6712-01

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 15-158; DA 15-784]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits data, information, and comment on the status of competition in the market for the delivery of video programming for the Commission's Seventeenth Report (17th Report). The 17th Report will provide updated information and metrics regarding the video marketplace in 2014. Comments and data submitted in response to this document in conjunction with publicly available information and filings submitted in relevant Commission proceedings will be used for the report to Congress.

DATES: Interested parties may file comments, on or before August, 21, 2015, and reply comments on or before September 21, 2015.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Danny Bring, Media Bureau (202) 418-2164, or e-mail at danny.bring@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document, <u>Annual Assessment of the Status of Competition in the Market for Delivery of Video</u>

Programming, The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

Synopsis of Notice of Inquiry

1. This Public Notice (Notice) solicits data, information, and comment on the state of competition in the delivery of video programming for the Commission's Seventeenth Report (17th Report). We seek to update the information and metrics provided in the Sixteenth Report (16th Report) and report on the state of competition in the video marketplace in 2014.

2. Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) amended the Communications Act of 1934, as amended (Act or Communications Act) and directed the Commission to establish regulations for the purpose of increasing competition and diversity in multichannel video programming distribution, increasing the availability of satellite delivered programming, and spurring the development of communications technologies. To measure progress toward these goals, Congress required the Commission to report annually on "the status of competition in the market for the delivery of video programming."

3. In 1992, when Congress first required the Commission to report on the status of competition in the market for the delivery of video programming, most consumers had the limited choice of receiving over-the-air broadcast television stations or subscribing to the video services their local cable company offered. From the consumer perspective, head-to-head competition in multichannel video programming distribution (MVPD) began in 1994 with the introduction of direct broadcast satellite (DBS) video services. In 2005 an additional competitive alternative for MVPD services became available to consumers when telephone companies began offering video services in some areas cable operators already served. More recently, most consumers have additional alternatives for the delivery of video programming from online video distributors'

(OVDs) offerings of video content over the Internet.

Scope of the Report

4. In the 17th Report, we expect to continue using the analytical framework used in the 16th Report. Under this framework, we categorize entities that deliver video programming in one of three groups – MVPDs, broadcast television stations, or OVDs. We also plan to examine consumer premises equipment that enables consumers to view programming on their television sets and on other residential or mobile devices (e.g., smartphones and tablets). In addition, we plan to discuss the deployment of new technologies and services, as well as innovation and investment in the marketplace for the delivery of video programming.

Analytic Framework

5. We categorize entities that deliver video programming into one of three groups: MVPDs, broadcast television stations, or OVDs. Within each of the three groups, we describe the group's:

- Providers, which may include the number, size, and footprint of the entities in the group, horizontal and/or vertical concentration, regulatory and market conditions affecting entry, and any recent entry or exit from the group;
- Business models and competitive strategies, which may include the technologies entities employ to deliver programing, pricing plans, and product and service differences; and
- Selected Operating and Financial Statistics, which may include statistics related to the number of subscribers or viewers, revenue, and other financial indicators.

6. In the 17th Report, we plan to report on a calendar year-end basis. We request data as of year-end 2014 (i.e., December 31, 2014).

I. PROVIDERS OF DELIVERED VIDEO PROGRAMMING

Multichannel Video Programming Distributors

1. MVPD Providers

7. The vast majority of MVPD subscribers rely on cable, DBS, or telephone MVPDs to provide their video services and this report will focus on these entities. For cable, DBS, and telephone MVPDs, we seek data on the number of providers, the number of homes passed, the number of subscribers for delivered video programming, the number of linear channels and amount of non-linear programming offered, and the ability of subscribers to watch programming on multiple devices both inside and outside the home. Are there differences in the number and types of MVPDs between rural and urban areas?

8. We request updated information on the number of markets where DBS operators provide local-into-local broadcast service. With respect to non-contiguous states and U.S. territories, do DBS MVPDs offer the same video packages at the same prices as they offer in the 48 contiguous states? Do subscribers need different or additional equipment to receive DBS MVPD services?

9. Horizontal Concentration. In the 16th Report, we estimated the number of housing units nationwide with access to two, three, and four or more MVPDs. We seek data, information, and comment on this measure of horizontal concentration and on any other measure proposed by commenters. We also invite analysis regarding the relationship between the number of MVPDs available to a consumer and competition.

10. Vertical Integration. In the 16th Report, we identified the national video programming networks, regional video programming networks, and regional sports networks affiliated with one or more MVPDs. We seek data, information, and comment on these categories of vertical integration and on any other categories proposed by commenters. We also

invite analysis regarding the relationship between vertical integration and competition.

