Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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IN RE: DELETE, DELETE, DELETE	)	GN Docket No. 25-133
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COMMENTS OF THE FREE STATE FOUNDATION

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<u>THE FREE STATE FOUNDATION</u>[*]

I. Introduction and Summary

These comments are filed in response to the Public Notice released on March 12, 2025, "seeking public input on identifying FCC rules for the purpose of alleviating unnecessary regulatory burdens."[1] The Free State Foundation (FSF) applauds Chairman Brendan Carr for initiating this undertaking. These initial comments focus on outdated rules that are no longer necessary or that impede competition among all participants, old and new, in the converged video programming distribution marketplace. In the reply round, FSF likely will address outdated regulations that are outside the video realm, such as, for example, ARMIS reporting requirements, network discontinuance requirements, and payphone reporting requirements.

For years FSF scholars have been documenting in real time the rapid and unbounded transformation of consumer access to video content. A sampling of that

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[*] These comments express the views of Randolph J. May, President of the Free State Foundation, and Andrew Long, Senior Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.
[1] Public Notice, "IN RE: DELETE, DELETE, DELETE," GN Docket No. 25-133, DA 25-219 (released March 12, 2025), available at https://docs.fcc.gov/public/attachments/DA-25-219A1.pdf.

detailed documentation and links thereto can be found in the footnotes.[2] The ability to deliver the highest-quality video over broadband, in any format and to any connected device, has proven to be the great equalizer – a development that indisputably eviscerates any policy rationale underlying legacy regulations premised upon the existence of claimed video distribution "bottlenecks." As ongoing trends in the marketplace make plain, facilities-based Multichannel Video Programming Distributors (MVPDs) enjoy no competitive advantage vis-à-vis over-the-top providers warranting one-sided regulations.

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[2] *See, e.g.*, Andrew Long, "No Basis Exists in 2025 for Rules Targeting Traditional Video Providers," *Perspectives from FSF Scholars*, Vol. 20, No. 13 (March 6, 2025), available at https://freestatefoundation.org/wp-content/uploads/2025/03/No-Basis-Exists-in-2025-for-Rules-Targeting-Traditional-Video-Providers-030625.pdf (arguing that a requirement to provide rebates in the event of a carriage dispute "would heighten the substantial competitive challenges from other video distribution platforms that traditional MVPDs' already confront" and "would tip the scales toward programmers in negotiations, increase traditional MVPDs' costs, and, ultimately, subject their subscribers to higher prices"); Andrew Long, "FCC, Following White House Lead, Again Targets Cable and DBS," *FSF Blog* (August 19, 2024), available at https://freestatefoundation.blogspot.com/2024/08/fcc-following-white-house-lead-again.html (critiquing a customer service Notice of Inquiry as "yet another one-sided restraint on the ability of traditional MVPDs to compete effectively with far larger streaming services that grow more popular by the day"); Comments of the Free State Foundation, The State of Competition in the Communications Marketplace, *Public Notice*, GN Docket No. 24-119 (June 6, 2024), available at https://freestatefoundation.org/wp-content/uploads/2024/06/FSF-Comments-–-The-State-of-Competition-in-the-Communications-Marketplace-060624.pdf ("[T]he current regulatory framework is a mismatch with the current marketplace in which consumers increasingly reject traditional MVPD offerings in favor of a dynamic, self-curated mix of subscription streaming services accessed on consumer-owned connected hardware, ad-supported web-based video platforms, and social media smartphone apps."); Andrew Long, "The FCC Is Complicit in the Decline of Traditional MVPDs," *Perspectives from FSF Scholars*, Vol. 19, No. 17 (May 8, 2024), available at https://freestatefoundation.org/wp-content/uploads/2024/05/The-FCC-Is-Complicit-in-the-Decline-of-Traditional-MVPDs-050824.pdf ("Given the catastrophic video subscriber losses that traditional MVPDs weather financial quarter after quarter … the FCC must come to terms with the fact that, big picture, whatever hypothetical consumer benefit it alleges might justify further regulatory meddling, that value is far outweighed by the damage inflicted upon the ability of cable operators and DBS providers to provide a competitive counterweight."); Andrew Long, "Ever-Expanding Video Competition Undercuts Calls for More Rules, Compels Elimination of Existing Regulations," *Perspectives from FSF Scholars*, Vol. 18, No. 47 (October 23, 2023), available at https://freestatefoundation.org/wp-content/uploads/2023/10/Ever-Expanding-Video-Competition-Undercuts-Calls-for-More-Rules.pdf; Andrew Long, "A Tale of Two Trends: Traditional Video Distributors Shrink While Streaming Video Grows," *Perspectives from FSF Scholars*, Vol. 17, No. 46 (September 15, 2022), available at https://freestatefoundation.org/wp-content/uploads/2022/09/A-Tale-of-Two-Trends-%E2%80%93-Traditional-Video-Distributors-Shrink-While-Streaming-Video-Grows-091522-.pdf; Andrew Long, "Pixel by Pixel, Video Streaming's Ascension Comes Into Focus," *Perspectives from FSF Scholars*, Vol. 16, No. 52 (September, 29, 2021), available at https://freestatefoundation.org/wp-content/uploads/2021/09/Pixel-by-Pixel-Video-Streamings-Ascension-Comes-Into-Focus-092921.pdf; Andrew Long, "Online Video Subscriber Growth Compels Further Deregulation," *Perspectives from FSF Scholars*, Vol. 15, No. 66 (December 11, 2020), available at https://freestatefoundation.org/wp-content/uploads/2020/12/Online-Video-Subscriber-Growth-Compels-Further-Deregulation-121120.pdf.

