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	)	

REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") hereby replies to the comments submitted in response to the above-captioned Further Notice of Inquiry ("*Notice*").[1] The record demonstrates conclusively that the marketplace for video distribution is vibrant and highly competitive. Contrary to the claims of some commenters, there simply is no justification for expanding regulations. In fact, the Commission should report to Congress that, given the competitiveness of the marketplace, it is time to revisit and remove outdated rules that skew market forces, deter investment, and stifle innovation.

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

The record in this proceeding demonstrates that competition, investment, and innovation are flourishing in today's video distribution marketplace. The facts presented to the Commission paint a picture of healthy competition: DBS and telco market shares continue to grow;[2] new programming networks continue to emerge, while vertical integration between video

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

2 *See* Comcast Comments at 1 (noting that non-cable MVPDs gained more than 1.8 million net subscribers during the last year); NCTA Comments at 3 (noting that cable's share of the marketplace has continued to diminish while the percentage of customers purchasing MVPD service from DBS and telco providers continues to rise).

programmers and distributors continues to decline;[3] and online platforms continue to provide new opportunities for consumers to access content.[4] Over the past year, the marketplace has "produced significant consumer benefits, including more choices of video service providers, greater diversity in the delivery of programming, expanded investment in broadband, and more competitive packages and prices."[5] Even commenters seeking to use this forum to further their own business interests at the expense of consumers and competition or to gain unwarranted regulatory advantage over their competitors admit that "competition has continued to grow."[6]

In today's hyper-competitive marketplace, MVPDs must continue to innovate to attract new customers and keep existing ones. As many commenters noted, consumers today demand the ability to view video content on their own terms.[7] Broadcasters and MVPDs have responded by making on-demand and live TV content accessible on subscribers' tablets, smartphones, laptops, and other devices, so consumers can watch the programming they want whether they are at home or on the go, on the devices of their choosing.[8]

To meet or exceed evolving consumer demands, MVPDs also continue to invest in their infrastructure and network technologies,[9] enhanced DVR capabilities (*e.g.*, "whole home" options),[10] and high-quality, diverse programming and HD channel line-ups.[11] And MVPDs are

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3 *See* NCTA Comments at 8-10.

4 *See*, *e.g.*, Netflix Comments at 2-6.

5 AT&T Comments at 1.

6 *Id.*; *see also* Verizon Comments at 1 ("The continued rollout of competitive video services by Verizon and other newer entrants in the video marketplace – some facilities-based and others over-the-top – continues to expand the choices available to consumers and encourage increased innovation.").

7 *See* Comcast Comments at 1-2; DirecTV Comments at 2; NCTA Comments at 5-6; Netflix Comments at 2.

8 *See* NAB Comments at 9-10, 12-13; NCTA Comments at 5; DirecTV Comments at 2 (discussing DirecTV Everywhere); DirecTV Comments at 5-6 (discussing DirecTV's iPad and Android apps); Comcast Comments at 5-7; Verizon Comments at 5, 11.

9 *See* Comcast Comments at 3-4, 14-15; Verizon Comments at 8-10.

10 *See* NCTA Comments at 6; DirecTV Comments at 6.

working with consumer electronics manufacturers to bring MVPD programming to game consoles, tablets, smart TVs, and other retail devices.[12] As commenters highlighted, MVPDs continue to "enhance their service offerings by adding more programming, rolling out new interactive features, and making available different means of accessing video content."[13]

These developments allow MVPDs to distinguish themselves in a highly competitive marketplace. DBS and telco providers have gained subscribers this year, even as some cable operators have lost video subscribers.[14] And new entrants, like CenturyLink, have joined the video business, "bringing a valuable competitive choice to video consumers in each market" they enter.[15]

While MVPDs compete and innovate to attract and retain customers, online video distributors ("OVDs") continue to leverage innovative technologies and business models to offer consumers new ways to access their favorite video programming. The on-demand libraries of Netflix, Amazon, Hulu, and other OVDs offer consumers a vast array of choices, from the latest hits to old favorites. And consumers are taking advantage of these outlets: Netflix's subscribers alone stream more than one billion hours of movies and TV shows each month.[16] Like MVPDs, OVDs are working to make their content available to the widest audience possible, via as many devices as possible. For example, subscribers can access Netflix on more than 900 Internet-

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11 *See, e.g.*, Verizon Comments at 6-8 (discussing its expanded content and HD offerings).

12 *See* Comcast Comments at 6; NCTA Comments at 6; Verizon Comments at 11-12.

13 Verizon Comments at 1.

14 *See* NCTA Comments at 3 ("In the two years subsequent to those reported in the Fourteenth Report, the percentage of MVPD customers purchasing multichannel service from companies other than traditional cable operators has continued to increase. And, correspondingly, cable's share of the MVPD marketplace has continued to diminish."); Comcast Comments at 2.

