

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 14-16
Competition in)
the Market for the Delivery of Video)
Programming

**Comments of the
Consumer Electronics Association**

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March 21, 2014

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SUMMARY

Consumers first enjoyed sovereignty over the use and enjoyment of their video programming with the first consumer VCR. Today, people wish to make programming portable through the interoperation of an increasingly diverse collection of devices that they own. Flexibility in content consumption, made possible through devices that enable time- and place-shifting, remains a key consumer objective and a positive influence on competition.

CEA data show both the progress and continued evolution of home electronics in becoming personal, portable, and customizable. While the trend is toward personal devices and media selection, it is also toward enhanced opportunities to enjoy content in the theater-like and family settings that were once consumers' exclusive options. Consumers seek an individualized experience in connected devices: aggregating their own choice of services, sources and content, receiving recommendations, and handling payment and billing. However, one area that has resisted such aggregation and has grown more slowly is the market for set-top boxes dedicated to video programming, which remains dominated by products leased to consumers by providers of specific services.

Television programming provided through a service provider is still the most common way consumers access video content, but the landscape is clearly evolving. Consumers have many choices when it comes to online video, with Facebook, AOL, NDN, and Yahoo all streaming video content. With respect to such services, consumers choose electronics products primarily depending on the viewing situation (*e.g.*, in-home or externally) and the content available on the device. Consumer preferences for choice and mobility are especially pronounced among younger consumers. Younger consumers (age 18 – 34) more commonly use social media *while* watching live programming. Furthermore, reliance on over-the-air broadcasting to receive television content has been in decline since 2005. According to CEA's

US Household TV Usage Update, currently 15 percent of households have an antenna for over the air viewing, but only 7 percent use it as their exclusive means of obtaining programming. Of the 7 percent using an antenna exclusively, 34 percent have broadband Internet access.

CEA data demonstrate that new media choices result in new device choices, and vice versa. Constraints in either area will slow innovation or harm competition in the other. As its *National Broadband Plan* recognized, the Commission and, if necessary, the Congress can take positive steps to remove impediments in each area. For instance, the *National Broadband Plan* estimated that the “expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment.” Restrictions on pole access can cause deployment costs to skyrocket, particularly if a provider is forced to install its own poles or place its wires in new underground conduit.

The *National Broadband Plan* similarly recognized that increasingly archaic methods of attaching devices to networks have limited innovation in and purchase of some classes of consumer products, and encourage reliance instead on leased devices. As CEA’s data show, multipurpose platforms support a thriving market in apps that make these devices more useful every day and that spur further innovation. Where regulatory constraints on access limit these opportunities, however – whether to broadband via pole attachment rules or to MVPD programming and services through operator constraints that favor leased devices – neither consumers nor the marketplace are well served. In such circumstances, limited and proprietary solutions, such as unequal and discretionary access to attachment or proprietary app solutions to affording access, are of limited assistance to consumers and competition.

All consumers will benefit from greater competition and choice in the marketplace for video services. The FCC should do everything it can to facilitate those preferences in a manner

that is technology-neutral – not picking winners and losers based on the business model of the entity offering the content.

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The Consumer Electronics Association (“CEA”) respectfully files these comments in response to the Commission’s Notice of Inquiry (“NOI”) in the above-captioned proceeding.¹ In the NOI, the Commission seeks data and information on the status of competition in the video programming delivery market for its annual report to Congress, as required by statute.² CEA is pleased to respond to the Commission’s request.

I. INTRODUCTION

Consumers’ exercise of sovereignty over the use and enjoyment of the video programming to which they have lawful access began with the first consumer VCR. Individuals’ rights to control the time and place of their viewing of such content was affirmed by the Supreme Court in 1984 in *Sony Corporation of America v. Universal City Studios, Inc.*³ Since then,

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, FCC 14-8, Notice of Inquiry (rel. Jan. 31, 2014) (“NOI”).

² See 47 U.S.C. § 548(g).

³ 464 U.S. 417.

CEA's and other research⁴ consistently have found that as new products and media formats have become available, consumers have sought and found novel and often unexpected⁵ ways to make them their own, thus creating new and unanticipated markets.⁶

Consumers seek mobility for themselves and their content. People wish to make programming portable through the interoperation of an increasingly diverse collection of devices that they own. Consumers tend to "pick and mix"⁷ content in accordance with where they are and what is available to them at any given time. While growing and proliferating in commercial acceptance, portable and mobile devices continue to supplement, rather than replace, in-home viewing of television content provisioned through conventional media providers such as cable operators.

