PUBLIC NOTICE

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MEDIA BUREAU SEEKS COMMENT ON
THE STATUS OF COMPETITION IN THE MARKET FOR THE DELIVERY OF
VIDEO PROGRAMMING

MB Docket No. 15-158

Comment Date: August 21, 2015
Reply Comment Date: September 21, 2015

I. INTRODUCTION

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*")[1] and report on the state of competition in the video marketplace in 2014. Using the information collected pursuant to this *Notice*, we seek to enhance our analysis of competitive conditions, better understand the implications for the American consumer, and provide a solid foundation for Commission policy making with respect to the delivery of video programming to consumers.

Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") amended the Communications Act of 1934, as amended[2] ("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.[3] 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."[4]

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[1] *Annual Assessment for the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Sixteenth Report, 30 FCC Rcd 3253 (2015) ("*16th Report*").

[2] 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460, 1494 (1992) ("The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.").

[3] Video programming is defined as: "Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and is exhibited for residential use." 47 U.S.C. § 522(20); 47 C.F.R. § 79.1(a)(1).

[4] Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 548(g). *See* the Commission's most recent report on the status of competition in the market for the delivery of video programming: *16th Report*, 30 FCC Rcd 3253.

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.[5] From the consumer perspective, head-to-head competition in multichannel video programming distribution ("MVPD")[6] 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.[7] 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.[8]

A. Scope of the Report

In the 17th Report, we expect to continue using the analytical framework used in the *16th Report*.[9] Under this framework, we categorize entities that deliver video programming in one of three groups – MVPDs, broadcast television stations, or OVDs. Our placement of entities into groups is an organizational tool to facilitate the presentation of information. This approach is useful for several reasons. First, the three categories reflect the historical evolution of video programming as initially delivered by over-the-air broadcast television stations, then also through MVPDs, and, more recently, via the Internet by OVDs. Second, to some degree the groupings reflect marketplace participants' self-identification. Entities within each group tend to identify other entities in the same group as their foremost competitors in marketing materials and when describing their businesses to shareholders. Third, the business models of entities within a group share more similarities than the business models of entities across groups. Finally, this organization parallels available data sources; some focus on one group (*e.g.*, BIA Kelsey, which focuses on broadcast) and others separately organize data in the same manner we propose (*e.g.,* SNL Kagan). We seek comment on our proposed three-group categorization. Is there a better way to group entities that compete in the marketplace for the delivery of video programming? Would a different grouping facilitate better discussion of competition, innovation, and investment?

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[5] In most areas, consumers had only one choice of cable provider, although cable overbuilders offered another option in some areas. *See Tenth Report*, 19 FCC Rcd at 1659, ¶ 79.

[6] Section 602 (13) of the Communications Act of 1934, as amended, defines a multichannel video programming distributor ("MVPD") as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. § 522(13). The Commission issued a Notice of Proposed Rulemaking seeking comment on a proposal to modernize the interpretation of the term "multichannel video programming distributor" by including within its scope services that make available for purchase, by subscribers or customers, multiple linear streams of video programming, regardless of the technology used to distribute the programming. *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 (2014) ("*MVPD NPRM*"). Nothing in this Notice should be read to state or imply our determination on the proposal.

[7] For example, Verizon and AT&T began offering video services in 2005 and 2006, respectively.

[8] 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. *See Application of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4358, App. A (2011) ("*Comcast-NBCU Order*"). Consumers need a broadband connection to receive video content from OVDs. As discussed in Section II.C.i, *infra*, we recognize that our definition of OVD may need to evolve in light of developments in the evolving video marketplace.

[9] *16th Report*, 30 FCC Rcd at 3258, ¶ 13.

We expect to describe the providers of delivered video programming in each group, summarize their business models and competitive strategies, and present selected operating and financial statistics. We invite interested parties to provide input for the 17th Report. We therefore request data, information, and comment regarding the providers' business models and competitive strategies, and relevant operating and financial statistics in each of the three groups. We seek comment on our proposed description for each group. Is there a better way to describe competition in the marketplace? Are there characteristics that we should include in our description?

We recognize that the business models and competitive strategies of entities in one group may impact the business models and competitive strategies of entities in the other groups. We request data, information, and comment regarding the interrelationships and competitive interactions between and among MVPDs, broadcasters, and OVDs. We also recognize that some companies offer more than one type of video service, such as an MVPD service and an OVD service (DISH Network/Sling TV), or an MVPD service and a broadcast service (Comcast/NBCU). We request data, information, and comment regarding the impact of common ownership across the three groups on competition in the market for the delivery of video programming. In addition, we recognize that many consumers obtain delivered video programming from providers in more than one of these three groups. We request data, information, and comment regarding consumer views and usage of MVPDs, broadcasters, and 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.