15 CenturyLink Comments at 1.

16 *See* Netflix Comments at 3.

connected devices, including game consoles, Blu-ray players, smart TVs, DVRs, and mobile devices like tablets and smartphones.[17]

While commenters generally agree that online video complements, and is not a substitute for, MVPD programming,[18] OVDs nonetheless have had a significant impact on MVPD behavior and innovation. Netflix claims that OVDs do not discipline prices for the bundle of MVPD video programming,[19] but it is nevertheless clear that, because of OVDs, more programming is now available to consumers in more ways and over more devices, even if OVDs and MVPDs are not considered to be direct competitors. For example, "online video providers and other startups and device manufacturers are pushing incumbents to improve television user interfaces . . . [and] give consumers more choices in how and when they watch their favorite video programming."[20] And this benefits consumers: "The increasing availability of online and traditional video services – and consumers' ability to mix-and-match between the various sources for their desired video content – creates an expanding array of consumer choices."[21]

Likewise, broadband Internet service providers continue to invest in and improve the broadband platforms that enable consumers' access to online video and other services. To cite just the most recent example, Comcast announced that its new Extreme 305 tier for broadband Internet service (offering 305 Mbps downstream and 65 Mbps upstream) is now available across

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17 *See* Netflix Comments at 3.

18 *See* Comcast Comments at 24; Netflix Comments at 6.

19 *See* Netflix Comments at 7.

20 *See id.* at 1-2.

21 Verizon Comments at 5.

most of its northeast division, including major markets such as Boston, Hartford, Philadelphia, Pittsburgh, Harrisburg, Wilmington, Baltimore, Washington, D.C., Richmond, and New Jersey.[22]

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The rapid pace of innovation undercuts any claim that today's marketplace is not competitive. As Netflix put it, "Media, device, and delivery convergence means that content providers of all stripes" – including MVPDs – "are in a battle for consumer engagement."[23] That battle shows no signs of abating, and consumers are reaping the benefits.

II. THE COMMISSION SHOULD REJECT PROPOSALS TO IMPOSE NEW REGULATIONS IN THIS DYNAMIC AND COMPETITIVE VIDEO MARKETPLACE.

Despite the incredible diversity, innovation, and competition present in the current video marketplace, certain parties urge the Commission to promulgate unnecessary regulations, which would distort competition and harm consumers, in order to tilt the competitive playing field in their favor.[24] But there is no evidence of any market failure that would justify the regulations sought. The facts should lead the Commission to *reduce* regulation, not increase it.

Discounted Bundling of Services and Programming Networks. Comcast explained in its comments that bundling is both a common practice throughout the economy, and a boon to consumers because it results in significant savings for them.[25] Courts have recognized both the

[22] Cathy Avgeris, *Nation's Fastest Internet Provider Now Provides Fastest In-home WiFi*, Comcast Voices, Sept. 18, 2012, *available at* http://blog.comcast.com/2012/09/nations-fastest-internet-provider-now-provides-fastest-in-home-wifi.html.

[23] Netflix Comments at 2.

[24] Certain parties also used this proceeding to air unfounded grievances. For example, several Public, Educational, and Governmental ("PEG") programmers filed comments regarding their experiences with cable operators. For decades, Comcast has worked cooperatively with thousands of local communities and franchising authorities to address their PEG needs and interests, and it will continue to do so. With respect to the specific signal quality concerns raised by some PEG commenters, Comcast notes that it delivers PEG channels in full conformance with the Commission's signal quality requirements and works closely with PEG programmers to address any issues as expeditiously as possible.

[25] *See* Comcast Comments at 16-17.

prevalence and general pro-competitiveness of bundled offerings, be it at the retail or wholesale level.[26] DirecTV offers conjectural – and unsubstantiated – theories of harm based on the fact that some MVPDs offer broadband Internet services as part of their product bundles while others do not.[27] But DirecTV cannot overcome the fact that the marketplaces for both video programming distribution and broadband are intensely competitive, and offering services on a bundled basis is a perfectly reasonable competitive response that provides many consumers better value. DirecTV itself acknowledges this by both its words and its actions.[28]

Certain commenters representing small and rural MVPDs complain about so-called "forced tying" requirements, under which MVPDs allegedly are "forced" to "purchase undesired content in order to obtain the content they actually want."[29] For its part, NBCUniversal does not require MVPDs to purchase programming networks on a bundled basis. Upon any MVPD's request, NBCUniversal will offer any of its cable networks on a standalone basis,[30] and will negotiate a rate that reflects the value of any such network on a standalone basis. To be sure, most MVPDs choose to carry multiple NBCUniversal networks, but that is because those networks offer desirable programming and bring significant value to any MVPD's channel line-up.[31]

Moreover, the commenters that complain about bundling ignore the significant pro-consumer benefits of program bundles. Bundling allows programmers to realize economies of

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

27 *See* DirecTV Comments at 15-18.

28 *See id.* at 13; Comcast Comments at 17 n.63 (recounting DirecTV's collaborations with RBOCs to provide bundles to consumers).

29 OPASTCO and NTCA Comments at 7-10; *see also* Comments of NTCA, RICA, ITTA, WTA, and OPASTCO, MB Docket No. 07-269, at 5-6, 8 (filed June 8, 2011).

