regulatory Affairs

COMCAST CORPORATION
300 New Jersey Avenue, N.W., Suite 700
Washington, DC 20001

September 10, 2012