



# 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. 17-214

Comments Due: October 10, 2017

Reply Comments Due: November 9, 2017

### I. INTRODUCTION

This Public Notice (*Notice*) solicits data, information, and comment for the Commission's Nineteenth Report on the Status of Competition in the Market for the Delivery of Video Programming (*19<sup>th</sup> Report*). We seek to update the information and metrics provided in the Eighteenth Report (*18<sup>th</sup> Report*)<sup>1</sup> in order to report on the state of competition in the video marketplace in 2016. 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. The *19<sup>th</sup> Report* also will satisfy the Commission's statutory requirement to "annually report to Congress on the status of competition in the market for the delivery of video programming."<sup>2</sup> Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) amended the Communications Act of 1934, as amended<sup>3</sup> (the 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.<sup>4</sup> Our annual reports to Congress seek to assess progress toward these goals.

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 received video programming either

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<sup>1</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568 (MB 2017) (*18<sup>th</sup> Report*).

<sup>2</sup> 47 U.S.C. § 548(g).

<sup>3</sup> 1992 Cable Act, Pub. L. No. 102-385, § 19, 106 Stat. 1460, 1494 (1992) (codified at 47 U.S.C. § 548) ("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.").

<sup>4</sup> 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 CFR § 79.1(a)(10).

from over-the-air (OTA) broadcast television stations or from subscription video services offered by their local cable company.<sup>5</sup> For most consumers, additional options for multichannel video programming distributors (MVPDs)<sup>6</sup> arguably began in 1994 with the introduction of direct broadcast satellite (DBS) video services. In 2005, still more MVPD choices became available when telephone companies began offering video services on a widespread basis.<sup>7</sup> The options for consumers receiving video programming expanded further in 2007, when online video distributors (OVDs)<sup>8</sup> began streaming video content over the Internet.<sup>9</sup>

#### A. Scope and Analytic Framework of the Report

The *19<sup>th</sup> Report* will discuss the significant issues and trends affecting competition in the market for the delivery of video programming. We anticipate that the *19<sup>th</sup> Report* will use an analytical framework similar to that employed in the *18<sup>th</sup> Report*.<sup>10</sup> This framework categorizes entities that deliver video programming into three groups—MVPDs, OVDs, and broadcast television stations.<sup>11</sup>

We anticipate that the *19<sup>th</sup> Report* will discuss both intragroup competition (i.e., competition within a group) and intergroup competition (i.e., competition between groups) within the video delivery marketplace. Our discussion of intragroup competition will (1) provide information on the number, size, and footprint of the major providers; (2) review recent entry to or exit from the group; and (3) describe the business models and competitive strategies of the major providers, including with respect to delivered video services, equipment, and pricing. We invite interested parties to provide data, information, and comment regarding intragroup competition. We also seek data, information, and comment regarding

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<sup>5</sup> In most areas, consumers had only one choice of cable provider, although cable overbuilders offered another option in some areas. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 19 FCC Rcd 1606, 1659, para. 79 (2004) (*10<sup>th</sup> Report*).

<sup>6</sup> Section 602(13) of the Act defines 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). As discussed in more detail below, in December 2014, the Commission adopted a Notice of Proposed Rulemaking that proposed to include within the scope of the definition of MVPD “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*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, 15996, para. 1 (2014) (*MVPD NPRM*). The proceeding remains pending.

<sup>7</sup> Verizon and AT&T began offering video services in 2005 and 2006, respectively. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 548, 605-06, paras. 14, 132-33 (2009). Various telephone companies provided wireline and wireless video programming service in the prior decade but to a much more limited degree. See *10<sup>th</sup> Report*, 19 FCC Rcd at 1663-64, 1677-78, paras. 86-87, 112-16.

<sup>8</sup> For purposes of the *19<sup>th</sup> Report*, we define OVD as “an entity that distributes video programming (1) by means of the Internet or other Internet Protocol (IP)-based transmission path; (2) not as a component of an MVPD subscription or other managed video service; and (3) not solely to customers of a broadband Internet access service owned or operated by the entity or its affiliates.” See *18<sup>th</sup> Report*, 32 FCC Rcd at 570, n 4.

