

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)*, MB Docket No. 18-283 and CSR No. 8965-E.

During the previous Administration, a bipartisan majority of the FCC adopted a rebuttable presumption that cable operators are subject to effective competition. At the time, 99.7% of homes in the United States had access to multiple multi-video programming distributors, including the two major satellite carriers and at least one cable operator.<sup>1</sup> Subsequently, only franchising authorities in Hawaii and Massachusetts filed certified forms successfully rebutting this presumption. As a result, those franchising authorities are the only ones in the country currently authorized to regulate basic-tier cable rates.

Four years later, the market for video services has become even more competitive. Indeed, 70% of U.S. households now subscribe to at least one streaming service.<sup>2</sup> The success of these services is driven by fierce market competition, and consumers are benefiting from high-quality programming. This year, the leading three streaming services—Netflix, Hulu, and Amazon Prime—earned 184 Emmy nominations.<sup>3</sup> And more services are coming online seemingly every month; in November, consumers will get at least two more options as Disney+ and Apple TV+ join the ranks of online video distributors. The rise of streaming services is clearly having an impact on traditional video providers. By the end of last year, for example, 33 million adult Americans had cut the cord altogether.<sup>4</sup>

Against this backdrop, it strains credulity to suggest that cable operators are not subject to competition in the video marketplace across the nation. And it is even odder to suggest that, in this vast land of nearly 330 million, only consumers in a handful of communities in Massachusetts and Hawaii lack competitive choices for video entertainment.

With all this in mind, today's *Order* focuses on a discrete question of statutory interpretation: Are Charter's cable systems in certain Hawaii and Massachusetts communities subject to effective competition under Section 623(l)(1)(D) of the Communications Act?

We answer this question in the affirmative, finding that the AT&T TV NOW streaming service meets the local exchange carrier test outlined in that provision. To be sure, when this statute was enacted in 1996, Congress probably didn't specifically envision the video marketplace that exists today. But it wisely established a flexible, future-oriented test, using broad language that could apply to new technologies. This item thoroughly analyzes the language of the statute, meticulously considers the arguments on both sides, and reaches the correct conclusion—one that is consistent with the statute's plain meaning.

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<sup>1</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3267, para. 31 (2015).

<sup>2</sup> "How Many Streaming Services Does the Average Person Subscribe To?," *available at* <https://www.forbes.com/sites/tonifitzgerald/2019/03/29/how-many-streaming-video-services-does-the-average-person-subscribe-to/#5e1d90316301>.

<sup>3</sup> "HBO Dominated the 2019 Emmy Nominations, Thanks to Game of Thrones," *available at* <https://www.theverge.com/2019/7/16/20696484/game-of-thrones-got-emmy-nominations-actors-hbo-netflix-streaming>.

<sup>4</sup> "Cord-Cutting Keeps Churning: U.S. Pay-TV Cancelers to Hit 33 Million in 2018," *available at* <https://variety.com/2018/digital/news/cord-cutting-2018-estimates-33-million-us-study-1202881488/>.

My thanks to the Commission staff that diligently worked through this petition. From the Media Bureau, Michelle Carey, Holly Saurer, Steve Broecker, Diana Sokolow, Joe Price, and Brendan Murray, and from the Office of General Counsel, Susan Aaron and David Konczal. Your work on this item certainly has earned you a good weekend of binge-watching.