We request data, information, and comment from MVPDs, broadcast television stations, OVDs, consumers, consumer groups, and manufacturers of consumer premises equipment. The accuracy and usefulness of the 17th Report will depend on the quality of the data and information we receive from commenters in response to this *Notice*. We encourage thorough and substantive submissions from industry participants, as well as state and local regulators with knowledge of the issues raised. We will augment reported information with submissions in other Commission proceedings and from publicly available sources.

B. Analytic Framework

Following the analytic framework adopted initially in the *14th Report*, 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.

We also plan to discuss consumer premises equipment.

We seek comment on our analytic framework, including how to incorporate a discussion of the interrelationships and competitive interactions between and among the three groups. Are there additional topics we should include in our discussion of providers, business models and competitive strategies, and selected operating and financial statistics?

C. Data

The data reported in previous reports on the status of competition for the delivery of video programming were derived from various sources, including data the Commission collects in other contexts (*e.g.*, FCC Form 477 and FCC Form 325),[10] comments filed in response to notices of inquiry, and other Commission proceedings; publicly available information from industry associations; company filings, news releases, and websites; Securities and Exchange Commission filings; data from trade associations and government entities; data from securities analysts and other research companies and consultants; corporate presentations to investors, newspaper and periodical articles; scholarly publications; vendor product releases; white papers; and various public Commission filings, decisions, reports, and data. Are there additional sources of data, especially quantitative data, we should use to report on the status of competition in the market for the delivery of video programming? Additionally, we seek input on data that would help inform the Commission about the availability and adoption of service options to and by distinct segments of the population, such as data that is provided on a geographic basis or is aggregated by geographic (*i.e.*, rural vs. urban) or demographic (*e.g.*, divided into income or age brackets) strata.

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). In addition, to the extent commenters can provide comparable data for year-end 2013, we seek such information to assess changes in the marketplace for the delivery of video programming over the last year.

II. PROVIDERS OF DELIVERED VIDEO PROGRAMMING

In this section, we seek data, information, and comment that will allow us to describe the providers, business models and competitive strategies, and selected operating and financial statistics of MVPDs, broadcast television stations, and OVDs. To improve our description of the video products and services within each group, we seek quantitative and qualitative data and information from companies and trade associations in each group. In addition, we request comment from the perspective of consumers and other participants in the video marketplace on the extent to which the video services of MVPDs, broadcast stations, and OVDs are substitutes, supplements and/or complements.

A. Multichannel Video Programming Distributors

1. MVPD Providers

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.[11] 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,[12] and

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[10] FCC Form 477 collects information about broadband connections to end user locations, wired and wireless local telephone services, and interconnected Voice over IP services, in individual states. FCC Form 325 is the Cable Television System Report that collects information about cable television systems.

[11] *16th Report*, 30 FCC Rcd at 3261-64, ¶¶ 21-27. Less than one percent of MVPD subscribers rely on other types of MVPDs such as large home satellite dishes, open video systems, wireless cable systems, and private cable operators. Large home satellite dish subscribers use a large dish (typically ranging from 4 to 8 feet in diameter) and receive signals transmitted by satellites operating in the C- and Ku-band frequencies. A wireless cable system, also known as a multichannel multipoint distribution system, is a radio alternative to cable television. Wireless cable systems use the Broadband Radio Service and Educational Broadband Service to transmit video programming to consumers. Private cable operators collect video signals using satellite master antenna systems and distribute programming via wiring in apartments, condominiums, hotels, and office buildings. We do not have reliable data for these other types of MVPDs and plan to exclude them from the 17th Report consistent with recent reports. *See, e.g., 15th Report,* 28 FCC Rcd at 10508-509, ¶¶ 31-32; *16th Report*, 30 FCC Rcd at 3259, ¶ 16 & n. 18.

[12] A linear channel is one that distributes programming at a scheduled time. Non-linear programming, such as video-on-demand, is available at a time of the viewer's choosing.

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?

We request updated information on the number of markets where DBS operators provide local-into-local broadcast service. With respect to non-contiguous states, do DBS MVPDs offer the same video packages at the same prices and terms in Alaska and Hawaii as they offer in the 48 contiguous states? Do subscribers need different or additional equipment to receive DBS MVPD services in these two non-contiguous states? With respect U.S. territories (*i.e.*, Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, and the Northern Mariana Islands), 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 in U.S. territories?

Horizontal Concentration. In the *16th Report*, we estimated the number of housing units nationwide with access to two, three, and four or more MVPDs.[13] Are there other measures of horizontal concentration we should consider? 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. Do consumers with access to more MVPDs have access to a wider array of service options, pay lower prices, or receive other benefits, relative to consumers with access to fewer MVPDs?

Vertical Integration. In the 1992 Cable Act, Congress enacted provisions related to common ownership between cable operators and video programming networks.[14] 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.[15] Are there other categories of vertical integration we should consider? 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.