To the contrary, what primarily stands in the way of unbridled, consumer-benefitting competition are ill-fitting rules that hamstring the subset of participants to which they uniquely apply: cable operators and Direct Broadcast Satellite (DBS) providers. This proceeding can foster optimal efficiency levels in the operation of the marketplace by realigning the regulatory environment to fit the facts that exist on the ground today. By deleting rules that no longer serve the American public – and, in some instances, identifying for Congress statues ripe for repeal – the FCC can achieve a status quo in which comparable offerings appropriately are treated comparably. Then, and only then, will the ability of a competitive marketplace to expand consumer welfare reach its full potential.

Accordingly, the Commission should delete one-sided Biden-Era rules and proceedings exclusively targeting facilities-based MVPDs, its cable rate regulation rules, and its "navigation device" rules. Additionally, it should delete – or, where necessary, recommend that Congress repeal – artificial constraints on what facilities-based MVPDs may or must include in the consumer-facing offerings they curate, including "must carry," program access, leased access, network non-duplication protection, and syndicated program exclusivity. Only if this is accomplished, at the same time the Commission, or Congress if need be, should consider deleting media ownership rules – such as the national ownership cap and local television ownerships limits – that are premised upon an outdated and overly narrow view of the marketplace in which local broadcasters compete for viewers.

It is important to have in mind that the First Amendment imposes constraints on the agency's regulation of video content providers, and this is another reason for the

Commission to eliminate the legacy regulations addressed in these comments. Even though some of these regulations, such as "must carry," program access, and other program carriage requirements, may have been sustained against First Amendment challenges in the past, in today's marketplace environment, when facilities-based video distributors no longer even arguably possess "bottleneck" power, such content-based regulations likely violate the First Amendment. Of course, the Commission should take this into account.

II. The Profound Impact of Broadband Connectivity on the Video Distribution Marketplace Compels the Commission to Delete, Delete, Delete

To understand the current regulatory landscape, it is useful to revisit the past. Once upon a time, local television broadcasters represented the sole means by which consumers could access video content. Consequently, government oversight, in the form of legislation and regulation, attached. Cable operators subsequently entered the video marketplace, and Congress twice – in 1984 and 1992 – took steps to mitigate the *potential* impact of their unique ability to distribute not just over-the-air signals, but other linear programming services, as well. Cable was followed by satellite-based video offerings, most notably DBS services like DIRECTV and DISH TV. As *potential* gatekeepers, they, too, attracted guardrails. Later, telephone companies introduced their own multichannel video offerings – services that, from a regulatory perspective, fit within the "cable" silo.