30 This is the case except with respect to the HD simulcast versions of SD networks, which are offered together.

31 *See* Comcast Corp., General Electric Co., and NBC Universal, Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 10-56, at 213 (filed July 21, 2010).

scale and scope, enabling them to produce, market, and distribute their programming in a more cost-effective manner. Bundled packages also help programmers to launch and distribute new programming services. Programmers do not and as a practical matter cannot require MVPDs to carry the new services; rather, they offer discounts on popular, established networks in exchange for distribution of the new networks.

Definition of MVPD. Some parties continue to insist that OVDs should be classified as MVPDs under the current regulatory regime.[32] Putting aside the serious legal impediments to such a finding,[33] sound public policy provides compelling reasons why the existing MVPD regulatory scheme should not be applied to OVDs. Online video has not had any of the regulatory complications associated with FCC regulation, and this has surely contributed to its dynamism and rapid growth. Nor does online video need regulatory entitlements in order to thrive. Importantly, OVDs have gained legitimate access – with the express consent of the content owners – to vast libraries of programming through marketplace negotiations, with no regulatory overhang.[34] Further, many OVDs are investing in high-quality, original programming, demonstrating that content owners and producers see online video distribution as a new way of reaching consumers.[35] Of course, none of this should be read to suggest that OVDs should be permitted to appropriate content without the consent of the content owner. Given the remarkable success and growth of online video distribution, it would be poor public

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32 *See* Public Knowledge Comments at 8-10.

33 Comcast and other entities have explained at length why the statutory definition cannot be manipulated in this way. *See, e.g.*, Comments of Comcast Corporation, MB Docket No. 12-83, at 4-10 (filed May 15, 2012).

34 For example, Netflix noted that its content library quickly grew shortly after it began offering its streaming service. Netflix Comments at 3.

35 *See* Comcast Comments at 27, 29; Netflix Comments at 5-6; Mike Flacy, *YouTube Planning to Launch Scheduled Video Channels in 2012*, DigitalTrends.com, Sept. 26, 2011, *available at* http://www.digitaltrends.com/web/youtube-planning-to-launch-scheduled-video-channels-in-2012/; Chris Crum, *AOL Gets Into the YouTube Game, Launches 22 Channels*, WebProNews, Oct. 1, 2012, *available at* http://www.webpronews.com/aol-gets-into-the-youtube-game-launches-22-channels-2012-10.

policy to place these providers under a regulatory regime crafted for a very different, less competitive era.[36]

Independent Programming. Despite claims to the contrary by Writers Guild of America, West, Inc. ("WGAW"), there is tremendous source diversity in today's marketplace. WGAW's allegations are premised entirely on: (1) its self-serving definition of "independent," which treats the five major studios affiliated with broadcast networks as if they were affiliated with each other;[37] (2) its myopic consideration of the lineup of only (a) the broadcast networks, (b) in one time period (primetime), (c) for one season (Fall); and (3) its inexplicable focus on the state of program diversity in 1989.[38] Today, in addition to the broadcast networks, there are approximately 800 national cable networks and hundreds more regional and local networks. All of these networks obtain their programming from a large variety of sources.

NBCUniversal routinely buys programs from studios with which it has no affiliation. For its part, NBCUniversal looks for programming, first and foremost, that is original and creative, that adds variety to a broadcast or cable network, and that will attract viewers – regardless of whether the programming comes from affiliated studios, from third-party studios affiliated with another network, or from producers that are not affiliated with any network. Even accepting WGAW's definition of "independent," NBCUniversal is economically engaged with many writers and producers who are not affiliated with any network at various stages in the creative process, from initial pitches to final production. In fact, several NBCUniversal cable networks obtain the majority of their original programming from such producers. Further, NBCUniversal

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[36] *See generally* Comments of Comcast Corporation, MB Docket No. 12-83 (filed May 15, 2012); Reply Comments of Comcast Corporation, MB Docket No. 12-83 (filed June 14, 2012).

[37] *See* WGAW Comments at 3.

[38] *See id.* at 2.

is actively working with the Independent Film and Television Alliance to develop even more programming with producers that are not affiliated with any network.

Retention Marketing. Verizon again tries to use the Video Competition proceeding to urge the Commission to subject retention marketing in the video marketplace to unwarranted and unauthorized regulation.[39] As Comcast has explained in the past, the Commission has already refused Verizon's efforts to apply the same retention marketing to both voice and video services, and the U.S. Court of Appeals for the D.C. Circuit upheld that ruling.[40] There is absolutely no reason for the Commission to reconsider that ruling.

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[39] *See* Verizon Comments at 18-21.

[40] Reply Comments of Comcast Corporation, MB Docket No. 07-269, at 28 (filed Aug. 28, 2009) (citing *Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion & Order, 23 FCC Rcd. 10704 ¶ 43 (2008) ("Moreover, Verizon's 'level playing field' argument ignores the fact that the statute itself treats different services differently – on its face, section 222 applies to telecommunications services, but not to video or other services.") and *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009)).

III. CONCLUSION

For the foregoing reasons, the Commission should 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.

Respectfully submitted,

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