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. Relevant regulations include franchising,[16] effective competition,[17] program access,[18] program carriage,[19] retransmission consent,[20] must carry,[21] exclusivity,[22] ownership,[23] public interest programming,[24] access to multiple dwelling units,[25] and over-the-air reception devices.[26]

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[13] *16th Report*, 30 FCC Rcd at 3267, ¶ 31 & Table 2.

[14] 47 U.S.C. § 533. These provisions, among other things, prevent cable operators from engaging in unfair acts that have the purpose or effect of significantly hindering or preventing an MVPD from providing satellite-delivered programming to consumers, ensure that competitive MVPDs obtain access to satellite programming affiliated with a cable operator, and prohibit cable operators or other MVPDs from requiring a financial interest in a video programming vendor or obtaining exclusive rights as conditions for carriage. *See* 47 U.S.C. §§ 536, 548; 47 C.F.R. §§ 76.1001-04, 1301-02.

[15] *16th Report*, 30 FCC Rcd at 3268-69, ¶¶ 33-34; App. B, Table B-1; App. C, Table C-1; and App. D.

[16] 47 U.S.C. § 541; 47 C.F.R. § 76.41.

[17] 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(b).

[18] 47 U.S.C. § 548; 47 C.F.R. §§ 76.1001-04.

[19] 47 U.S.C. § 536; 47 C.F.R. §§ 76.1301-02.

[20] 47 U.S.C. § 325(b); 47 C.F.R. § 76.64.

[21] 47 U.S.C. §§ 534-35; 47 C.F.R. § 76.56.

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?

We seek comment on the impact of marketplace conditions on MVPD competition. Market conditions include economies of scale, first-mover advantages, access to content, and the responses of competitors. Are there other marketplace conditions that influence MVPD competition? If so, we seek data, information, and comment on those marketplace conditions. 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

MVPDs may choose from a variety of business models and competitive strategies to attract and retain subscribers and viewers. MVPDs decide where they will offer video services, the technology they will use to deliver video services, the programming they will offer, how they will package the programming (*i.e.*, the number of tiers of video programming and the specific programming carried on each tier), and the additional video services they will offer (*e.g.*, HD programming, ultra HD programming, digital video recording ("DVR"), video-on-demand ("VOD"), and TV Everywhere[27]). MVPDs also make decisions regarding bundles (*i.e.*, packaging Internet and phone services with video services), pricing, advertising, customer service, and vertical integration with suppliers of video programming. We invite data, information, and comment that will assist our understanding of MVPDs' business models and competitive strategies.

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?[28] 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. For example, Verizon FiOS now offers bundles of Internet and Custom TV that provides a base set of channels (*i.e.*, select national networks and

(Continued from previous page)
[22] 47 C.F.R. §§ 76.92, 76.101, 76.111.

[23] 47 U.S.C. § 533(f); 47 C.F.R. §§ 76.501, 76.503-04.

[24] A franchising authority may require a cable operator to use channel capacity for public, educational, or governmental (PEG) use. 47 U.S.C. §§ 531, 541(a)(4)(B). DBS operators are required to reserve 4 percent of their channel capacity for noncommercial programming of an educational or informational nature. 47 U.S.C. § 335(b)(1)(A); 47 C.F.R. § 25.701(f).

[25] 47 C.F.R. § 76.2000.

[26] 47 U.S.C. § 303 note; 47 C.F.R. § 1.4000.

[27] TV Everywhere is an authentication system whereby certain movies and television shows are accessible online via a variety of display devices including personal computers, tablets, smartphones, and televisions – but only if you can prove (or "authenticate") that you have a subscription to an MVPD.

[28] We note that the Commission is currently considering the transfer of control of the licenses and authorizations involved in a proposed transaction between AT&T and DIRECTV. AT&T/DIRECTV Description of Transaction, Public Interest Showing, and Related Demonstrations (filed June 11, 2014), MB Docket 14-90.

all local broadcast TV network stations) and an opportunity to add channel packages from seven different genres.[29] Has the introduction of "skinny bundles" enhanced the competitiveness of MVPDs? 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?

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.

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?

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 VOD programs on a variety of in-home and mobile Internet-connected devices. Access to TV Everywhere video programming is restricted through the use of an authentication process that requires a subscriber to select their MVPD service provider and then provide a user ID and password. We seek comment, information, and data on MVPD deployment and subscriber use of TV Everywhere.

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. For example, DISH Network's Sling TV is an online video service that includes combinations of live and VOD programming.[30] We request comment on the competitive strategies of MVPDs launching online video services separate from their MVPD services.

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. Some MVPDs may raise subscribers' total monthly bills using these fees without raising the advertised package prices. We seek comment on the competitive strategy associated with adding video-related fees as opposed to raising monthly subscription prices. What types of non-tax fees are included on monthly billing statements? Do video-related fees cause consumers to pay prices higher than some MVPDs advertised rate for video services? Do such fees enable MVPDs to better attract new subscribers and retain existing subscribers? Are consumers less responsive to a $1 video-related fee than they are to a $1 increase in the price of video services? How are such fees calculated? In what way, if at all, are specific fees tied to specific programming charges? How are such fees disclosed to consumers prior to becoming a customer or prior to the inclusion of a new fee on a consumer's bill?