<sup>9</sup> See Ashley Rodriguez, *Netflix (NFLX) launched streaming video 10 years ago and changed the way we watch everything*, Quartz (Jan. 17, 2017), <https://qz.com/887010/netflix-nflx-launched-streaming-video-10-years-ago-and-changed-the-way-we-watch-everything/>.

<sup>10</sup> *18<sup>th</sup> Report*, 32 FCC Rcd at 573, para. 15.

<sup>11</sup> See *id.* at 569-70, para. 1.

significant differences in the availability of delivered video services in rural areas, relative to urban areas.

To enhance our discussion of intergroup competition, we seek data, information, and comment on the similarities and differences between the delivered video services offered by MVPDs, OVDs, and broadcast stations. Are the distinctions between MVPDs and OVDs diminishing as OVDs offer packages of linear video programming? In addition, we seek data, information, and comment on how consumers view the delivered video services offered by the three groups. We note that some traditional MVPDs now offer OVD services and/or broadcast video services.<sup>12</sup> We seek comment on these business strategies.

We request data, information, and comment on the important operating and financial statistics that would illuminate the relative strengths of the providers of delivered video services. We also seek data, information, and comment on consumer access to MVPDs, OVDs, and broadcast stations, as well as on the upstream and downstream relationships of these groups of video providers.

We seek data and information regarding consumer access for all three groups, including consumer access to OTA television broadcast signals, the number and types of MVPDs available to consumers, and the ability of consumers to access OVD services. We invite analysis regarding the relationship between consumer access and consumer benefits. Does increased consumer access lead to increased consumer benefits? For example, do consumers with access to more MVPDs pay lower prices for video services or receive a wider array of video services, relative to consumers with access to fewer MVPDs? As in prior reports, we also expect the *19<sup>th</sup> Report* to focus on technical and regulatory issues related to the equipment that enables consumers to view programming, including television sets and mobile devices (e.g., smartphones and tablets). The *19<sup>th</sup> Report* will discuss the competitive issues associated with consumer equipment as part of the overall discussion of intragroup and intergroup competition, respectively, and we seek data, information, and comment on the major technical and regulatory issues related to consumer equipment.

## **B. Data**

The accuracy and usefulness of the *19<sup>th</sup> Report* will depend in part on the quality of the data and information we receive from commenters in response to this *Notice*. We anticipate that such commenters will include MVPDs, OVDs, broadcast television stations, consumers, consumer groups, manufacturers of consumer equipment, state and local regulators, trade associations, and other interested parties and industry participants. We encourage thorough and substantive submissions from commenters knowledgeable about these issues. In addition to materials submitted by commenters, we will consider submissions in other Commission proceedings, and information from publicly available sources.

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),<sup>13</sup> comments filed in 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

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<sup>12</sup> For example, DISH Network (an MVPD) owns the OVD service Sling TV; DIRECTV (an MVPD) owns the OVD service DIRECTV NOW; and Comcast (an MVPD) owns broadcast stations through its ownership of NBCU.

<sup>13</sup> FCC Form 477 collects information about broadband connections to end user locations, wired and wireless local telephone services, and interconnected Voice over Internet Protocol services, in individual states. FCC Form 325 is the Cable Television System Report that collects information about cable television systems.

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 marketplace for the delivery of video programming?

In the *19<sup>th</sup> Report*, we plan to report on a calendar year-end basis, and request data as of year-end 2016 (i.e., December 31, 2016).

## **II. PROVIDERS OF DELIVERED VIDEO PROGRAMMING**

We seek data, information, and comment on the current state of both intragroup and intergroup competition, as well as information about the relationships between, and relative significance of, intragroup and intergroup competition for the delivery of video programming.

### **A. Intragroup Competition**

Consistent with prior reports, we expect the *19<sup>th</sup> Report* will discuss intragroup competition by providing information regarding the number, size, and footprint of MVPDs, OVDs, and broadcast television stations, and reviewing recent entry to or exit from each group. We also expect to describe the business models and competitive strategies of select providers of video services in each group. In general, we seek comment on the extent to which consumers rely on providers from each group, alone or in combination.