Along a parallel timeline, still more alternative sources of video emerged. First, home video formats – VHS cassettes and DVDs – became available for purchase or rent. Then, home broadband connections achieved sufficient speeds and geographic coverage to enable the widespread distribution of high-quality video over the Internet. In 2007, Netflix began the process of further speeding up the ongoing video-distribution revolution by adding streaming video to what previously had been exclusively a DVD-by-mail business.[3]

Fast forward to 2025, and streaming video indisputably has revolutionized the way that content reaches consumers. Control of distribution facilities – whether cable, fiber, or spectrum – is no longer a prerequisite. Nor, for that matter, is access to an MVPD's billing system. Anyone can establish direct contractual relationships with consumers and provide them with content over bring-your-own broadband connections. This has had two primary competitive implications.

One, it has allowed video distributors to break free from the "big bundle" that traditional MVPDs offer – packages of linear programming services, Pay-Per-View (PPV) offerings, an Electronic Programming Guide (EPG), Digital Video Recording (DVR) capabilities, and specialized hardware (also known as a Set-Top Box (STB) or, in Commission-speak, a "navigation device") – and experiment with differentiated offerings. These include (what began as) stored-library services like Netflix and Amazon Prime Video; Direct-to-Consumer (DTC) single-service offerings like Max, Disney+, and ESPN+; and bundles like Hulu and Paramount+. Over time, these services have expanded their offerings: Netflix, for example, increasingly provides subscribers with access to live content,[4] and Amazon Prime Video is the home of live Thursday night NFL games.[5] In

[3] *See* Tara Bitran, "Skip Intro: Netflix Turns 25 Today (August 29, 2022), available at https://www.netflix.com/tudum/articles/netflix-trivia-25th-anniversary.
[4] *See* "Live events on Netflix: WWE wrestling and more," available at https://help.netflix.com/en/node/129840.
[5] *See* "Watch Thursday Night Football | Prime Video," available at https://www.amazon.com/salp/tnf.

addition, short-form video websites and apps (YouTube, TikTok) have joined the battle for eyeballs.

These streaming services have achieved unprecedented success in the marketplace. According to Nielsen, in February 2025 nearly the same percentage of people watched streamed content (43.5 percent) as broadcast and cable *combined* (44.4 percent).[6] Netflix, in particular, has enjoyed tremendous growth, adding 4.82 million subscribers in the United States and Canada during the fourth quarter of 2024 for a total of 89.63 million subscribers.[7] Corporate parent The Walt Disney Company reported that Hulu had 49 million subscribers at the end of 2024, up 3 percent from the previous quarter, while Disney+ had 56.8 million subscribers, up 1 percent quarter to quarter.[8] Paramount+ added 5.6 million subscribers during the fourth quarter of 2024, for a total of 77.5 million.[9] YouTube represented 11.6 percent of all television viewing in February 2025.[10] As of January TikTok reportedly had 170 million users in the United States alone.[11]

Two, broadband as a distribution platform has made it possible for upstarts to compete with facilities-based MVPDs directly, on an apples-to-apples basis. Virtual

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[6] *See* "The Gauge™", available at https://www.nielsen.com/data-center/the-gauge/ (accessed on April 8, 2025).

[7] *See* Netflix Fourth Quarter 2024 Letter to Shareholders (January 21, 2025), available at https://s22.q4cdn.com/959853165/files/doc_financials/2024/q4/FINAL-Q4-24-Shareholder-Letter.pdf.

[8] *See* "The Walt Disney Company Reports First Quarter Earnings for Fiscal 2025" (February 5, 2025), available at https://thewaltdisneycompany.com/the-walt-disney-company-reports-first-quarter-earnings-for-fiscal-2025/.

[9] *See* Daniel Frankel, "Paramount+ adds 5.6M subscribers in Q4, but operational costs spike," *StreamTV Insider* (February 27, 2025), available at https://www.streamtvinsider.com/video/paramount-adds-56m-subscribers-q4-operational-costs-spike.

[10] *See* "YouTube Achieves Best Monthly Performance to Date and Pulls Ahead in Nielsen's February Media Distributor Gauge," available at https://www.nielsen.com/news-center/2025/youtube-achieves-best-monthly-performance-to-date-and-pulls-ahead-in-nielsens-february-media-distributor-gauge/.