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

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[29] Verizon, *A New Way to Get TV: Verizon Gives Customers an Unrivaled Level of Choice With the New FiOS 'Custom TV'* (press release), Apr. 21, 2015. ESPN has filed a lawsuit against Verizon asserting that Verizon breached its contract with ESPN. John Koblin, *ESPN Sues Verizon Over New Cable Packages*, THE NEW YORK TIMES, April 27, 2015.

[30] Dish Network, *Sling TV to Launch Live, Over-the-Top Service for $20 Per Month; Watch on TVs, Tablets, Computers, Smartphones, Game Consoles* (press release), Jan. 5, 2015.

video encoding technologies (*e.g.*, MPEG-4 and High Efficiency Video Coding ("HEVC")),[31] developing and testing enhanced transmission technologies (*e.g.*, DOCSIS 3.1) and expanding 3-D and 4K services.

We are interested in the extent of substitution between MVPD services, OVD services, and over-the-air broadcast television. MVPDs offer both live and VOD programming, while most large OVDs, to date, typically only offer VOD programming. Has substitution between MVPDs and OVDs focused on VOD programming? Is the focus of substitution shifting to live programming? 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. Although supplements and complements are common features in the market for the delivery of video programming, our primary focus is substitution. To what extent do MVPDs compete with broadcast stations and with OVDs? Is such competition increasing and if so how? Households vary in their demand for delivered video services. Some MVPD subscribers buy a full package of MVPD services, while other MVPD subscribers buy a more limited package of MVPD services. Regardless of the size of the MVPD package, some of these subscribers also use OVD services and some also have televisions that only receive over-the-air broadcast services. Some households, such as cord cutters and cord nevers, do not subscribe to any MVPD services and instead rely on OVDs and/or over-the-air broadcast television. Other households have retained their MVPD subscription, trimmed premium channels and pay-per-view programming ("cord shavers"), and substituted with OVD services. Differences in the demand for video services may lead to differing views of substitution between MVPDs, OVDs, and over-the-air broadcast services.

Accordingly, we seek data, information, and comment on substitution between MVPDs and OVDs, and between MVPDs and over-the-air broadcast services. What video services do MVPDs offer that OVDs and broadcast stations do not? To what extent are OVD services and over-the-air broadcast services substitutes for MVPD services? What are the demographics characteristics of cord cutters and cord nevers?[32] An analysis of substitution involves both video services and relative prices. 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

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.[33] We expect to report comparable statistics in the 17th Report. Should we include other operating and financial statistics? If commenters suggest additional statistics, we request data or identification of data sources that would allow us to report such statistics in the 17th Report, especially sources that provide aggregated or industry-wide statistics on cable, DBS, and telephone MVPDs.

We seek data on the number of housing units passed nationally, the number of subscribers, and the penetration rates.[34] 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,

[31] HEVC is a video compression standard, a successor to MPEG-4.

[32] *See infra,* Section IV, Consumer Behavior.

[33] *16th Report,* 30 FCC Rcd at 3308-18, ¶¶ 130-139.

[34] The penetration rate is the number of subscribers divided by the number of housing units passed.

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. We seek information regarding changes in MVPD video revenue, and request comment on whether such changes reflect changes in the number of video subscribers, changes in the number of video services sold to subscribers, or changes in the price of video services.

B. Broadcast Television Stations

1. Broadcast Television Station Providers

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. The Commission already collects data on the number of broadcast television stations in each designated market area ("DMA") and ownership of broadcast television stations using our CDBS database,[35] and purchases data from BIA/Kelsey[36] and The Nielsen Company.[37] We seek additional data concerning the number of households that use over-the-air broadcast television services. 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?

Horizontal Concentration. We are interested in tracking common ownership of broadcast stations nationally and by DMA. 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.[38] The Commission already collects data from the above-mentioned sources that we can use to assess the horizontal concentration of broadcast stations, including the number of stations in each DMA and the ownership of each station. Are there other available data that can be used to inform our assessment of horizontal concentration? 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?[39]

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[35] The Commission collects data on broadcast stations through the Broadcast Radio and Television Electronic Filing System (CDBS). *See* Federal Communications Commission, Media Bureau: MB-CDBS: CDBS Public Access, http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm. We collect ownership data on FCC Form 323 – Ownership Report for Commercial Broadcast Station – and the data are available in CDBS.

[36] *See* BIA/Kelsey, Broadcast Media Resources, http://www.biakelsey.com/Broadcast-Media/Resources (visited April 8, 2015).