Flexibility in content consumption, made possible through devices that enable time-and-place shifting, remains a key consumer objective and a positive influence on competition. The FCC should strive to stoke device innovation, which often drives media innovation, through adoption of policies that encourage the development of competition. Dynamic device and media marketplaces will be further empowered through enhanced consumer access to competitive broadband offerings, which can be achieved in part by updating and liberalizing archaic restrictions on pole attachment.

⁴ See generally, CEA Market Research Reports: *Video Content Discovery and Purchasing Trends*, Feb. 2014 ("CEA Content Discovery"); *U.S. Household Television Usage Update*, July 2013 ("CEA TV Usage Update"); *U.S. Consumer Electronics Sales and Forecasts, January 2014* ("CEA Sales and Forecasts"); *Consumer Outlook on Tablets*, January 2014; *CEA Consumer Electronics Detailed Forecast*, January 2014 ("Detailed Forecast"). See also *Ericsson ConsumerLab TV and Media 2013 Report* ("Ericsson"); TiVo Inc., *2013 Millennial Video Entertainment Survey* ("TiVo"). Unless otherwise indicated all statistics are from CEA Market Research Reports.

⁵ "The street finds its own uses for things." William Gibson, *Burning Chrome* 199 (2003).

⁶ For example, the market for video rental was driven by the availability of VCRs despite industry plans to exploit it by means of other devices. See James Lardner, *Fast Forward*, Chapters 5, 23 (1987).

⁷ See Ericsson, slide 19.

II. THE CONSUMER ELECTRONICS ASSOCIATION

CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA's more than 2,000 member companies include the world's leading consumer electronics manufacturers. CEA's members design, manufacture, distribute, and sell a wide range of consumer products including television receivers and monitors, computers, computer television tuner cards, digital video recorders ("DVRs"), game devices, navigation devices, music players, telephones, radios, and products that combine a variety of these features and pair them with services.

In addition to market research data, CEA offers ongoing, primary research into consumer buying patterns, awareness of new technologies, interest in product features and a host of other issues. Working with member companies, CEA Research conducts some 20 unique consumer studies each year. The reports contain executive summaries and analysis of the survey data, topline results and detailed data cross-tabulated by demographic categories, as well as variables such as Internet access.

III. VIDEO-ENABLED CONSUMER ELECTRONICS HAVE SHOWN STRONG GROWTH SINCE THE COMMISSION'S LAST INQUIRY.

In its 14th Report NOI, the Commission included the category of Customer Premises Equipment for the first time as one of the key factors in assessing the status of competition in the market for video delivery. As it embarks on this 16th Report, the market for CPE devices has advanced to the point that they are an essential component of consumers' video viewing habits.

A. Display And Access Devices

Initially, consumers had few choices in accessing video content. Until television displays became available, consumers could not enjoy video content at home. Initially, televisions were not affordable; hence, consumers witnessed major events through retail stores and their windows,

or through movie theater newsreels that were days old. Once home displays became more affordable, they remained non-portable. While consumers could view content at home, they were tied to that location and had no ability to time-shift content. They also were subject to negotiations with other family members about choice and access.

Recent CEA data shows both the progress and continued evolution of home electronics in becoming personal, portable, and customizable. While heavily tilted in the direction of personal devices and media selection, the trends are also toward enhanced opportunities to enjoy content in the theater-like and family settings that were once consumers' exclusive options. For example, viewing of live sports and news remains very much a home theater affair, consonant with the ability of consumer electronics displays to present vivid and immersive pictures of live action. The higher resolution and "smart" features of these home displays appear to account for their growth in sales, even in an era of mass acceptance of portable and mobile devices.

As reported by CEA,⁸ the "video landscape in American homes is shifting due to the adoption of portable connected devices and the consumption of Internet-based content." For example, CEA's January 2014 *Consumer Outlook on Tablets* study projects that tablet shipments will increase by 15% by the end of 2014. The most popular activity on tablets—by far—is watching movies. Programming on home televisions is still largely sourced through traditional pay-TV providers, but according to CEA's *TV Usage Update* this has declined slightly from 2010.