[11] *See* Savannah Sellers and Kat Tenbarge, "TikTok considering total shutdown in U.S. on Sunday if ban moves forward," *NBC News* (January 15, 2025), available at https://www.nbcnews.com/tech/social-media/tiktok-ban-total-shutdown-us-app-moves-forward-rcna187621.

MVPDs (vMVPDs) – which include YouTube TV, Hulu + Live TV, DIRECTV STREAM, and Sling TV – replicate the traditional big bundle, but deliver their service over the public Internet to customer-owned devices: smart TVs, streaming devices, and smartphones. vMVPDs as a category had 17.1 million subscribers at the end of the second quarter of 2024.[12] Four of the ten largest MVPDs are vMVPDs,[13] and the largest by far – YouTube TV, reportedly with 8 million subscribers as of April 2024 – is expected to become the largest MVPD in the U.S. by next year.[14]

On the other side of the ledger, competing in the same video marketplace of course, are traditional MVPDs, which have been shedding subscribers for more than a decade. According to the FCC's *2024 Communications Marketplace Report*, traditional MVPD subscriber totals declined by 46.8 percent between 2012 (101.6 million) and the end of 2023 (54.1 million).[15] Year-end 2024 reporting confirms that this trend continues. Charter, the largest cable operator, lost 1.23 million subscribers in the fourth quarter, 8.7 percent of its base.[16] Comcast, the second-largest cable operator, lost 1.583 million subscribers, 11.2 percent of its base, during the same period.[17] DISH TV ended 2024 with 5.69 million subscribers, down from 5.89 million at the end of the third quarter.[18]

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[12] *See* Colin Dixon, "4 of the top ten live, linear US TV providers are vMVPDs," *nScreenMedia* (September 9, 2024), available at https://nscreenmedia.com/top-ten-live-linear-tv-providers-q2-2024/.

[13] *Id*.

[14] *See* Jeff Baumgartner, "YouTube TV set to become top US pay-TV provider by 2026 – analyst," *Light Reading* (April 1, 2024), available at https://www.lightreading.com/video-streaming/youtube-tv-set-to-become-top-us-pay-tv-provider-by-2026-analyst.

[15] *See* 2024 Communications Marketplace Report, GN Docket No. 24-119 (December 31, 2024), available at https://docs.fcc.gov/public/attachments/FCC-24-136A1.pdf, at 141.

[16] *See* "Charter Announces Fourth Quarter and Full Year 2024 Results" (January 31, 2025), available at https://ir.charter.com/static-files/0114c23c-d066-485f-8cac-cc1caad02dee.

[17] *See* "COMCAST REPORTS 4th QUARTER 2024 RESULTS" (January 30, 2025), available at https://www.cmcsa.com/static-files/9cd62cea-91c4-4ad7-a7dc-7eeaaa576c42.

[18] *See* "EchoStar Announces Financial Results for the Three and Twelve Months Ended December 31, 2024" (February 27, 2025), available at https://ir.echostar.com/news-releases/news-release-details/echostar-announces-financial-results-three-and-twelve-months-5.

Verizon, meanwhile, lost 267,000 subscribers during 2024.[19] Other traditional MVPDs do not publicly report subscriber totals.

Given the steady rise of those that stream their content over the public Internet and the corresponding steady fall of facilities-based MVPDs, it is irrefutable that the latter category today lacks undue marketplace power warranting one-sided legacy rules. Accordingly, and as described below, the highly competitive video distribution sector presents numerous opportunities to "delete, delete, delete" – or put another way, to achieve meaningful regulatory reform.

III. The Commission Should Delete One-Sided Biden Era Rules and Proceedings Exclusively Targeting Facilities-Based MVPDs

During Chairwoman Jessica Rosenworcel's tenure, the FCC opened several proceedings that singled out those that fall within the definition of an MVPD: cable operators and DBS providers.[20] Irrespective of their purported merits, regulatory burdens that apply exclusively to facilities-based MVPDs first and foremost suppress competition to the detriment of overall consumer welfare. As then-Commissioner Carr wrote in his Dissenting Statement in one such proceeding, the majority was acting to further burden facilities-based MVPDs "at a time when consumer choice has never been greater and traditional MVPDs are bleeding market share to new, unregulated competitors."[21]

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[19] *See* "Verizon 4Q 2024 Financial Statements" (January 24, 2025), available at https://www.verizon.com/about/file/74375/download?token=O3eldbCM.