[37] Under Commission rules, broadcast television stations serve a community of license. However, Nielsen's DMA market definition is commonly used as the geographic coverage area for broadcast television stations. A DMA is a group of counties that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMAs, covering the entire continental United States, Hawaii, and parts of Alaska.

[38] 47 C.F.R. § 73.3555. *See also* Telecommunications Act of 1996, Pub. L. No. 104-04, § 207, 110 Stat. 56, 114 (1996), § 202(h) (imposing a cap on the percentage of television households that one television station group can serve to 39 percent of U.S. television households).

[39] The Commission has requested comment on specific issues related to joint ownership and certain sharing agreements between stations in the Quadrennial Review. *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 14-50, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4518-26, ¶¶ 320-339.

Vertical Integration. We are interested in tracking the common ownership of broadcast television stations and video programming networks. The Commission has a significant amount of data from publicly available sources that we can use to analyze trends in vertical integration, including data on the number of broadcast stations owned by or affiliated with video content creators and aggregators. However, to obtain the most accurate picture of affiliations between broadcast stations and programming networks, we request additional data directly from stakeholders. We seek information on common ownership of television stations and video programming networks. 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?

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.[40] 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.[41] The Commission's territorial exclusivity rule restricts the geographic area in which a television broadcast station may obtain exclusive rights to video programming.[42] We seek data, information, and comment on the impact of these regulations on competition in the market for the delivery of video programming. The Middle Class Tax Relief and Job Creation Act of 2012 provides for voluntary participation of full-power and Class A broadcast station licensees in a "reverse auction" in which they may offer to relinquish some or all of their licensed spectrum usage rights in exchange for a share of the proceeds from a "forward auction" of new, flexible-use licenses suitable for providing broadband services.[43] We seek data, information, and comment on the impact of the upcoming incentive auction on competition in the marketplace for the delivery of video programming.

We seek comment on the impact of marketplace conditions on broadcast television station competition, innovation, and investment. Marketplace conditions include access to capital and access to programming. With respect to access to capital, we seek comment on the potential impact of our recent Declaratory Ruling regarding foreign broadcast investment.[44] We recognize that broadcast stations depend heavily on advertising and their revenues can be impacted by local and national economic conditions as well as election cycles which can implicate the demand for political advertising. We seek data, information, and comment on the impact of economic conditions, including election cycles, on broadcast station competition, innovation, and investment.

2. Broadcast Television Station Business Models and Competitive Strategies

Broadcasters' business models and competitive strategies involve decisions regarding the communities they will serve, the number of stations they will own nationally and within a DMA (subject to our ownership rules), the audience demographic they seek to attract and the programming they will offer, whether they will be affiliated with a broadcast network, the amount of HD, ultra HD and multicast programming (*i.e.*, multiple linear streams of HD and/or SD programing) they will provide, whether they will air local news, how they advertise their stations and their programming, and whether they will

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[40] *See generally* 47 C.F.R. Part 73, Subpart E.

[41] 47 C.F.R. § 73.3555.

[42] 47 C.F.R. § 73.658(b).

[43] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6401-05, 126 Stat. 156, 222-30 (2012). *See also* http://www.fcc.gov/incentiveauctions (visited April 8, 2015).

[44] *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013).

participate in JSAs,[45] LMAs,[46] and SSAs.[47] Broadcasters also make decisions regarding their websites and their involvement in mobile TV, which uses broadcast airwaves to deliver video programming to mobile devices.[48] We seek data, information, and comment on broadcast station business models and competitive strategies. 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. Are multicast streams being used to carry one of the four major broadcast networks (*i.e.*, ABC, CBS, FOX, or NBC), other national broadcast networks (*e.g.*, The CW, Telemundo), newer networks, niche content, or independently and/or locally produced programming? 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. How many broadcast television stations offer video content in HD or ultra HD, and is the amount of such programming increasing? 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? How many broadcast stations offer mobile TV? What video programming is being offered on mobile TV, what live programming is offered, and what VOD programming is offered? What, if any, broadcast subscription services are being offered on 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?

To what extent do broadcast stations market themselves as providing unique services, such as local news, sports, weather and emergency alerts, to increase viewership? We seek comment on the provision of local news as a competitive strategy. We also request comment on the partnerships among broadcast stations used to produce and deliver local news. Do JSAs, LMAs, and SSAs affect the provision of local news offered by broadcast stations, and if so, how? To what extent is local news programming available online? Has online delivery contributed to increased investment in broadcast station local news and information programming?

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. For example, free VOD programming is available from the ABC, CBS, FOX, and NBC broadcast networks, and subscription VOD and live programming is available from the CBS broadcast network.[49] Are other broadcast networks planning to offer subscription VOD and live programming,

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[45] "Joint Sales Agreement." A JSA is "an agreement with a licensee of a 'brokered station' that authorizes a 'broker' to sell advertising time for the 'brokered station.'" 47 C.F.R. § 73.3555, note 2(k).