(1) TV Formats and Devices

The progression toward better home viewing experiences – from analog to digital, from digital to HD, and now to Ultra HD, continues. In particular, the transition from analog displays receiving converted digital content, to native digital displays, is nearing completion.

⁸ CEA *TV Usage Update* at 4.

Approximately 89 percent of households now include at least one digital display for “TV” (as opposed to portable device) viewing. These are now primarily High Definition displays, which include non-exclusive sub-categories of HD, Ultra HD, 3D, and Smart TVs.⁹

According to CEA’s *Detailed Forecast*, in 2013 there were 27.3 million unit sales of HDTVs to U.S. dealers, a 48 percent increase over 2012. We project the sales in HD resolution TVs to level off or possibly decline in 2014 as consumers embrace Ultra HD displays, which offer at least four times the pixel resolution of HD displays and have dropped dramatically in price. Smart TVs – those HD, 3D and Ultra HD models with the ability to access programming through broadband connectivity – continue to grow in popularity, enjoying a 50 percent increase in sales in 2013. Given prior dramatic growth, CEA expects that in 2014 there will be a leveling-off in the market for video-enabled devices across the board.

(2) Tablets and Smartphones

Ericsson reports that consumers seek “preferably one easy, individualized video experience/solution,” which combines aggregated interface and navigation; aggregate services, sources and content; aggregated discovery and recommendations; and aggregate payment and billing.¹⁰ It is no surprise that tablets and smartphones, which offer these features, so quickly moved beyond the luxury stage toward becoming household and personal essentials. CEA estimates that as of January 2014, 39 percent of households have a tablet and 58 percent of households have smartphones. Sales of tablets have grown strongly since 2012, while prices have dropped by approximately 11 percent. Smartphone sales to dealers increased by 21 percent in 2013, while sales of standard wireless handsets – which do not offer the same sort of

⁹ *CEA Sales and Forecasts*.

¹⁰ Ericsson, slide 18.

aggregation and portability features – *declined* by 22 percent. Parks Associates reports that 29% of U.S. broadband users watch video on a mobile phone monthly.¹¹

(3) Set-top Boxes

As discussed below, the market for set-top boxes dedicated to video programming is dominated by products leased to consumers by providers of specific services. Thus, products in this market have not matched the degree of aggregation and mobility offered in tablets and smartphones. In 2013, sales to dealers of set-top units configured for access to cable programming declined 3 percent while those configured for access to direct broadcast satellite programming increased by 12 percent. However, unit sales to dealers of network-enabled digital media players rose by 35 percent while prices in this category declined by 12 percent. Household penetration rates for network-enabled players increased to 19 percent in 2012 and then to 24 percent in 2013.

B. Programming Sources And Investments

CEA observed in *Content Discovery* that “While television programming provided through a service provider (*e.g.*, cable, satellite or fiber to the home provider) is still the most common way consumers access video content (79%), the landscape of video content is clearly evolving – presenting consumers with a greater variety of content and more ways to access it.”¹² This seems largely attributable to investments made in online programming, as well as investments made in providing “cloud” platforms for user-generated content.

¹¹ Parks Associates, *Nearly 30% of U.S. Broadband Users Watch Video on Their Phone Monthly*, Feb. 25, 2014, <https://www.parksassociates.com/blog/article/pr-feb2014-mcw>.

¹² *Content Discovery* at 7.

(1) OVD Program Investment.

According to public statements, Netflix aims to spend up to \$300 million, or 10 percent of its total programming funds, on developing original content.¹³ According to SEC filings, Netflix had 11.8 million subscribers in the 4th quarter of 2009¹⁴ and 31.7 million *domestic streaming* subscribers in the 4th quarter of 2013.¹⁵ According to Hulu's blog,¹⁶ Hulu Plus has approximately 5 million subscribers. Amazon Prime, according to news sources,¹⁷ has approximately 18.7 million. Each of these services has added original content.¹⁸

(2) Online Video Content.

