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

In the Matter of )
) MB Docket No. 14-261
Promoting Innovation and Competition in the )
Provision of Multichannel Video Programming )
Distribution Services )

Comments of Atlanta Interfaith Broadcasters, Inc.

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February 12, 2015
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Atlanta Interfaith Broadcasters, Inc. (AIB) is a local, nonprofit programmer that reaches more than one million cable television viewers in Atlanta with educational, public interest, community, nonprofit, and interfaith-religious programming. It also streams this content and provides other programming via the Internet. AIB opposes the proposed rule changes because on the one hand they suggest Internet content-providers like AIB can be regulated and on the other hand because they pose a threat to local programmers.

I. Summary

AIB does not want to be a Multichannel Video Programming Distributor (MVPD) or regulated as one. It does not read Notice of Proposed Rulemaking to make it one; however, it does read the Notice to imply that the Commission has regulatory jurisdiction over AIB -- and every other website owner -- by virtue of the fact that it provides content over the Internet. It is troubled by the wide net the Notice seems to cast over Internet content-providers and by the precedent this proceeding could set as to the Commission’s regulatory jurisdiction. AIB’s other objection is that the Commission is proposing to redefine MVPD in order to promote competition with cable television, yet cable
television systems carry local programmers like AIB whereas their Internet competitors will likely not. The end result will be a net loss of local programming. AIB feels the Notice runs roughshod over the principles of localism that inhere in the Communications Act.

II. Description of AIB and Other Local Programmers

AIB is an unusual cable programmer. It is not the large, international, commercial enterprise that comes to mind when one hears the phrase “cable programmer.” Nor is it a local public, educational, and government (PEG) programmer that is entitled to be carried on cable by local franchises or a must-carry broadcast television station. But, it may be the largest, if not the only, local, interfaith programmer in the country.

AIB got its start in the early 1970s when Commission rules required broadcast television stations to provide public interest and community programming. AIB produced such programs and provided them to Atlanta television stations. It was quite low-tech then. Its founder, Rev. John Allen, loaded AIB-produced video tapes in his car and delivered them to the television stations. In those bygone days, AIB’s programs counted toward the stations’ public service and community programming obligations. When the Commission eased these requirements on broadcasters, AIB persuaded cable television systems to carry its programs. AIB struggled at first, producing a mere twenty hours of programming per week, not even enough for a full-time channel. By the early 1990s, however, it was running a full-time channel on twelve cable systems in the Atlanta area and now reaches more than a million viewers.
AIB is rooted in the religious community of Atlanta, a city rich in traditions of public and community service. Some of AIB’s programming is intended to serve the individual congregations at the synagogues, mosques, temples, and churches of the city. However, AIB also originates and airs local news, educational, instructional, public service, and community programs. It also makes its channel available to secular educational and nonprofit institutions in the city. Today, its channel carries a mix of religious programming from its members, educational offerings, and the kind of local, community and public service programming that was once carried on broadcast television. AIB owns some of this programming and transmits the rest under license. Cable systems carry AIB without charge. This is a testament to the quality and value of AIB’s programming. It bears emphasizing that AIB is not a broadcast station eligible for must-carry or a PEG channel nor is its carriage otherwise required by law.

AIB distributes via Internet too. It streams the same programming carried on channel. It also offers programs on-demand on the Internet. Thus, depending upon which definition of MVPD might be adopted and upon the answers to other questions raised in the Notice, AIB could end up being considered a multichannel video programming distributor although not under the currently proposed definition. In any case, it seems clear from the Notice that the Commission is implicitly suggesting it can regulate AIB’s Internet offering – indeed anyone’s Internet transmission -- if it so chooses.