[46] "Local Marketing Agreement." An LMA or time brokerage agreement refers to "the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." 47 C.F.R. § 73.3555, note 2(j).

[47] The Commission sought comment on a proposed definition for "Shared Service Agreements" in the pending Quadrennial proceeding. *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 14-50, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4518-26, ¶¶ 320-339.

[48] *See* http://www.nab.org/mobiletv/ (visited April 8, 2015).

[49] *See* http://abc.go.com/, http://www.cbs.com/, http://www.fox.com/, www.nbc.com, and http://www.cbs.com/live-tv/ (visited June 10, 2015). VOD programming from the ABC, FOX, and NBC broadcast networks is also available

(continued….)

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? How are stations using their own OVD services to strengthen their competitive positions in the market? 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? We note that CBS All Access was initially available in markets where CBS owned broadcast stations but has now expanded to markets with affiliated broadcast stations.[50] What competitive strategies are broadcast stations using to remain important to broadcast networks for program distribution?

Some households rely exclusively on over-the-air broadcast television stations and others receive over-the-air broadcast television on some television sets while also using MVPD and OVD services. These households may view various combinations of over-the-air, MVPD, and OVD services as supplements, complements, or substitutes. How do these households that rely solely on over-the air broadcast services view MVPD and OVD services? To what extent do the prices associated with MVPD services and Internet services enter into the decision of these households? Are broadcast stations encouraging consumers to switch away from MVPD and OVD services and rely more on over-the-air services?

As indicated above, we are interested in the extent of substitution between over-the-air services and MVPDs and between over-the-air services and OVDs. We seek data, information, and comment on 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?

3. Selected Broadcast Television Station Operating and Financial Statistics

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.[51] Are these the most useful operating and financial statistics for assessment of the broadcast television station group? Are there other operating and financial statistics that we should include? What are the best sources of data for broadcast television station operating and financial statistics? If commenters suggest other statistics, we request data or identification of data sources that would allow us to report such statistics in the 17th Report. We invite data, information, and comment on broadcast station operating and financial statistics that will assist our understanding of competition in the marketplace for the delivery of video programming.

We seek data on the viewership of broadcast television stations from over-the-air reception, MVPD carriage, online viewing, and mobile TV. What are the trends in broadcast station viewership over each

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free from Hulu and by subscription from Hulu Plus. The OVDs Hulu and Hulu Plus are a joint venture of News Corporation, NBCUniversal, and The Walt Disney Company.

[50] CBS All Access is now available in 33 markets. *See* https://cbsi.secure.force.com/CBSi/articles/FAQ/Where-is-Live-TV-available?retURL=%2FCBSi%2Fapex%2Fknowledgehome_allaccess%3Freferer%3Dcbs.com%252Fvod%26categories%3DCBS_Entertainment%253AAll_Access&popup=false&categories=CBS_Entertainment%3AAll_Access&template=template_cbsvod&referer=cbs.com/vod&data=&cfs=SFS_1.

[51] *16th Report*, 30 FCC Rcd at 3339-52, ¶¶ 192-212.

such platform? 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. What percentage of total revenue is derived from each of these sources? How are these revenue sources and their relative shares of total revenue changing? Are there changes to the network/affiliate relationships that affect broadcast stations' revenues? We seek information regarding the extent to which network affiliated broadcast stations share retransmission consent revenues with the network. We seek information and comment on the impact, if any, of JSAs, LMAs and SSAs on retransmission consent negotiations and fees. We realize that some broadcast stations are integrated with other businesses but we are interested in financial data related directly to the delivered video programming of broadcast television stations, such as the local and national advertising revenue, retransmission consent fees, and revenue from stations' websites.

C. Online Video Distributors

1. OVD Providers

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. 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.[52] 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.[53] 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.[54] 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.

OVDs use the Internet to deliver video content to consumers.[55] Thus, to receive an OVD's video programming, a consumer must have access to high-speed Internet service. The Commission already collects data and produces reports on entities that provide fixed and mobile high-speed Internet access service.[56] Because OVDs are relatively new entities in the video marketplace, data regarding this

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[52] *See supra* note 8 (definition of OVD).

[53] *See* Verizon, *Verizon Goes Over the Top With AwesomenessTV and DreamworksTV; Orders More Than 200 Hours of Original Programming* (press release), Mar. 11, 2015, http://www.verizon.com/about/news/verizon-goes-over-top-awesomenesstv-and-dreamworkstv-orders-more-200-hours-original-programming. *See also supra* note 30 (Sling TV).

[54] *See supra* note 6 (defining an MVPD and *MVPD NPRM*).

[55] *See supra* note 8 (defining an OVD).