#### **1. Multichannel Video Programming Distributors**

*MVPD Providers.* The vast majority of MVPD subscribers rely on cable, DBS, or telephone MVPDs to provide their video services.<sup>14</sup> For cable, DBS, and telephone MVPDs, we seek data on the number of providers, the number of households passed, the number of subscribers for delivered video programming, the number of linear channels, amount of video-on-demand (“VOD”) programming offered,<sup>15</sup> and the ability of subscribers to watch programming on multiple devices both inside and outside the home. Are there significant differences in the number and types of MVPDs between rural and urban areas? To what extent do MVPD customers also use OTA broadcast signals or OVD services to view video content?

We request updated information on the number of markets where DBS operators provide local-into-local broadcast service. 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 Alaska and Hawaii? With respect to U.S. territories (i.e., Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, and the Northern Mariana

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<sup>14</sup> See *18<sup>th</sup> Report*, 32 FCC Rcd at 575, para. 19. For 2016, SNL Kagan estimates that fewer than 0.2 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. See SNL Kagan, *Cable TV Investor: Deals & Finance* at 3 (Sept. 28, 2015). 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 typically do not have reliable data for these other types of MVPDs and plan to exclude them from the *19<sup>th</sup> Report* consistent with recent reports.

<sup>15</sup> A linear channel is one that distributes programming at a scheduled time. VOD programming is available at a time of the viewer’s choosing. See *18<sup>th</sup> Report*, 32 FCC Rcd at 574, n.25.

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?

*Entry and Exit.* We request data, information, and comment regarding the entry and exit of MVPDs in 2016.

*MVPD Business Models and Competitive Strategies.* MVPDs use a variety of business models and competitive strategies to attract and retain subscribers. MVPDs decide where they will offer video services, the technology they will use to deliver video services, the equipment and video packages they will offer, the channels they will offer in each video package, and the additional video services they will offer (e.g., HD and ultra HD programming, VOD programming, digital video recording (DVR), and TV Everywhere<sup>16</sup>). MVPDs also make decisions regarding pricing and bundles (e.g., packaging Internet and/or phone services with video services). We invite data, information, and comment that will assist our understanding of MVPDs' business models and competitive strategies.

We seek descriptions of the business models and competitive strategies that MVPDs use to compete with other MVPDs. How do MVPDs differentiate their services from other MVPDs to attract new subscribers and retain existing subscribers? What are the key differences between MVPDs? Do consumers view MVPDs as good alternatives for other MVPDs? Do bundles of video, Internet, and voice services help attract and retain video subscribers? Do video packages with fewer channels and lower prices help attract and retain video subscribers?

Do large MVPDs have a competitive advantage, relative to smaller MVPDs? Do vertically integrated MVPDs have a competitive advantage, relative to MVPDs that are not vertically integrated? Do MVPDs that offer OVD or broadcast video services have a competitive advantage, relative to MVPDs that do not? If so, what are the advantages? What is the impact of programming prices and retransmission consent fees on MVPD business models and competitive strategies? We seek comment on the impact of marketplace conditions on MVPD competition, innovation, and investment.

Some MVPDs have deployed TV Everywhere, which allows MVPD subscribers to access both linear and VOD programming 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 his or her MVPD service provider and then provide a user ID and password. We seek data, information, and comment on MVPD deployment and subscriber use of TV Everywhere.

## **2. Online Video Distributors**

*OVD Providers.* The video services provided by OVDs<sup>17</sup> continue to expand and evolve. In addition to the OVD services provided by Netflix, Amazon Prime Video, and Hulu, both DBS MVPDs now offer OVD services that do not require subscription to their traditional MVPD services (i.e., Sling TV by Dish Network and DIRECTV NOW by DIRECTV).<sup>18</sup> Wireline providers are beginning to offer

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<sup>16</sup> 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 subscribe to an MVPD.

<sup>17</sup> For the definition of an OVD, see *supra* note 8.

<sup>18</sup> See Sling TV, *Sling TV | Watch Live TV Anytime, Anywhere for \$20/mo*, <https://www.sling.com/watchnow> (last visited Aug. 16, 2017); DIRECTV NOW, *DIRECTV NOW | Stream TV – Watch Live TV & On Demand*, <https://www.directvnow.com/> (last visited Aug. 16, 2017).