III. The Proposal Asserts Regulatory Authority over Internet Content-Providers

The Commission’s reason for changing the definition of MVPD is to promote commercial enterprises that want to compete with the traditional distributors of
multichannel video programming, such as cable systems and direct broadcast satellite providers. The promotional aspects of the rulemaking would extend the privileges of MVPD status -- equal access to the programming of broadcast stations and to the programming of producers affiliated with cable systems – to those who provide video over the Internet. The business model for this is sometimes called an “over-the-top” (OTT) programmer.¹

In achieving its aim, the Commission takes a law written for analog technologies and attempts to give it meaning in a digital age. The Notice says the Commission is striving for a “technology-neutral” approach.² Use of this term is confusing since the technology that is addressed in the Notice, the Internet Protocol, is not a communications protocol at all and is not regulated by the Federal Communications Commission. More importantly, under the Internet Protocol, all digital bits are equal. A video bit is no different from an audio bit or a text bit. Thus, the Notice steps into perilous territory in its attempt to apply Commission regulation only over images that are chopped into bits and encoded by customer-premises equipment and then travel over a communications path to their destination where they are decoded and displayed as video by customer-premises equipment. Traveling over the communications path, a video bit is indistinguishable from a text, audio, or image bit although the package as a whole may carry a priority. Thus, it certainly looks as though the Notice is trying to regulate based

¹ Wikipedia, “Over the Top Content” [http://en.wikipedia.org/wiki/Over-the-top_content](http://en.wikipedia.org/wiki/Over-the-top_content) (accessed January 20, 2014). The Notice in this proceeding is narrower in that it proposes to define MVPD as an entity which provides video programming on a schedule. However, it also asks for comment on whether on-demand distributors should also be included. Moreover, the Notice apparently applies only to video programming whereas the term OTT applies to the provision of audio programming and indeed any media offering over the Internet.

² Paragraphs 3 and 4. But the Notice is not in fact taking a technologically neutral approach. For example, it suggests that Netflix would be an MVPD if on-demand programming is considered. But the Notice looks only at regulation of one of Netflix’s distribution technologies, its online offering. It does not suggest it would regulate Netflix’s other distribution technology, DVDs by mail.
on content, e.g., video versus text, as it exists before and after it passes through communications facilities over which the Commission has jurisdiction. This seems neither technology-neutral nor content-neutral regulation.

A further complication with the Notice’s approach is that almost everyone transmits video over the Internet. Facebook users do; homeowners with online security services do; GoPro users do; television stations do; most media outlets do. The New York Times, for example, was a newspaper in the analog world, when the MVPD law was written, but today it routinely produces news videos that are available to subscribers over the Internet together with text, still images, and audio.

Thus, a threshold question is the scope of the Commission’s jurisdiction over Internet transmissions. Can it, at its discretion, regulate a single individual who transmits content, whether video or otherwise, from his cell phone, tablet, camera, or computer? Can it regulate video producers solely because they transmit their video over the Internet? These are jurisdictional questions. If the answer is no that the Commission cannot regulate individuals or single video providers, then the standards the Commission adopts to distinguish the single user from MVPDs are jurisdictional. If it wants to regulate Internet MVPDs, the Commission should explain why it has jurisdiction over a commercial enterprise that streams twenty channels for purchase but not over an individual who sends a one-minute video to her friend. Or is the Notice suggesting that the Commission has jurisdiction over anyone who connects to the Internet, but it may choose not to regulate some?

AIB should hardly be alone in its concern over the possible breadth of the Notice’s apparent assertion of jurisdiction. What AIB is doing is widespread in the cable
business. In the Washington D.C. area, for example, Montgomery County Cable of Maryland offers two channels on cable, streams both of them on the Internet, and offers additional programming on demand.\textsuperscript{3} There must be hundreds if not thousands of other cable programmers who are in the same position.

Nor should this be dismissed as a matter of line drawing that falls within the Commission’s discretion. AIB believes it is jurisdictional. If the Commission can regulate MVPDs with twenty channels, then it might in the future decide to regulate AIB with only one channel or Montgomery County with two – or any Internet user for that matter. Nothing suggests that when Congress added the MVPD provisions to the Communications Act in 1992, it intended to expand the Commission’s basic regulatory jurisdiction or that merely by providing multiple streams an otherwise unregulated Internet content-provider is swept under the Communications Act.

IV. \textbf{Linear Streams May Be Outdated}

The Notice proposes to equate an analog channel with a linear stream, but it has chosen an elusive and perhaps outmoded concept. According to the Notice, the distinguishing characteristic of a stream is that distributed at a prescheduled time. This seems synonymous with the term “broadcast.”