In January 2014, comScore reported that users watched over 48.5 billion videos, with an average of 1,155 minutes per user.¹⁹ This is a significant jump from January 2012, when users

¹³ Alan Breznick, *Netflix to Spend Big, Strike Cable Deals in 2014*, Light Reading, Feb. 6, 2014, <http://www.lightreading.com/cable-video/ott/netflix-to-spend-big-strike-cable-deals-in-2014-/d/d-id/707594>.

¹⁴ Netflix, *Annual Report*, Tab "Table 12," Feb. 22, 2010, <http://www.shareholder.com/visitors/activeedgardoc.cfm?f=xls&companyid=NFLX&id=7069793>.

¹⁵ Netflix, *Annual Report*, Tab "Table 6," Feb. 3, 2014, <http://www.shareholder.com/visitors/activeedgardoc.cfm?f=xls&companyid=NFLX&id=9742936>.

¹⁶ See Hulu, Dec. 8, 2013, <http://blog.hulu.com/2013/12/18/a-strong-2013/>. "We launched more than 20 Hulu Originals in 2013, and plan to double that number over the next few years."

¹⁷ Richard Lawler, *Amazon Prime snags 'Archer' and five more Fox series, launches 10 free pilots*, Engadget, Feb. 7, 2014, <http://www.engadget.com/2014/02/07/amazon-prime-fox-archer-the-americans-pilot-season/>.

¹⁸ See, e.g., Willa Paskin, *Amazon Has Finally Made Its House of Cards*, Slate, Feb. 11, 2014, http://www.slate.com/blogs/browbeat/2014/02/11/amazon_s_new_pilots_transparent_mozart_in_the_jungle_the_after_the_rebels.html; Amazon Pilot Season, <https://www.amazon.com/gp/feature.html?docId=1001155581>; Hulu Originals, <http://www.hulu.com/originals>; Christopher Hooton, *9 Netflix original series to watch in 2014*, The Independent, Jan. 14, 2014, <http://www.independent.co.uk/arts-entertainment/tv/new-netflix-releases-9-original-series-youll-be-watching-in-2014-from-better-call-saul-to-house-of-cards-9056971.html>.

¹⁹ comScore, *comScore Releases January 2014 U.S. Online Video Rankings*, Feb. 21, 2014, https://www.comscore.com/Insights/Press_Releases/2014/2/comScore_Releases_January_2014_US_Online_Video_Rankings ("comScore 2014").

watched just under 40 billion videos with an average of 1,354 minutes per user.²⁰ YouTube, as the largest video site, drives most of that traffic: users now watch over 6 billion hours per month and content generation increased to 100 hours/minute in February 2014.²¹ However, consumers have many choices when it comes to online video, with Facebook, AOL, NDN, and Yahoo Sites rounding out the top five distributors of online, streaming video content.²²

IV. CONSUMERS DEMAND CHOICE AND MOBILITY IN VIDEO DELIVERY PLATFORMS.

According to CEA's *Video Content Discovery and Purchasing Trends*, consumers choose electronics products primarily depending on two factors: (1) the viewing situation (*e.g.*, in-home or externally) and (2) the content available on the device.

A. Content and Device Interaction

CEA's data shows interesting trends in the interaction between the content now available to consumers and their choices among devices to access and store it:

- While all types of content are more likely to be viewed live than recorded or streamed, news and sports are especially likely to be viewed live (news 80 percent, sports 89 percent).
- News and TV shows are the most frequently watched programming, with 58 percent watching news daily and 55 percent watching TV shows daily. While TV programming generally is increasingly available across delivery platforms, live news programming remains tied to cable, satellite, and broadcast delivery platforms.
- Seventy-nine percent of adults who obtain programming on-line still watch video on television. Of that 79 percent:
 - 66 percent watch DVDs
 - 47 percent use free streaming services
 - 37 percent use paid streaming services

²⁰ comScore, *comScore Releases January 2012 U.S. Online Video Rankings*, https://www.comscore.com/Insights/Press_Releases/2012/2/comScore_Releases_January_2012_US_Online_Video_Rankings.

²¹ Brett Molina, *YouTube: 72 hours of video uploaded per minute*, USA Today, May 21, 2012, <http://content.usatoday.com/communities/technologylive/post/2012/05/youtube-72-hours-of-video-uploaded-per-minute/1#.UySUz87DXEl>.

²² comScore 2014.