11. Regulatory and Market Conditions Affecting Competition. Regulations and market conditions affect competition in the marketplace for the delivery of video programming. We seek data, information, and comment on the impact of the Communications Act and Commission rules on competition, innovation and investment. We recognize that the regulations applicable to cable operators may differ from the regulations applicable to DBS systems and telephone MVPDs. How do regulatory disparities affect competition? What specific actions could the Commission take to facilitate competition in the marketplace for the delivery of video programming?

12. We seek comment on the impact of marketplace conditions on MVPD competition. We also request data, information, and comment regarding the entry and exit of MVPDs in 2014. We are specifically interested in entry that increases the number of MVPDs available to consumers and exit that reduces the number of MVPDs available to consumers.

2. MVPD Business Models and Competitive Strategies

13. MVPDs may choose from a variety of business models and competitive strategies to attract and retain subscribers and viewers. We seek descriptions of MVPD business models and competitive strategies in the marketplace for the delivery of video programming. How do MVPDs attract new subscribers and retain existing subscribers? How do MVPDs distinguish their video services from their closest competitors? Do bundles of video, Internet, and voice services help attract and retain video subscribers? Do cable and telephone MVPDs offering bundles over wireline facilities with two-way capability have competitive advantages over DBS MVPDs offering video using satellites with one-way capability and Internet and phone services using cooperative arrangements with other entities? Is there a trend to unbundle or offer smaller, less expensive video packages? Some MVPDs are now offering skinny bundles that include Internet and video packages with a relatively small number of video channels. Are skinny

bundles attracting cord cutters (households that have cancelled MVPD service) and cord nevers (households that have never had MVPD service) or helping to retain existing subscribers that may have been thinking about cutting the cord?

14. Do some MVPDs, such as those of a certain size, have a competitive advantage in the marketplace for the delivery of video programming? Do some MVPDs pay lower prices for video programming? Do the competitive strategies of certain MVPDs include arrangements with content providers that make it more difficult for competitors to acquire programming on reasonable terms? To the extent that any of these answers is yes, please describe the characteristics of such MVPDs.

15. Have vertically integrated MVPDs (i.e., MVPDs with ownership interest in video programming) made it more difficult for competitors to acquire programming by restricting access or raising prices? What is the impact of rising programming prices and rising retransmission consent fees on MVPD business models and competitive strategies?

16. To enhance their competitive position in the marketplace for the delivery of video programming, MVPDs have deployed TV Everywhere, which allows MVPD subscribers to access both linear and video-on-demand (VOD) programs on a variety of in-home and mobile Internet-connected devices. In addition to TV Everywhere, which requires an MVPD subscription, some MVPDs are offering online video packages, which do not require an MVPD subscription, to attract cord cutters and cord nevers. We request comment on the competitive strategies of MVPDs launching online video services separate from their MVPD services.

17. Some MVPDs have added various video-related fees to monthly billing statements. Such fees include, for instance, a broadcast fee to partially recoup retransmission consent fees charged by local broadcast stations and a sports fee to defray the cost of sports programming. We seek comment on the competitive strategy associated with adding video-related fees as opposed to raising monthly subscription prices. Do such fees enable MVPDs to

better attract new subscribers and retain existing subscribers?

18. We request information on MVPDs' deployment of new technologies, including transitioning to all-digital distribution, adding Internet Protocol (IP)-delivered video programming, deploying more efficient video encoding technologies (e.g., MPEG-4 and High Efficiency Video Coding (HEVC)), developing and testing enhanced transmission technologies (e.g., DOCSIS 3.1) and expanding 3-D and 4K services.

19. We are interested in the extent of substitution between MVPD services, OVD services, and over-the-air broadcast television. We realize that substitution represents only part of the competitive interaction between MVPDs, broadcasters, and OVDs. Consumers may also use OVDs and broadcast stations to supplement (i.e., add to) and complement (i.e., combine with) their MVPD services. Our primary focus, however, is substitution. What video services do MVPDs offer that OVDs and broadcast stations do not? To what extent do the prices of MVPD services lead households to substitute OVD services and over-the-air broadcast services for MVPD services? When marketing their video services, have MVPDs encouraged households to switch away from OVD services and over-the-air broadcast services and rely more on MVPD services? What actions have MVPDs taken in response to actual or potential competition from OVDs and broadcast stations?

