

FCC to Redefine What it Means to be an "MVPD"

December 23, 2014

On December 19, 2014, the FCC adopted a [Notice of Proposed Rulemaking](#) that would expand the definition of a "multichannel video programming distributor" ("MVPD") to include some types of Internet-based services.

As MVPDs, these internet-based services would be able to enjoy several regulatory privileges such as the right to seek relief under the Commission's program access rules and retransmission consent rules. However, MVPDs would also assume many potentially onerous and costly regulatory obligations including those regarding: program carriage, competitive availability of navigation devices (including the integration ban); good faith negotiation with broadcasters for retransmission consent; Equal Employment Opportunity; closed captioning; video description; access to emergency information; signal leakage; inside wiring; and the loudness of commercials.

An "MVPD" is defined as an entity that must "make[] available for purchase, by subscribers or customers, multiple channels of video programming." The Commission has previously recognized that video distributed over the Internet is considered "video programming." In the NPRM, the FCC is exploring how it should define and regulate the distributors of that programming. In light of evolving technology, and the fact that more and more companies provide video programming online, the proposed MVPD definition would be updated to include some of these Internet-based services.

The NPRM examines the following types of Internet-based video services:

- **Subscription Linear.** This refers to subscription-based services like Aereo or Sky Angel that offer video content in a continuous, linear stream.
- **Subscription On-Demand.** This refers to subscription-based services like Netflix, Hulu or Amazon Prime Instant Video, through which video programming can be viewed on-demand and there is no additional fee for viewing, beyond the subscription fee.
- **Transactional On-Demand.** This refers to services like Apple's iTunes Store, Best Buy's CinemaNow, Amazon Instant Video or Google Play, where video programming is available on-demand but consumers are charged per-episode (per-season or per-movie) to rent the content for a specific period of time, or can download the content, to view any time.
- **Ad-based Linear and On-Demand.** This refers to free, ad-supported services like YouTube, Hulu or FilmOn, where video-programming can be viewed linearly, or on-demand.

There already appears to be a potential partisan divide on this issue, with Democratic Commissioners Rosenworcel and Clyburn supporting Chairman Wheeler on the NPRM and Republican Commissioners Pai and O'Reilly concurring with reservations. Commissioner Pai expressed doubt about the NPRM and the effect that new regulations on Internet-based services may have on an evolving video market. Commissioner O'Reilly echoed those concerns and issued a statement saying

that he would be unlikely to support a future order based on the current NPRM.

Comments on the NPRM are due on or before February 17, 2015 and reply comments are due on or before March 2, 2015.