Yet the genius of Internet technology is that it permits video to be transmitted to multiple viewers without broadcasting it. Indeed, this is generally considered a huge advantage. Internet communication obviates the need for everyone to read, listen to, or watch the same content at the same time. Television viewers have always wanted time-shifting. In analog days, they bought video tape recorders to watch broadcasts at a time

\textsuperscript{3} Montgomery County Television, Montgomery Channel 21, \url{http://www.mymcmedia.org/montgomery-channel/} (accessed January 22, 2015).
of their choosing. More recently, consumers buy digital recording devices for the same purpose. Some people time-shift everything, never watching a program at the time it is broadcast over television, cable, or satellite. One popular feature of the defunct Aereo service was the recording capability which lay within Aereo’s computers. This allowed subscribers to watch programs on their tablets, computers, or cell phones on a time-shifted basis, to watch at a time convenient to them. It is a feature that will surely become ubiquitous in the future, but it fits none of the four Internet-based video service models itemized in the Notice.\textsuperscript{4}

The broadcast model itself may be passé for Internet video. Even in the analog world, it never made sense to broadcast at 2 a.m. The audience at that hour is a tiny fraction of what it is prime time as advertisers well know. And of course, not all television stations broadcast twenty-hours a day.

Technology doesn’t just allow the viewer to time-shift though. A streaming programmer can achieve the same result by chopping its schedule into several simultaneous transmissions. For example, a twenty-four hour schedule could be chopped up into twenty-four simultaneous streams with each channel offset by one hour. Thus, twenty-four different, hour-long programs could be streamed all at once, so the viewer could tune in at any time and see her favorite program. In this way, the programmer of a single linear channel would turn itself into an MVPD under the definition proposed in the Notice. Granted, this might not make sense from a cost standpoint at the moment, but

\textsuperscript{4} Notice, Paragraph 13.
cost equations change. The point is that the Notice is not making the correct analogy between the analog age and a digital one.

This is not of idle concern to AIB, nor should it be to anyone who uses the Internet. AIB currently streams the same programming it puts on cable and also offers video on-demand. Since the Notice asks if on-demand programming should also be treated as a channel, AIB might be considered to have two or more channels and hence be a multichannel video program distributor. And, given that the Notice suggests the Commission can raise or lower the number of channels in its definition of MVPD, then it seems to be saying it has jurisdiction to regulate AIB right now if it chooses. Of course, AIB does not currently offer its streamed programming for purchase in the traditional sense. However, even this is in doubt since the Notice asks whether the definition of “purchase” should be extended beyond its conventional meaning to include advertiser-supported programming. AIB is concerned because one can always make the argument that there is no such thing as a free lunch: one way or the other someone pays for content and therefore a “purchase” is involved whenever programming is broadcast.

Lastly, AIB suggests at least one business model not mentioned in the Notice and that is of what are called “aggregators.” Everyone uses them. Google and Yahoo News are two examples. They consist of a single webpage with a computerized summary of content on other websites and links to them. Thus, a multichannel Internet-based video provider does not need to store content on its servers. Operating under contract with the content-provider, it could simply link to a stream coming from the content-provider. The aggregator might only provide advertising, a linking website, and billing. Such an

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5 At present, this may not be a cost-effective approach. AIB estimates the capital cost of streaming per channel to be about $44,000 and the monthly operating cost per channel to be about $3,000. These costs are not linear and might decline with additional channels.
aggregator would be an MVPD under the proposed definition even though the similarities between it and the traditional cable system with a headend are non-existent.

Roku is already an aggregator of streaming video, including programming from religious organizations. According to a 2013 online article, Roku will link to a linear video stream of a religious organization for only $250 per month.\(^6\)

V. MVPD Obligations Would Subject AIB to the Costs of Regulation and Interfere with Editorial Control of Programming

For a small nonprofit like AIB, with no desire to avail itself of the privileges of being an MVPD, the obligations that go with being an MVPD loom large. Some of these, such as Equal Employment Opportunity, signal leakage, negotiation with broadcasters, inside wiring, and loudness of commercials, are either inapplicable or doable. However, the administrative cost of regulation would be significant for a small entity.

The program carriage requirements are a more serious concern. AIB carries on its cable channel programming produced by unaffiliated vendors. However, it imposes certain editorial standards on them, such as prohibiting the on-air solicitation of money and attacks on other religions and faiths. But this might be unlawful if AIB were subject to the MVPD obligation in 47 C.F. R. 76.1301(c) against “discriminating in video programming distribution … in the selection, terms, or conditions of carriage.” If the definition of MVPD ends up including operations like AIB’s, then it would force AIB to change its editorial policies.