- Nielsen data show that the number of adults streaming video from subscription services increased 10 percent from 2012 to 2013. Of consumers who stream video, device usage is fairly consistent across multiple portable device types.
 - Laptop, 52 percent
 - Desktop, 44 percent
 - HDTV, 40 percent
 - Smartphone, 32 percent. When asked about activities via smartphone, 50 percent of consumers included “watching video.”
 - Tablets, 31 percent. When asked about activities via tablet, 66 percent of consumers included “watching video.”

Increasingly, consumers demand greater mobility in terms of *both* (1) where they can view content, and (2) the portability of content across their platforms and devices. Restrictions on the mobility and availability of content create a tension between what consumers desire – complete mobility – and what they are able to achieve. This is evidenced by rapid consumer adoption of streaming services and mobile devices. Thirty-six percent of consumers say they want to *own* content to enhance their access to it and mobility with it.

B. Reliance on Internet Streaming

Consumer preferences for choice and mobility are especially pronounced among younger consumers. Younger consumers (age 18 – 34) more commonly use social media *while* watching live programming. For example, 34 percent of these consumers say they use social media while watching live sports.

Millennials spend 36 percent of their TV viewing time watching traditional TV programming, such as TV shows and live sports, but (unlike previous generations) access this content primarily through Internet streaming and subscription services.²³ According to TiVo’s survey,

Nearly three-quarters (72 percent) of survey respondents reported using free online streaming services, such as Hulu, YouTube and TV network streaming sites. Nearly two-

²³ TiVo. *See also, TiVo Survey Shows Millennials Embrace Both the Old and the New*, Feb. 20, 2014, <http://pr.tivo.com/press-releases/tivo-survey-shows-millennials-embrace-both-the-old-and-the-new-nasdaq-tivo-1091496>.

thirds (60 percent) regularly use subscription video-on-demand (VoD) services, such as Netflix, Amazon Instant Video, Hulu Plus and HBOGo. Other generations, in contrast, reported making use of these services 40 percent of the time.

C. Decline In Over the Air Viewership

Reliance on over-the-air broadcasting to receive television content has been in decline since 2005.²⁴ According to CEA's *US Household TV Usage Update*, currently 15 percent of households have an antenna for over the air viewing, but only 7 percent use it as their exclusive means of obtaining programming. Of the 7 percent using an antenna exclusively, 34 percent have broadband Internet access.

V. MARKETPLACE CONSTRAINTS SHOULD BE RELAXED TO ENABLE MORE COMPETITION IN BROADBAND SERVICES AND DEVICES.

As CEA data demonstrate, new media choices result in new device choices, and vice versa. As the NOI recognizes, constraints in either area will slow innovation or harm competition in the other. As its *National Broadband Plan* recognized, the Commission and, if necessary, the Congress can take positive steps to remove impediments in each area.

A. Constraints on Pole Attachments Limit Competition In Providing Broadband To Consumers.

Expanding broadband deployment and availability is not only a primary way of promoting video competition, but also a top national priority. As the Commission has recognized, “[u]ntil recently, not having broadband was an inconvenience. Now, broadband is essential to opportunity and citizenship.”²⁵

Building broadband networks that can support IP video and other services, however, is time-consuming and expensive, making broadband construction the “great infrastructure

²⁴ In 2005 20 percent of households had an antenna and 13 percent relied on antennas exclusively. CEA TV Usage Update at 3.

²⁵ FCC, *Connecting America: The National Broadband Plan*, Mar. 16, 2010, at 5, available at <http://www.broadband.gov/plan/> (“National Broadband Plan”).

challenge of the 21st century.”²⁶ The economics of broadband network deployment depend “significantly on the costs that service providers incur to access conduits, ducts, poles and rights-of-way on public and private lands.”²⁷ Inability to gain “reliable, timely, and affordable access to physical infrastructure – particularly utility poles – is often a significant barrier to deploying wireline and wireless services.”²⁸

The *National Broadband Plan* estimates that the “expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment.”²⁹ Restrictions on pole access can cause deployment costs to skyrocket, particularly if a provider is forced to install its own poles or place its wires in new underground conduit. According to the Fiber to the Home Council, building a new fiber optic network utilizing existing poles is estimated to “cost in the range of \$2 to \$4 per linear foot,” but installing duplicate infrastructure can cost “ten times as much.”³⁰

Unfortunately, pole attachment laws have lagged behind technology. The Pole Attachment Act of 1978, the Telecommunications Act of 1996, and the FCC rules implementing those laws require utility pole owners to allow cable television operators and phone companies to attach to their poles on reasonable rates and terms. These federal pole-attachment protections, however, do not extend to broadband providers that are not cable system operators or telecommunications carriers. The uncertainties caused by a denial of affordable infrastructure access can delay or jeopardize a network build-out.