OVD service as well.<sup>19</sup> For the *19<sup>th</sup> Report*, we seek data, information and comment on OVDs, both individually and as a group. We are particularly interested in the number of subscribers or viewers, the number of linear channels, the amount of VOD programming available, and the types of programming offered to consumers. To what extent do households that use OVD services also rely on MVPD or OTA broadcast services?

*Entry and Exit.* We request data, information, and comment regarding the entry and exit of OVDs in 2016.

*OVD Business Models and Competitive Strategies.* OVDs use a variety of business models.<sup>20</sup> 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 fewer options. Some OVDs have upstream ownership interests in video programming and some have downstream ownership interests in video streaming or viewing devices. In addition, some OVDs provide video storage services and operate content delivery networks (CDNs).<sup>21</sup> We invite data, information, and comment that will assist our understanding of OVDs' business models and competitive strategies.

We seek descriptions of the business models and competitive strategies OVDs use to compete with other OVDs. How do OVDs differentiate their services from other OVDs to attract new customers and retain existing customers? What are the key differences in terms of the video service offerings, exclusive content, original content, linear programming, picture quality, enabling viewing on multiple devices, and pricing? Do consumers view some OVDs as supplements? Do consumers view some OVDs as good alternatives for other OVDs?

Do large OVDs have a competitive advantage, relative to smaller OVDs? If so, what are those advantages? Do vertically integrated OVDs have a competitive advantage, relative to OVDs that are not vertically integrated? If so, what are those advantages?

Consumers typically use Internet access service provided by Internet Service Providers (ISPs) to receive OVD programming. What specific actions are OVDs taking individually or cooperatively with ISPs to facilitate the viewing of video online? We seek information on the downstream speed requirements of OVDs and the impact the amount of online video viewing has on Internet speeds available to consumers.

### **3. Broadcast Television Stations**

*Broadcast Television Stations.* Broadcasters include both individual and group-owners that hold licenses to broadcast video programming to consumers. The Commission collects data on the number of broadcast television stations in each designated market area (DMA)<sup>22</sup> and ownership of broadcast

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<sup>19</sup> See, e.g., Kate Cox, *Today in Streaming TV: Charter Tests Skinny Bundle, CenturyLink Launches \$45 Package*, Consumerist (June 30, 2017), <https://consumerist.com/2017/06/30/today-in-streaming-tv-charter-tests-skinny-bundle-centurylink-launches-45-package/>.

<sup>20</sup> See SNL Kagan, *State of Online Video Delivery* (2016).

<sup>21</sup> A content delivery network provides video content to consumers more quickly and reliably by placing servers close to consumers. See TechTerms, *CDN (Content Delivery Network) Definition*, <https://techterms.com/definition/cdn> (last visited August 17, 2017).

<sup>22</sup> The Nielsen Company defines a DMA as a group of counties that comprise the major viewing audience for each television station located in a particular metropolitan area. For the most part, the metropolitan areas correspond to

television stations using our Consolidated Database System (CDBS),<sup>23</sup> and through purchases of data from BIA/Kelsey and The Nielsen Company. We seek data concerning the number of households that use OTA 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 rely exclusively on MVPD services to view television broadcast stations? How many households use a combination of OTA broadcast signals, MVPD services, and/or OVD services?

*Entry and Exit.* We request data, information, and comment regarding the entry and exit of broadcast television stations in 2016.<sup>24</sup>

*Broadcast Television Station Business Models and Competitive Strategies.* Among other things, broadcast television station licensees make decisions about the communities they will serve (subject to FCC allotment and community of service requirements); the number of stations they own nationally and locally (subject to our ownership rules); the audience demographic they seek to attract; the programming they 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 programming) they provide; whether they air local news; how they advertise their stations and their programming; and what content to include on their websites. We invite data, information, and comment that will assist our understanding of the business models and competitive strategies of broadcast television stations.