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VI. The Transmission Path Requirement is Jurisdictional

Given the complexities of trying to refine the definition of an MVPD so as not to imply the Commission has jurisdiction over how people use the Internet, AIB believes any revisions to current MVPD rules must be minor. The requirement that an MVPD must distribute programming over transmission paths it owns should be retained. Since the Commission has long exercised jurisdiction over entities owning transmission paths, such as common carriers, cable systems, and licensees of radio transmitters, this would not imply an extension of the Commission’s traditional jurisdictional limits. It might seem anachronistic to fall back on a Latin phrase in a digital age, but resort to *expressio unius est exclusio alterius* seems appropriate here: mentioning one thing may exclude another thing. The fact that all the entities that Congress referred to in the statute owned transmission paths excludes a definition of MVPD that does not. Indeed, the entities mentioned in the statute distribute to end users over the transmission path they own. They do not use an intermediary carrier as is typical with Internet transmissions.7

VII. Extending the MVPD to Internet Providers Threatens Local Programming

AIB strongly opposes the notion that multichannel Internet providers be given MVPD status because AIB does not believe they will carry local programmers. There is no reason to expect them to have a local presence, and no reason to expect them to tailor programming packages to local needs. In the least, none of those rumored to be interested in the business has talked about local programming.

7 AIB also wants to comment in passing on two other questions in the Notice. First, if the definition of MVPD is extended to the Internet, then only “linear programming,” i.e. streamed programming, should be considered. On-demand programming should not be counted in the definition of MVPD. Second, only multichannel providers that operate on a paid subscription basis should be MVPDs.
The defunct Aereo was an exception of course. It was carrying local broadcast stations. However, since time-shifting of television broadcasts was part of Aereo’s offering, it is difficult to know how important this was to customers. Did they subscribe to get programs they could get for free over-the-air and on cable, or did they sign up because they found Aereo’s time-shifting of television shows to be attractive. Aereo did not carry AIB or PEG channels.

But the best proof that Internet-based multichannel offerings are not interested in public service, community, and local programming is this very proceeding. The Notice here says the benefit of the proposed rules is to give Internet-MVPDs access to the commercial entertainment programming from local stations, primarily the network shows, and from national programmers affiliated with cable companies. In other word, the Notice proposes to help Internet-MVPDs get national programming that is already carried on cable. There is but a single passing reference to localism in Paragraph 53 of the Notice.

AIB will be harmed if the Commission is successful in this effort to help Internet-based MVPDs because the Commission’s very purpose seems to be to give customers Internet alternatives to cable systems, which carry local programmers. AIB does not intend to make cable’s argument for it, but to the extent cable claims the Commission is tilting the playing field against them, AIB would agree because this would hurt local programmers. While the proposed rules are no different from the old rules in this respect, the Notice’s ambitions are to promote MVPD as a competitor to cable and thus take “eyeballs” away from the local programming that exists only over-the-air and on cable. This would be a shame. Moreover, while competition between cable and MVPDs might
be of marginal economic benefit to viewers by lowering prices, it does not provide a net increase in programming choices: the benefit of MVPD status is to give an Internet-provider access to the very same commercial programs that cable systems carry. It will not increase the total amount of programming available to the public and in fact might decrease it since cable’s competitors will be able to get by without carriage of local programmers like AIB and PEG channels and perhaps even broadcast stations.

VIII. Conclusion

Despite the fact the Notice admits in Paragraph 1 that Internet-based video programming is nascent, it still proposes to regulate it. AIB has advanced multiple reasons not to do this. First, these rules would be precedent for further regulation of Internet content-providers. Second, it is an attempt to apply regulation of analog offerings to digital offerings by making outmoded analogies. “Video” no longer exists on interstate communication by wire and radio. It has been replaced by a digital bit which is not video, text, image, audio, or other. Video is something humans see on special equipment after the bits have reached their destination in someone’s house. Third, the broadcast business model of the analog age may not last long in a digital world where users increasingly want to view content when they want, not when the programmer broadcasts it. Fourth and last, while the success of Internet-based MVPDs as a business model is debatable, any such success will be at the expense of localism and programming diversity.

Respectfully submitted,

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