[56] The Commission collects information regarding entities that offer Internet service, including the number and size of participants, the number of consumers with access to each provider's Internet service, the download and upload speeds, the services offered by providers of Internet service, and the prices charged for Internet service. *See* FCC Form 477 Broadband Data; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN

(continued….)

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. The *16th Report* described the providers, business models and competitive strategies, and selected operating and financial statistics for some OVD entities, but lacked a reliable source of data for OVDs as a group. We seek data and information regarding OVDs for the 17th Report.

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).[57] We expect to follow a similar approach in the 17th Report. Have the types of services offered by OVDs changed or expanded in 2014? Is there a better way to organize our discussion of OVD providers? We request data on the number and size of OVDs. We also request information regarding the entry and exit of OVDs in 2014.

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. We seek comment on the validity of this assumption. In the *16th Report*, we noted that OVDs continued to enter and exit the marketplace and OVDs had diverse business models that continued to evolve.[58] We also 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.[59] We seek comment on an appropriate measure of OVD horizontal concentration. For any recommended measure of horizontal concentration, we seek relevant data for assessing the level of concentration.

Vertical Integration. Some OVDs are vertically integrated with MVPDs.[60] Some OVDs are vertically integrated with video content creators and aggregators (*i.e.*, broadcast and cable networks, television and movie studios, and sports leagues).[61] Some OVDs are vertically integrated with manufacturers of devices used for viewing video programming.[62] In addition, some OVDs provide video storage services and operate content delivery networks ("CDNs").[63] Do these vertical relationships strengthen the competitive positions of OVDs? To what extent are OVDs developing content delivery networks ("CDNs")? We seek data, information, and comment regarding OVD vertical integration and its impact on competition in the marketplace for the delivery of video programming.

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

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Docket No. 14-126, Order, 30 FCC Rcd 1567 (2015); *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311 (2014).

[57] *16th Report*, 30 FCC Rcd at 3353-65, ¶¶ 217-241.

[58] *Id.* at 3377-81, ¶¶ 268-274.

[59] *Id*. at 3365-66, ¶ 242.

[60] For example, Sling TV is owned by the Dish Network.

[61] For example, the OVD Hulu is owned by News Corporation, NBCUniversal, and The Walt Disney Company. The four largest professional sports leagues – Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League – also provide a significant portion of their programming through their own OVD services.

[62] For example, the OVD iTunes is owned by Apple, which designs and manufactures personal computers, tablets, smartphones, and the Apple TV media player.

[63] A content delivery network provides video content to consumers more quickly and reliably by placing servers close to consumers. *See* TechTerms.com, http://techterms.com/definition/cdn (visited Mar. 27, 2015).

of video programming. Relevant regulations include possible reclassification of some OVDs as MVPDs,[64] Open Internet rules,[65] and IP closed captioning requirements for video programming.[66]

We seek data, information, and comment on marketplace conditions affecting OVD competition, innovation, and investment. 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? How do Internet speed requirements differ among OVDs, and what factors affect the speed needed to deliver specific OVD programming to consumers? Are ISPs providing consumers with sufficient Internet speeds to view OVD programming whenever, and wherever, and on whatever devices they choose? What is the impact of the growing amount of Internet traffic on Internet speed? Do Internet speeds slow when OVD traffic increases? Do ISP data caps or usage-based pricing inhibit consumers' use of OVD services? To what extent are consumers able to obtain or purchase higher tiers of Internet service needed to view OVD programming? Do ISPs that are also MVPDs have incentives to disadvantage OVDs? Do ISPs that are also MVPDs favor their own online services and impede OVD services? If so, how? What specific actions are OVDs and ISPs taking individually or cooperatively to improve video streaming quality and facilitate the viewing of video online?

We seek data, information, and comment regarding the ability of OVDs to acquire content. Do OVDs encounter unique issues (relative to MVPDs and broadcast stations) when acquiring content rights? Do MVPD and broadcast station agreements with content providers hinder the ability of OVDs to acquire content? Are OVDs disadvantaged in obtaining programming due to the bargaining leverage of large MVPDs? Do large OVDs have advantages acquiring content that small OVDs do not have?

2. OVD Business Models and Competitive Strategies

The business models of OVDs vary greatly. Some OVDs rely on subscriptions or per-program fees, others rely on advertising, and some OVDs rely on a combination of subscription and advertising revenue. Some offer tens-of-thousands of video programs, others offer much fewer. Some OVDs have ownership interests in little or no video programming, while others have significant ownership interests in all or most of the video programming they make available over the Internet. Some OVDs distribute only video programming previously available through other delivery technologies, while others create their own content.

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? Do vertically integrated OVDs (*e.g.*, Hulu) have less incentive to encourage dropping MVPD and over-the-air services relative to non-vertically integrated OVDs (*e.g.*, Netflix)?

Because the business models of OVDs vary significantly, OVDs with similar business models may view themselves as substitutes and OVDs with different business models may view themselves as supplements or complements. Do all OVDs compete with all other OVDs, or do OVDs compete mainly with OVDs with similar business models? We seek data, information, and comment on substitution between OVDs.