We seek descriptions of the business models and competitive strategies that broadcast television stations use to compete with other television stations. In particular, advertising, including political advertising, is a significant source of revenue for television broadcasters.<sup>25</sup> To what extent do marketplace conditions impact television stations' reliance on advertising? What effect do marketplace conditions have on other competitive issues, including access to capital?

How do television stations differentiate their services from other television stations to attract viewers? What are the key differences between television stations? When marketing to consumers, do television stations compare their services with other broadcast stations? To what extent do stations market themselves as providers of local news, sports, weather, and emergency information? How much local broadcast news programming do broadcast television stations make available online? What is the competitive impact of taking this approach?

We seek data, information, and comment on the use of multicast streams, the amount of HD and

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the standard metropolitan statistical areas defined by the Federal Government Office of Management and Budget. The geographic areas do not overlap, and most counties in the United States belong to only one DMA. There are 210 DMAs, covering the entire continental United States, Hawaii, and parts of Alaska.

<sup>23</sup> The Commission collects data on broadcast stations through CDBS. FCC, *CDBS Public Access*, [http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs\\_pa.htm](http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm) (last visited Aug. 17, 2017). We collect ownership data on FCC Form 323, Ownership Report for Commercial Broadcast Station, and the data are available in CDBS.

<sup>24</sup> We note that the Commission recently announced the closing of, and provided the results for, the broadcast incentive auction. *FCC Announces Results of World's First Broadcast Incentive Auction*, Public Notice, 32 FCC Rcd 2786 (MB/WTB 2017). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012) (initiating a rulemaking proceeding to implement the incentive auction). As a result of the auction, some broadcast television stations will go off the air, move to high- or low-VHF channels, or channel share with another station in the future. See *18<sup>th</sup> Report*, 32 FCC Rcd at 605, para. 94. Such changes, however, will not occur until after the end of the period relevant to this report.

<sup>25</sup> See *18<sup>th</sup> Report*, 32 FCC Rcd at 609-610, 615-18, paras. 103-05, 118-23.

ultra HD programming, and the use of station websites and apps. For example, to what extent are multicast streams used to carry one of the four major broadcast networks, other national broadcast networks, or independent locally produced programming? To what extent are multicast streams able to secure MVPD carriage?

## **B. Intergroup Competition**

We are especially interested in intergroup competition between the video services offered by MVPDs, OVDs, and broadcast television stations. In previous reports, we have discussed the similarities and differences between the groups of providers that have led some consumers to view the groups as alternatives or supplements. We seek comment related to these issues. For example, how does the offering of linear video programming by OVDs impact intergroup competition? How does the introduction of set-top boxes that access both MVPD and OVD programming impact intergroup competition? What has been consumers' reaction to these developments? More generally, we seek comment on any significant marketplace developments that impact intergroup competition.

We recognize that consumer decisions regarding MVPD, OVD, and broadcast television services are based on more than the availability of specific video programming. For example, how does the offering of linear channels<sup>26</sup> or live programming by OVDs impact these decisions? Other factors consumers may take into account when selecting services could include the relative prices, the number and length of commercials, the ease of finding programming, the quality of the picture and sound, the ability to binge watch programming, the ability to record programming, the ability to watch on specific devices, the ability to watch a specific program via linear and/or VOD, and which episodes or seasons are offered for a specific television show. Which features do consumers deem most important when choosing MVPD, OVD, and broadcast television services? We are particularly interested in analysis regarding the influence of relative prices on consumer decisions in the market for the delivery of video programming.

We seek data, information, comment, and analysis on consumer views of MVPD, OVD, and broadcast television station services. We are particularly interested in which consumers view these groups as alternatives and which consumers view these groups as supplements. We seek data, information, and comment regarding the significant similarities and differences that currently exist between the three groups. Are there similarities between the three types of providers that lead consumers to view the three groups as alternatives? Conversely, are there differences that lead consumers to view the three groups as supplements? Related to this, to what extent are MVPDs marketing their new services as alternatives to other OVDs in the marketplace, or vice versa?

To what extent can consumers use OVDs to replicate the programming offered by MVPDs or television stations? What are the relative prices for MVPDs and OVDs? Can consumers replicate the programming they wish to view using OVDs at a lower price than using an MVPD? Does the provision of OVD services by broadcast networks have an effect on broadcast stations affiliated with the network, or the relationship between the broadcast network and their affiliates, and if so, what is the effect?

