Before the
Federal Communications Commission
Washington, D.C.

In the matter of

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

COMMENTS OF THE

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)¹

CCIA respectfully submits these comments in the above referenced proceeding regarding the reclassification of Multichannel Video Programming Distribution Services (MVPD). The Federal Communications Commission (the Commission) should take a balanced approach that does not harm the vibrant “over-the-top” (OTT) video market that has provided consumers with a wider variety of content and contributed significantly to our economy. An effort to expand the MVPD definition beyond Congress’ intent could seriously hinder e-commerce and how consumers access content.

I. The Commission Should Not Extend Application of a Static Definition of MVPD that Could Prevent Future Innovation and Investment.

The Commission has noted the OTT video market’s recent explosion in availability and popularity. According to the Diffusion Group, and internet video research firm, by 2020, a third of all video viewing will be done online – up from about 10 % in 2013.² Over the past few

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ more than 600,000 people and generate annual revenues in excess of $465 billion. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A list of CCIA’s members is available online at http://www.ccianet.org/members.
² http://www.foxbusiness.com/markets/2015/01/06/tv-isnt-dead-but-set-makers-and-service-providers-focus-design-on-growing/
years, new technologies and media outlets have developed to meet consumers’ growing demand for content. Innovation flourishes when people can develop their ideas free from artificial, regulatory constraints. For example, new devices like Roku, Chromecast, and FireTV allow consumers to access content streaming from the open Internet. New platforms like these have increased options for consumers beyond the traditional cable systems. Cable operators usually offer consumers fixed channel line-ups that are accessible via a closed user interface. There is minimal integration of over-the-top content available on such a user interface, making it inconvenient or impossible for subscribers to watch the TV show or movie they want to see at their preferred time and at the best price. As a result, subscribers have insufficient opportunities to tailor the user interface to their own needs and interests.

Innovation has permitted consumers to enjoy video online through at least five, distinct models. The Commission has tentatively concluded that subscription linear distributors should be included in the MVPD definition because they allow consumers to buy multiple channels of video. However, in addressing the question of whether any other internet-based video programming providers should be included in the new MVPD definition, the Commission should not act in a way that would prohibit new or established companies from “experimenting with new business models based on Internet Distribution.”

Even if Internet-based MVPDs are treated like facilities-based MVPDs offering similar programming, entities providing content online that complements, but does not substitute for, traditional MVPD offerings should not be subject to such regulation (e.g., subscription on-demand, transactional on-demand, ad-based linear and on-demand, or transactional linear

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3 NPRM at ¶ 13 (identifying the models as “subscription linear,” “subscription on-demand,” transactional on-demand,” “ad-based linear and on-demand,” and “transactional linear”).

4 NPRM at ¶ 14.

5 NPRM at ¶ 2.
By broadening the definition of MVPD, the Commission would risk forcing every entity offering video content online into the definition of MVPD. The Commission correctly notes the differences between subscription linear distributors and all other models and that they should not be included in a new definition of MVPD. There are clear distinctions between how these services are offered and how consumers use them. For example, viewers often “binge watch” programs on subscription on-demand services because viewers can access these programs at their discretion and on their own time. This type of discretionary viewing is dissimilar from the services offered by MVPDs. Therefore, “linear stream” should not include programs that are made available all at once for viewers to watch.

By redefining MVPD, the Commission also risks the imposition of a static definition that could prevent future innovation and investment. Just as OTT has evolved and grown exponentially into at least five different models, it is impossible to tell how video will be consumed in the future. It would be misguided for the Commission to misjudge “the impact of technology transition” by confining content providers to an MVPD model.

II. The Commission Should Not Place Unnecessary Burdens on the Vibrant OTT Market.

Responding to growing consumer demand for online, on-demand video, some broadcast and cable providers have recently announced their intentions to expand their online video options for customers based on subscription models. Investment in online video is in the hundreds of millions of dollars as almost every major content provider (e.g., Time Warner, Disney, CBS, ...}

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6 NPRM at ¶ 14 (“Because these other Internet-based distributors of video programming either (1) make programming available for free, and not ‘for purchase’ as required by the definition of an MVPD, or (2) do not provide prescheduled programming that is comparable to programming provided by a television broadcast channel, we believe they fall outside the statutory definition.”).

7 NPRM at ¶ 2.
Comcast, Fox, Sony), many leading information technology companies (e.g., Apple, Amazon, Google, Microsoft), and newer companies like Netflix and Roku are exploring new ways to deliver online video content to a voracious public. These new services have grown without government intervention or assistance – solely by appealing to what viewers want. Further, increasingly popular OTT consumer choices contribute the public interest benefit of encouraging broadband adoption by additional households that will then be able to access all the other valuable resources that come with an Internet connection.

Though the Commission believes that “[s]pecifying the circumstances under which an Internet-based provider may qualify as an MVPD, possessing the rights as well as responsibilities that attend that status, may incent new entry that will increase competition in video markets,” the opposite is also possible. Imposing regulations that were developed in the last century on the wide range of companies that are currently expanding and investing in the flourishing on-line video market could stifle future innovation.

III. The Commission Should Promote “Good Faith” Negotiation Rules for Consumer Access to Cable and Broadcast Content

Currently, cable and broadcast programming is not available on reasonable or nondiscriminatory terms for Internet-based video distributors. Because the Commission’s program access rules and retransmission consent rules generally do not apply to Internet-based distributors, cable-affiliated programmers can and do withhold programming, or they attempt to extract unreasonable prices, terms, or conditions in exchange for carriage. “Good faith” negotiation rules would provide for greater competition and consumer access to certain “must-

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8 NPRM at ¶ 5.
9 See NPRM at ¶ 36 (outlining at least eight of the regulatory and statutory obligations by which MVPDs must currently abide); NPRM at ¶ 34 (expressing the Commission’s acknowledgement that newer companies like Aereo, Film On, and Sky Angel have been apprehensive to launch new Internet-base subscription video services due to “regulatory uncertainty”).

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have” content like live sports over their Internet connections. Any action by the Commission should also apply the program access rules selectively because not all OTT providers seek to distribute television broadcast programming. Aereo and similar services should be distinguished from other OTT offerings because they are uniquely aimed at consumer access to local broadcast TV signals, which still occupy a public interest and regulatory status under Title III of the Communications Act that is different from that of any other video content.

IV. Conclusion

CCIA urges the Commission to maintain its “hands off” approach to the Internet-based video marketplace, except where there are clear market failures like blackouts or unavailability of premium broadcast network programming. When addressing the definition of MVPD, the Commission should be mindful of how innovations in Internet-based video have contributed to our nation’s economy and consumer choice of TV content.

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Respectfully submitted,

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