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[64] *MVPD NPRM*, 29 FCC Rcd 15995.

[65] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*Open Internet Order*").

[66] *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, 27 FCC Rcd 787 (2012).

How many households subscribing to OVD services, subscribe to only one OVD? How many subscribe to multiple OVDs? What is the impact of the relative prices of OVDs with subscription-based business models on the number of OVD subscriptions per household? What are the trends in household expenditures on OVD programming and the time households spend viewing OVD programming?

To what extent do OVDs compete with MVPDs and with over-the-air broadcast services? Have OVDs been a better substitute for the VOD programming offered by MVPDs than the live programming offered by MVPDs? Is competition between OVDs and MVPDs increasing with the growing amount of live programming offered by OVDs? What actions have OVDs taken in response to competition from MVPDs and broadcast stations? Have OVDs adapted their business models and competitive strategies in response to competition from MVPDs and broadcast stations? We seek comment on the increase in live programming available from OVDs. What impact is this having on competition in the marketplace for the delivery of video programming? Are OVDs targeting households that do not subscribe to MVPD services or are OVDs targeting MVPD households and encouraging them to drop their MVPD subscriptions?

Some consumers use OVD services in combination with MVPD and over-the-air services. These households may view various combinations of OVD, MVPD, and over-the-air services as supplements, complements, and substitutes. Some households, however, rely exclusively on OVD services. How do these cord cutters and cord nevers view MVPD and over-the-air services? To what extent do the prices associated with MVPD services enter into the decision of cord cutters and cord nevers? Which OVDs, or combination of OVDs, are consumers using to substitute for MVPD and over-the-air services? Can MVPD and over-the-air services be replicated by a combination of OVDs? What prices are consumers paying for such combinations? Is there programming available from MVPDs and broadcast stations that a combination of OVDs does not offer?

Although it may be useful to view substitution in terms of available video programming, there are additional features that influence a consumer's view of substitution in the marketplace for the delivery of video programming. These include price and the number of commercials. Other potentially important features may include which episodes or seasons are offered for a specific television show, the ability to binge view programming, and whether programming can be recorded for later viewing over DVRs and other similar devices. Which features do consumers deem most important when substituting OVD services for MVPD and over-the-air services?

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?

3. Selected OVD Operating and Financial Statistics

In the *16th Report*, we provided the following OVD operating and financial statistics: usage, viewership, subscribership, revenue, investment, and profitability.[67] In the 17th Report, we again plan to report on these operating and financial statistics. Are there other operating and financial statistics that we should include? What are the best sources of data for OVD operating and financial statistics?

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[67] *16th Report*, 30 FCC Rcd at 3394-405, ¶¶ 299-320.

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. In addition, we invite comment and the submission of data and information on other OVD statistics that will assist our understanding of competition in the marketplace for the delivery of video programming.

III. CONSUMER PREMISES EQUIPMENT

Consumer premises equipment ("CPE") refers to devices that enable consumers to watch video content delivered by MVPDs, broadcast stations, and OVDs. CPE includes numerous devices that receive and display video (*e.g.*, televisions, computers, tablets, and smartphones), MVPD set-top boxes, recording equipment (*e.g.*, DVRs), video game consoles and streaming devices (*e.g.*, Xbox, PlayStation, Roku, Fire TV, Chromecast, Apple TV, and DVD and Blu-Ray players), gateways (*i.e.*, modems and wireless routers), and antennas. 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? Is it important to consumers to be able to use a single CPE to access both MVPD and OVD services?

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. What are the consumer benefits and costs of retail alternatives to set-top boxes? Are consumers able to receive the full suite of an MVPD's video services via these retail alternatives? If consumers are not able to receive the full suite of MVPD video services via retail CPE, what are the major obstacles that prevent this?

IV. CONSUMER BEHAVIOR

We seek information regarding trends in consumer behavior and their impact on the products and services entities offer in the marketplace for the delivery of video programming. 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? For example, do these consumers have lower incomes or assign less value to live sports programming and first-run programming, relative to MVPD subscribers? How do they compare to other consumers in terms of age, education, or household structure? We recognize that most consumers of OVD services also subscribe to MVPD services. Do these consumers view OVD services as a supplement, complement, or substitute for MVPD services? 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.

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)?

V. ADDITIONAL ISSUES

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.

VI. PROCEDURAL MATTERS

Ex Parte Rules. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

Comment Information. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 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).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- 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 St., 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 and boxes 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: 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).

For further information about this Public Notice, please contact Marcia Glauberman at (202) 418-7046, marcia.glauberman@fcc.gov or Dan Bring at (202) 418-2164, danny.bring@fcc.gov. Press inquiries should be directed to Janice Wise at (202) 418-8165, janice.wise@fcc.gov.

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