We are also interested in the role that broadcast television service plays in intergroup competition. Although OTA service is free, most consumers pay an MVPD or an OVD to receive broadcast station programming. Do broadcast television stations market or encourage consumers to use OTA service? To what extent do consumers view OTA broadcast television service as an alternative for MVPD and OVD services? To what extent do consumers view OTA broadcast television service as a supplement for MVPD and OVD services?

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<sup>26</sup> For the definition of channels, see *supra* note 15.

More generally, we seek comment regarding the factors that drive consumers' perceptions, and use, of MVPD, OVD, and broadcast station video services.

### III. OPERATING AND FINANCIAL STATISTICS

In the *19<sup>th</sup> Report*, we seek data that would enable us to provide operating and financial statistics that facilitate comparisons both within the MVPD, broadcast television, and OVD groups and between those groups. This may entail focusing on statistics that are (1) common to all three groups, and (2) readily available for all three groups. Would focusing on current trends in subscribership/audiences and revenue be sufficient? Are there other operating and financial statistics that we should include? We seek updated data, information, and comment on relevant operating and financial statistics; information about the availability, penetration rate, and subscribership for relevant products and services; and data for MVPDs, OVDs, and broadcast stations that might allow us to report relevant and useful statistics.<sup>27</sup>

### IV. VERTICAL INTEGRATION

In the 1992 Cable Act, Congress directed the Commission to enact provisions related to affiliation of cable operators and video programming networks.<sup>28</sup> In the *18<sup>th</sup> Report*, we identified the national video programming networks, regional video programming networks, and regional sports networks affiliated with one or more MVPDs.<sup>29</sup> In addition, some OVDs may increasingly hold ownership stakes in the video programming they deliver,<sup>30</sup> while the major broadcast television networks also own broadcast television stations.<sup>31</sup> Similarly, non-network owners of broadcast television stations may increasingly be acquiring video programming resources.<sup>32</sup> We invite analysis regarding the relationship between the common ownership of video content and video delivery platforms for MVPDs, OVDs, and broadcast stations. What impact do these relationships have on competition in the market for the delivery of video programming?

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<sup>27</sup> We recognize that some MVPDs, OVDs, and broadcast television stations are divisions of larger companies. Because we focus on the delivery of video programming, commenters should separate operating and financial statistics for video services from non-video statistics.

<sup>28</sup> 47 U.S.C. §§ 533(f), 536, 548. 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. *Id.* §§ 536, 548; 47 CFR §§ 76.1001-04, 1301-02.

<sup>29</sup> *18<sup>th</sup> Report*, 32 FCC Rcd at 577-578, 650-651, 655-657, 658-663, paras. 22-24, Appx. B, Tbl. B-1, Appx. C, Tbl. C-1, and Appx. D.

<sup>30</sup> For example, the OVD Hulu is owned by 21st Century Fox, NBCUniversal, the Walt Disney Company, and Time Warner. The four largest North American 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. *See id.* at 621-623, para. 132.

<sup>31</sup> *See, e.g.*, ABC, *ABC Owned Television Stations*, <https://www.abcfullcircle.com/item/abc-owned-television-stations/> (last visited Aug. 17, 2017); CBS, *Our Portfolio*, <https://www.cbcorporation.com/portfolio/cbs-television-stations/> (last visited Aug. 17, 2017); NBC, *NBC Owned Television Stations, Who We Are*, <http://www.nbcstations.com/multi-market/who-we-are/> (last visited Aug. 17, 2017); 21<sup>st</sup> Century Fox, *FOX Television Stations Group*, <https://www.21cf.com/businesses/television/fox-television-stations-group> (last visited Aug. 17, 2017).

<sup>32</sup> For example, Sinclair Broadcasting acquired the Tennis Channel in 2016. *See, e.g.*, David Lieberman, *Sinclair Scores Tennis Channel with \$350M Acquisition Deal*, *Deadline* (Jan. 27, 2016), <http://deadline.com/2016/01/sinclair-buys-tennis-channel-1201691628>.