[20] *See* 47 U.S.C. § 522(13) ("[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."). *See also* 47 U.S.C. § 522(4) (defining a "channel" as "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation)."

[21] Dissenting Statement of Commissioner Brendan Carr, Customer Rebates for Undelivered Video Programming During Blackouts, *Notice of Proposed Rulemaking*, MB Docket No. 24-80 (January 17, 2024). *See also* Dissenting Statement of Commissioner Nathan Simington, All-In Pricing for Cable and Satellite Television Service, *Report and Order,* MB Docket 23-203 (March 19, 2024) ("[W]e are yet again adding additional regulatory burden and complexity on an industry that is shedding customers by the

Accordingly, the Commission should delete the "all-in" pricing rules that apply only to facilities-based MVPDs that were adopted in March 2024.[22] It also should delete (terminate) open proceedings proposing to: (1) require that facilities-based MVPDs provide rebates in the event of a carriage-negotiation impasse,[23] (2) prohibit the use by facilities-based MVPDs of common billing practices such as early termination fees (ETFs) and monthly billing cycles,[24] (3) interfere with facilities-based MVPDs' freedom to contract with independent programmers by banning the use of most favored nation (MFN) and ill-defined "unreasonable" alternative distribution method (ADM) provisions,[25] and (4) impose on facilities-based MVPDs onerous customer service obligations.[26]

IV. The Commission Should Delete Its "Navigation Device" Rules

By all accounts, the effort initiated in 1996 to create out of whole cloth a consumer marketplace for the purchase of set-top boxes has been an unmitigated and costly disaster.[27] In 2020, the Commission wisely terminated a fatally flawed proceeding initiated in 2016 to "unlock the box."[28] In addition, it eliminated its rules specifically

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millions. Traditional linear video is on the way out, but we don't have to shoo them away like the last guest who hasn't gotten the hint that the party's over. For every mote of regulatory complexity we add to legacy providers, unregulated online video providers become more nimble by comparison.").

[22] *See* 47 CFR § 76.310.

[23] *See* Customer Rebates for Undelivered Video Programming During Blackouts, *Notice of Proposed Rulemaking*, MB Docket No. 24-80 (January 17, 2024).

[24] *See* Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices, *Notice of Proposed Rulemaking*, MB Docket No. 23-405 (December 14, 2023).

[25] *See* Fostering Independent and Diverse Sources of Video Programming, *Notice of Proposed Rulemaking*, MB Docket No. 24-115 (April 19, 2024).

[26] *See* Strengthening Customer Service in the Communications Industry, *Notice of Inquiry*, CG Docket No. 24-472 (October 23, 2024).

[27] *See* 47 U.S.C. § 549(a) (directing the FCC to "adopt regulations to assure the commercial availability, to consumers of multichannel video programming …, of converter boxes … from manufacturers, retailers, and other vendors not affiliated with any" MVPD.

[28] *See* Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices, *Report and Order*, MB Docket No. 16-42, CS Docket No. 97-80 (September 4, 2020). *See also* Andrew Long, "Closing the Lid on 'Unlock the Box' Should End Video Device Regulation," *Perspectives from FSF Scholars*, Vol. 15, No. 50 (September 25, 2020), available at https://freestatefoundation.org/wp-

requiring cable operators to support CableCARDs, a security element long ago abandoned by both consumer electronics manufacturers and consumers alike. However, it kept in place the requirement that cable operators make available separable security.[29] As a practical matter, this obligates cable operators to continue to provide and render technically operational CableCARDs at significant cost – not just in terms of the allocation of resources and personnel required to comply, but also in terms of unwarranted constraints on network innovation and evolution – without *any* offsetting consumer benefit.