3. Selected MVPD Operating and Financial Statistics

20. In the 16th Report, we provided the following MVPD operating and financial statistics: video packages and pricing, number of video subscribers and penetration rates, and revenue. We expect to report comparable statistics in the 17th Report. We seek data on the number of housing units passed nationally, the number of subscribers, and the penetration rates. We seek data on MVPD subscriber losses and the factors leading to those losses, especially competition from OVDs. We request data on MVPD revenue. We recognize that cable and telephone MVPDs also provide Internet and phone services using their own facilities. Our focus,

however, is the market for the delivery of video programming, and commenters submitting data for operating and financial statistics should separate video from non-video services.

Broadcast Television Stations

4. Broadcast Television Station Providers

21. Providers of broadcast television services include both individual and group-owned stations that hold licenses to broadcast video programming to consumers. Broadcast stations deliver video programming over the air to consumers. How many households view broadcast programming over-the-air exclusively, and how many households receive such programming over the air on some televisions not connected to an MVPD service? How many households use a combination of over-the-air stations and OVD services?

22. Horizontal Concentration. Commission rules limit the number of broadcast television stations an entity can own in a DMA, depending on the number of independently owned stations in the market. Does group ownership strengthen the competitive position of broadcast stations in the marketplace for the delivery of video programming, either through increased advertising revenue or lower prices for video programming? Does it affect the prices, terms or conditions of carriage agreements with MVPDs? What is the impact of group ownership on the competitive position of independently-owned stations?

23. Vertical Integration. Does vertical integration strengthen a broadcast station's ability to negotiate carriage rights with MVPDs? Are vertically integrated broadcast stations stronger competitors in the marketplace for the delivery of video programming?

24. Regulatory and Market Conditions Affecting Competition. The Commission's spectrum allocation and licensing policies affect broadcast television by limiting the number of stations located in a given geographic area. Commission rules limit the number of broadcast television stations an entity can own in a DMA as well as limit the aggregate national audience

reach of commonly owned broadcast television stations. The Commission's territorial exclusivity rule restricts the geographic area in which a television broadcast station may obtain exclusive rights to video programming. We seek data, information, and comment on the impact of these regulations, the impact of the upcoming incentive auction, and the potential impact of our recent Declaratory Ruling regarding foreign broadcast investment on competition in the marketplace for the delivery of video programming.

5. Broadcast Television Station Business Models and Competitive Strategies

25. What competitive strategies are broadcast television stations using to distinguish themselves from other broadcast television stations? What competitive strategies are broadcast stations using to strengthen their competitive position in the market for the delivery of video programming? We seek data, information, and comment on the use of multicast streams, the amount of HD programming, mobile TV, and broadcast station websites. We seek comment regarding the ability of broadcast stations to secure MVPD carriage of their multicast signals and the impact of such carriage on the financial viability of their multicast operations. What effect does the ability to offer HD or ultra HD programming have on a broadcast station's ability to compete in the marketplace for the delivery of video programming? What progress has been made regarding mobile TV? In what ways are broadcasters using their stations' websites to strengthen their competitive position in the marketplace for the delivery of video programming?

26. To what extent do broadcast stations market themselves as providing unique services, such as local news, sports, weather and emergency alerts, to increase viewership? Do joint sales agreements (JSAs), local marketing agreements (LMAs), and shared services agreements (SSAs) affect the provision of local news offered by broadcast stations, and if so, how? Has online delivery contributed to increased investment in broadcast station local news and information programming?

27. For many years, broadcast television networks used their local broadcast television-affiliated stations as their primary distributor of programming. Broadcast network programming, however, has become increasingly available from OVDs. In addition, broadcast networks are increasingly providing OVD services themselves to strengthen their competitive position in the market for delivery of video programming. Are other broadcast networks planning to offer subscription VOD and live programming, either as standalone OVD services or through joint ventures like Hulu and Hulu Plus? How successful are their subscription offerings, relative to their free offerings? When networks offer their programming as OVDs, how does this impact the financial well-being of affiliated stations that previously offered such programming to the public on an exclusive basis? Have local broadcast stations adapted their business models and competitive strategies in ways that indicate that they view MVPDs and OVDs as competitors? We seek comment generally on the effect of the broadcast networks' increasing provision of OVD service. In particular, what effect is this having on the relationship between broadcast networks and their affiliates? What competitive strategies are broadcast stations using to remain important to broadcast networks for program distribution?

28. We are interested in the extent of substitution between over-the-air services and MVPDs and between over-the-air services and OVDs. Do broadcast stations compare their video services to MVPD and OVD services? To what extent do broadcast stations market themselves as substitutes for MVPD and OVD services? What specific marketing activities have broadcast stations used, if any, to encourage households to switch away from MVPDs and OVDs and rely more on over-the-air services?