²⁶ *Id.* at XI.

²⁷ *Id.* at 109.

²⁸ *Implementation of Section 224 of the Act; In the Matter of A National Broadband Plan for Our Future*, WC Dkt. No. 07-245, GN Dkt. No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, at ¶ 3 (rel. Apr. 7, 2011) (“Pole Attachment Order”).

²⁹ *National Broadband Plan* at 109.

³⁰ Fiber To The Home Council, *State and Local Government Role in Facilitating Access to Poles, Ducts, and Conduits in Public Rights-of-Way*, Aug. 2013, at 1, available at <http://www.ftthcouncil.org/p/cm/ld/fid=33>.

These were exactly the conditions Congress sought to remedy in enacting the Pole Attachment Act of 1978. At that time, Congress noted that pole owners were seeking “exorbitant rental fees and other unfair terms in return for the right to lease pole space[,]”³¹ and expressed concern “that the pole attachment practices of telephone companies could” present “dangers of competitive restraint in the future.”³² The pole sharing arrangements encouraged by the law “minimize[d] unnecessary and costly duplication of plant for all pole users.”³³ Standardized pole attachment rates that the Commission adopted to implement the Pole Attachment Act encouraged the spread of cable television services to the public.³⁴ Between 1979 and 1984, the number of cable TV systems in the United States increased by 50% and cable subscribership more than doubled.³⁵

Nearly two decades later, Congress again removed pole attachment obstacles in order to spur competition. The Telecommunications Act of 1996 created a right of access to poles, requiring that both cable operators and telecommunications providers be permitted to attach.³⁶ This action encouraged the growth of alternative providers of telephone service, as well as more widespread availability of multichannel video service.

In 2011, the Commission revisited its pole attachment rules to encourage broadband deployment by telephone companies, in particular by lowering the rates paid by competitive telecommunications providers so that they are identical in most cases the rates paid by cable

³¹ S. REP. 95-580 at 13 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 121 (1978).

³² *Id.* at 13.

³³ *Id.*

³⁴ *Id.* at 15.

³⁵ U.S. Dept. of Commerce, *Statistical Abstract of the United States 1996*, at 567, Chart 890 (1996), *available at* <http://tinyurl.com/kvnfeot> (reporting that in 1979, there were 4,150 cable systems in the United States with 14,100,000 subscribers; in 1984, there were 6,250 cable systems with 30,000,000 subscribers).

³⁶ *See* 47 U.S.C. § 224(f)(1). Attachments may be denied when there is insufficient capacity or it is unsafe to add additional attachments.

companies.³⁷ Because the Pole Attachment Act does not specifically address fiber-to-the-home technology that is not provided by a cable television system or telecommunications carrier, however, the Commission has not yet included mandatory pole attachments for these other broadband suppliers.

To promote broadband deployment and competitive IP video options for consumers, the Commission should take all actions within its power to extend pole attachment rights to all facilities-based wireline broadband providers and to video service providers that are franchised in the relevant jurisdiction. Attachments by these providers are materially identical to those of cable operators and telephone companies and pose no implementation or safety issues.³⁸ Indeed, expanded attachment rights would help preserve community aesthetics as new networks are built and reduce the unnecessary noise, inconvenience, and dangers associated with installing redundant poles or digging additional trenches or conduits.

B. Constraints Requiring Consumer Reliance On Leased Devices Should Be Liberalized.

The *National Broadband Plan* similarly recognized that increasingly archaic methods of attaching devices to networks were limiting innovation in, and purchase of, some classes of consumer products, and encouraging reliance instead on leased devices.³⁹ This observation is borne out by CEA data as reviewed above in Part III.A.(3). Thus, this NOI asks a series of questions about why MVPD networks are not more interoperable with respect to devices, and

³⁷ *Pole Attachment Order* ¶¶ 149, 154. This decision, for the first time, also provided incumbent local exchange providers certain pole attachment rights and protections.