In addition to upstream ownership of video content, some OVDs have downstream relationships with devices used for viewing video programming. For example, some recently introduced set-top boxes allow consumers to access both MVPD and OVD programming. To what extent are the devices available to consumers, and to what extent are consumers purchasing and using them? What has been the impact on intergroup competition?

Amazon Prime Video is owned by Amazon, which also makes Fire TV streaming media players.<sup>33</sup> MVPDs also have downstream relationships with specific set-top boxes. For example, Comcast leases the X1 set-top box to its subscribers.<sup>34</sup> We invite analysis regarding the relationship between the affiliation of video distributors and manufacturers of consumer equipment used to stream or view video content. What impacts do these relationships and interests have on competition in the market for the delivery of video programming?

## V. REGULATIONS AFFECTING COMPETITION

As the Commission has observed in its reports previously, regulations potentially affect competition. We seek data, information, and comment on the impact of Commission rules on competition in the market for the delivery of video programming. We seek comment on the regulations that have the most significant potential for impact on competition in the market for the delivery of video programming. Are there particular regulations that impact some types of distributors more than others? We note that some of these issues are the subject of open proceedings.<sup>35</sup> Parties seeking action in those proceedings should submit comments in the relevant dockets.

## VI. NEW TECHNOLOGY AND CONSUMER EQUIPMENT

For purposes of the *19<sup>th</sup> Report*, consumer equipment refers to devices that enable consumers to watch video content delivered by MVPDs, OVDs, and broadcast stations. While consumers often lease set-top boxes, they tend to purchase most other types of consumer equipment. The current consumer equipment marketplace 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.

In this section, we are specifically interested in technological issues. As such, we seek comment on the major technological developments in consumer equipment. We request information on MVPDs' deployment of new technologies including all-digital distribution, Internet Protocol (IP)-delivered video programming, more efficient video encoding technologies (e.g., MPEG-4 and High Efficiency Video Coding (HEVC)),<sup>36</sup> enhanced transmission technologies (e.g., DOCSIS 3.1), and 3-D and 4K services.<sup>37</sup>

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<sup>33</sup> Amazon, *Fire TV – Amazon Official Site – Streaming Media Player*, <https://www.amazon.com/Amazon-Fire-TV-Streaming-Media-Player/dp/B00U3FPN4U> (last visited Aug. 17, 2017).

<sup>34</sup> Comcast, *XFINITY X1 Equipment*, <https://www.xfinity.com/learn/digital-cable-tv/x1/equipment> (last visited Aug. 17, 2017).

<sup>35</sup> For example, the Commission recently asked for input concerning elimination of regulations that could hamper competition. *See Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017).

<sup>36</sup> HEVC is a video compression standard, a successor to MPEG-4.

<sup>37</sup> In addition, we note that the Commission recently issued a Notice of Proposed Rulemaking proposing to authorize television broadcasters to use the “Next Generation” broadcast television transmission standard associated with recent work of the Advanced Television Systems Committee (ATSC 3.0) on a voluntary, market-driven basis.

Are devices that allow consumers to access both MVPD and OVD services available in the marketplace? And if so, to what extent are consumers purchasing and using such devices? Does the increased availability of new video devices make it easier for consumers to combine or switch between MVPD, OVD, and OTA broadcast video services? We seek comment on the competitive strategies associated with leasing of set-top boxes to consumers, as well as the effects of leasing on innovation and investment in set-top boxes.

## VII. 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 marketplace for the delivery of video programming. To make the *19<sup>th</sup> Report* as useful as possible, are there other issues, additional information, or data that should be included in the report? In the interest of streamlining and improving the report, we request comment on what issues should be included in or excluded from subsequent reports and whether any of our requests for data or other information should be modified or eliminated.

## VIII. PROCEDURAL MATTERS

*Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to Section 1.1204(b)(1) of the Commission's rules, 47 CFR § 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 Fed. Reg. 24121 (May 1, 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 12<sup>th</sup> 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 12<sup>th</sup> Street, SW, Washington DC 20554.

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*Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, 32 FCC Rcd 1670 (2017).

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