6. Selected Broadcast Television Station Operating and Financial Statistics

29. In the 16th Report, we provided the following broadcast television station operating and financial statistics: audiences; revenue from advertising, network compensation,

retransmission consent fees, ancillary services, and online services; cash flow estimates and pre-tax profits; and capital expenditures. We seek data on the viewership of broadcast television stations from over-the-air reception, MVPD carriage, online viewing, and mobile TV. Has multicasting, online viewing, and/or mobile TV increased broadcast station viewership in the marketplace for the delivery of video programming? We seek data on broadcast television station revenues from advertising, network compensation, retransmission consent fees, ancillary services, and subscription fees from OVD offerings. We seek information and comment on the impact, if any, of JSAs, LMAs and SSAs on retransmission consent negotiations and fees.

Online Video Distributors

7. OVD Providers

30. In the video marketplace, Internet-delivered video services are expanding and evolving quickly and significantly. Linear programming is becoming increasingly available. And new OVD service offerings are provided by both new entrants to the marketplace and existing industry participants developing new products. The Commission has in the past defined an "OVD" as any entity that offers video content by means of the Internet or other Internet Protocol (IP)-based transmission path provided by a person or entity other than the OVD. Pursuant to the definition, an OVD has not included an MVPD inside its MVPD footprint or an MVPD to the extent it is offering online video content as a component of an MVPD subscription to customers whose homes are inside its MVPD footprint. As these developments continue apace, the Commission may wish to consider modifying the definition of "OVD" it has used in previous Reports to better reflect the evolving marketplace. For instance, some traditional MVPDs are offering or considering offering Internet-delivered services that would not be restricted to subscribers to their traditional MVPD services. Moreover, the Commission has opened a proceeding to consider whether an Internet-delivered service that offers linear programming, as DISH's Sling TV, for example, does, should be considered to be an MVPD as

that term is defined in the Communications Act. We will want to consider any revised definition of OVD in coordination with any action the Commission may take in the MVPD proceeding. In the meantime, for purposes of the 17th Report we seek data on services that fall within our previous definition of OVD and on other Internet-delivered services that are available or are becoming available that should be considered in an assessment of the state of competition in this segment of the marketplace.

31. In the 16th Report, we categorized and discussed OVD providers in terms of the types of services offered (e.g., subscription, advertising-supported, rental, electronic sell-through, and sports). We expect to follow a similar approach in the 17th Report. Because OVDs are relatively new entities in the video marketplace, data regarding this category tends to be more dispersed and less standardized and reliable, relative to more long-established data for the MVPD and broadcast station categories. We seek comment on the most comprehensive and most reliable data sources for OVDs, individually and as a group.

32. Horizontal Concentration. Because OVDs may be accessed wherever consumers can connect to high-speed Internet, we assume that OVDs compete with one another in a national marketplace. In the 16th Report, we noted the difficulty of measuring OVD market shares as many OVDs are subsidiaries or divisions of companies that do not report data separately for OVD services. We seek comment on an appropriate measure of OVD horizontal concentration.

33. Vertical Integration. Some OVDs are vertically integrated with MVPDs, video content creators and aggregators, and manufacturers of devices used for viewing video programming. In addition, some OVDs provide video storage services and operate content delivery networks (CDNs). Do these vertical relationships strengthen the competitive positions of OVDs? We seek data, information, and comment regarding OVD vertical integration and its impact on competition in the marketplace for the delivery of video programming.

34. Regulatory and Marketplace Conditions Affecting Competition. We request data, information, and comment on regulatory and marketplace conditions that affect OVDs' ability to compete for the delivery of video programming. OVD regulations include possible reclassification of some OVDs as MVPDs, Open Internet rules, and IP closed captioning requirements for video programming. OVDs depend on ISPs to deliver video content to consumers. To what extent does this dependence impact the ability of OVDs to compete in the marketplace for the delivery of video programming? Are ISPs providing consumers with sufficient Internet speeds to view OVD programming whenever, and wherever, and on whatever devices they choose? Do ISPs that are also MVPDs have incentives to disadvantage OVDs? What specific actions are OVDs and ISPs taking individually or cooperatively to improve video streaming quality and facilitate the viewing of video online? Do OVDs encounter unique issues (relative to MVPDs and broadcast stations) when acquiring content rights?