³⁸ These providers deploy their wired networks in the same manner as cable and telephone companies, in the same “communications space” on poles, and using the same materials (generally, fiber-optic and coaxial cable).

³⁹ National Broadband Plan, Section 4.2, at 49-52.

whether this shortcoming has an effect on competition among MVPDs, as well as on device markets. CEA has addressed each of these issues in prior filings with the Commission.⁴⁰

Fundamentally, CEA has agreed that the leased model for device competition is an anachronism that hampers competition in both the markets for devices and for programming. CEA has observed that the Commission's efforts to manage the problems in these markets by dealing with waiver applications have long ago run their course and have become part of the problem rather than any solution. In CEA's comments on the Basic Tier rulemaking, CEA noted specific areas in which policy decisions, rather than waiver rulings, have become necessary.⁴¹ CEA and others have also pointed to private sector solutions that would implement the FCC's proposals as set forth in Chapter 4.2 of the *National Broadband Plan*.⁴²

As CEA's data show, multipurpose platforms support a thriving market in apps that make these devices more useful every day and that spur further innovation. Where regulatory constraints on access limit these opportunities, however – whether to broadband via pole attachment rules or to MVPD programming and services through operator constraints that favor leased devices – neither

⁴⁰ See *In the Matter of A National Broadband Plan for Our Future, et al.*, GN Dkt. Nos. 09-47, 09-51, 09-137, and CS Dkt. No. 97-80, Comments of the CEA on NBP Public Notice # 27 (Dec. 21, 2009); *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of CEA (Nov. 28, 2011) (“CEA Basic Tier Comments”); *Charter Communications, Inc.’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-8470-Z, MB Dkt. No 12-238, CS Dkt. No. 97-80, PP Dkt. No 00-67, Opposition of the Consumer Electronics Association (Nov. 30, 2012); *In the Matter of Video Device Competition*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of the Consumer Electronics Association and the Consumer Electronics Retailers Coalition on Notice of Inquiry (July 13, 2010); Reply Comments (Aug. 12, 2010); *In the Matter of Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment, Adams Cable Request for Waiver*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, CSR-8537-Z, Ltr. from Julie M. Kearney, V.P, Regulatory Affairs to Marlene H. Dortch, Sec., FCC (Feb. 22, 2012).

⁴¹ CEA Basic Tier Comments at 2 -3.

⁴² See *Video Device Competition*, MB Dkt. No. 10-91, *Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Dkt. No. 00-67, Ltr. from Robert S. Schwartz, AllVid Tech Company Alliance to Marlene H. Dortch, Sec. FCC (Sept. 20, 2011).

consumers nor the marketplace are well served. In such circumstances, limited and proprietary solutions, such as unequal and discretionary access to attachment or proprietary app solutions to access,⁴³ are of limited assistance to consumers and competition.⁴⁴

⁴³ CEA has long taken the position that the making available of incidental apps for some services, some of the time, does not provide an adequate solution to the problems noted in the NOI. *See* Comments of the CEA on NBP Public Notice # 27 at 15 – 16 (Dec. 21, 2009).

⁴⁴ With respect to devices, the Commission evidently has agreed in principle and intention, if not yet through action. In resolving the Basic Tier rulemaking the Commission noted its agreement with CEA and others “that ensuring the effective implementation of Section 629 of the Act and continuing future device compatibility are important issues that the Commission must resolve.” *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Report and Order, 27 FCC Rcd. 12786, at ¶ 35 n.162 (rel. Oct. 12, 2012).

VI. CONCLUSION

CEA is pleased to respond to the Commission's request for relevant information and data regarding competition in the market for the delivery of video programming. All consumers will benefit from greater competition and choice in the marketplace for video services. The data and statistics compiled by CEA demonstrate that the market in general is responding to consumer demand for CPE devices. Consumers wish to purchase devices in accordance with the type of content they seek, and where and how they want to watch it. As consumers continue to embrace mobility, they expect video delivery to be mobile as well. The FCC should do everything it can to facilitate those preferences in a manner that is technology-neutral – not picking winners and losers based on the business model of the entity offering the content.

Respectfully submitted,

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March 21, 2014