8. OVD Business Models and Competitive Strategies

35. We seek information on the business models and competitive strategies OVDs use to compete in the marketplace for the delivery of video programming. How do OVDs differentiate their services and attract consumers? What are the key differences in terms of the video service offerings, picture quality, original programming, distinctive content, linear programming, video streaming quality, enabling viewing on multiple devices, pricing, and revenue sources?

36. We are interested in the extent of substitution between OVDs and MVPDs and between OVDs and over-the-air broadcast services. We seek data, information, and comment on the extent of substitution between OVDs and MVPDs and between OVDs and over-the-air broadcast services. Do OVDs compare their video services to MVPD and over-the-air services? To what extent do OVDs market themselves as substitutes for MVPD and over-the-air services? What specific marketing activities have OVDs used, if any, to encourage households to rely more

on the video services of OVDs than on MVPDs and over-the-air broadcast stations? Substitution involves both the video content offered and relative prices. What effects have the prices charged by OVDs had on substitution?

9. Selected OVD Operating and Financial Statistics

37. In the 16th Report, we provided the following OVD operating and financial statistics: usage, viewership, subscribership, revenue, investment, and profitability. In the 17th Report, we again plan to report on these operating and financial statistics. We seek information concerning the amount and type of video programming OVDs offer (e.g., television programs, movies, and sports). We seek data on the number of consumers who view OVD programming, the number of programs they view, and the amount of time they spend viewing. We seek data on OVD revenue from subscriptions, advertising, and fees for video rentals and sales.

II. CONSUMER PREMISES EQUIPMENT

38. Consumer premises equipment (CPE) refers to devices that enable consumers to watch video content delivered by MVPDs, broadcast stations, and OVDs. We seek comment on the major developments in CPE devices that affect competition in the marketplace for the delivery of video programming. What new CPE products have been introduced? What are the major technological developments in CPE?

39. While consumers have traditionally leased the set-top boxes necessary for viewing MVPD programming, they purchase most other CPE devices. We seek comment on the competitive strategies associated with leasing set-top boxes. We also seek comment on the effects of set top box leasing on innovation and investment in CPE devices. To what extent do the set-top boxes provided by MVPDs limit the ability to access programming offered by OVDs? What are the consumer benefits and costs of leased set-top boxes? What alternatives do MVPD subscribers have to leasing a set-top box? We seek information and comment on the availability

of retail alternatives to leased set-top boxes. Are consumers able to receive the full suite of an MVPD's video services via these retail alternatives?

III. CONSUMER BEHAVIOR

40. We request data on the number or percentage of households that have HD televisions, ultra HD televisions, Internet-connected televisions, DVRs, and mobile video devices (e.g., laptops, tablets, and smartphones). We also seek data on trends that compare consumer viewing of linear video programming with time-shifted programming. To what extent are consumers dropping or limiting MVPD services in favor of OVDs or a combination of OVDs and over-the-air television? Do some consumers view OVD services separately, or in conjunction with over-the-air broadcast television services as a potential substitute for some or all MVPD services? Do consumers who do not subscribe to MVPD services share common characteristics? We seek comment on the relationship between consumer behavior (e.g., binge viewing, time shifting, viewing outside the home, viewing on multiple devices) and the business models and competitive strategies of entities in the marketplace for the delivery of video programming.

41. MVPD, OVDs, and broadcast stations use television, newspapers, mailings, and websites to reach potential consumers and provide information about video services and prices. Do consumers have sufficient information to easily compare video services and price offerings? What do consumers value most when choosing between and among MVPDs, broadcast stations, and OVDs? What reasons do consumers give for switching from MVPD services to reliance on OVDs and/or over-the-air services (e.g., price, programming)?

IV. ADDITIONAL ISSUES

42. With this Notice, we seek data, information, and comment on a wide range of issues in order to report on the status of competition in the market for the delivery of video programming. To make the 17th Report as useful as possible, are there other issues, additional

information, or data we should include in the report? In the interest of streamlining the report, we request comment on issues, information, and data that could be modified or eliminated without impairing the value of the 17th Report to Congress on the status of competition in the marketplace for the delivery of video programming.

PROCEDURAL MATTERS

43. Ex Parte Rules. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.204(b)(1).

44. Comment Information. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). All filings concerning matters referenced in this document should refer to MB Docket No. 12-203.

45. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

46. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- People with Disabilities: Contact the FCC to request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

47. For further information about this Notice, please contact Dan Bring at (202) 418-2164, danny.bring@fcc.gov, or Marcia Glauberman at (202) 418-7046, marcia.glauberman@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION.

Thomas Horan
Chief of Staff

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