In 2025, cable television subscribers are not interested in purchasing a dedicated set-top box. They want to access video content on the smart TVs, streaming devices, and mobile devices they already own. And cable operators, struggling to hold on to subscribers in the face of ever-growing competition from streaming alternatives that *exclusively* deliver their content to consumer-owned equipment, have every incentive to satisfy that demand by making their video services available via their websites and apps that run on third-party hardware.[30]

Section 549(d) of the Communications Act and Section 76.1210 of the Commission's rules both set forth a set of conditions that, once satisfied, shall compel the deletion of the "navigation device" rules.[31] While those conditions anticipated a future

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content/uploads/2020/09/Closing-the-Lid-on-Unlock-the-Box-Should-End-Video-Device-Regulation-092520.pdf.

[29] *See* 47 CFR § 76.1204.

[30] *See, e.g.*, Andrew Long, "Xumo Streaming Devices Compel the Sunset of Set-Top Box Rules," *FSF Blog* (July 12, 2024), available at https://freestatefoundation.blogspot.com/2024/07/xumo-streaming-devices-compel-sunset-of.html.

[31] *See* 47 U.S.C. § 549(d), 47 CFR § 76.1210. The navigation device rules, all of which are ripe for deletion, span from 47 CFR § 76.1200 to 47 CFR § 76.1210.

that never came to pass – that is, one in which set-top boxes remained relevant and consumers in fact wanted to own them – their spirit undeniably has been satisfied.

V. The Commission Should Delete Its Cable Rate Regulation Rules

By statute, the ability of the FCC to regulate the rates charged by cable operators is confined to those areas where "effective competition" does not exist.[32] As set forth convincingly above, however, cable operators confront vigorous competition nationwide on multiple fronts: vMVPDs, including the soon-to-be-largest MVPD, YouTube TV; numerous streaming services with subscriber totals twice as large – or more – than that of all cable operators *combined*; YouTube, the largest single video-programming destination with 11.6 percent of all viewing in February 2025; wildly popular short-form video apps like TikTok, with its 170 million U.S. users; social media platforms; and more.

Accordingly, the suggestion that every cable operator might not face "effective competition" everywhere defies the common understanding of what that phrase means. In a 2020 Memorandum Opinion and Order, the Media Bureau concluded that the AT&T TV NOW nationally available streaming service satisfied the statutory definition of "effective competition."[33] Today it is appropriate for Congress and the Commission to move beyond myopic "tests" for determining whether "effective competition" exists, acknowledge that there is abundant marketplace evidence demonstrating that it in fact

[32] *See* 47 U.S.C. § 543(a)(2) ("If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section."

[33] *See* Petition of Comcast Cable Communications, LLC, for a Determination of Effective Competition in Massachusetts Communities Listed in Appendix A; Petition of CoxCom, LLC d/b/a Cox Communications for a Determination of Effective Competition in Holland, Massachusetts (MA0321), *Memorandum Opinion and Order*, MB Docket Nos. 19-385, 20-10 (December 7, 2020).

does, and delete from both the Communications Act and the Code of Federal Regulations those provisions pertaining to rate regulation.[34]

VI. Bigger Picture, There Should Be More Comprehensive Reform of the Video Marketplace Regulatory Landscape

In a recent *Perspectives from FSF Scholars*, Senior Fellow Andrew Long urged lawmakers and the Commission not to mandate that a facilities-based MVPD provide a rebate to subscribers when they and a programmer are unable to negotiate a mutually beneficial agreement:

> Even where well intentioned, regulatory intervention inescapably leads to economic inefficiencies. Here, requiring traditional MVPDs – and not streaming substitutes – to provide rebates to consumers in the event of a negotiating impasse would discriminate in favor of both unregulated distributors and programmers, doubly driving subscriber prices higher. *Given the abundance of competition in the video distribution space, the better choice is to allow the efficiently operating marketplace to determine optimal outcomes*.[35]

That "abundance of competition in the video distribution space," documented at length throughout these comments, requires that, in the context of this deregulatory exercise, the Commission reevaluate the continued validity of longstanding assumptions that ostensibly justify the regulation of both facilities-based MVPDs and local television broadcasters. In the current marketplace, the vast number of options available to consumers for virtually any form of video content renders outdated not only carriage requirements that apply exclusively to facilities-based MVPDs and likely run afoul of the First Amendment, but also certain media ownership rules that hamstring local

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[34] *See* 47 U.S.C. § 543, 47 CFR §§ 76.901-76.990.

[35] Andrew Long, "No Basis Exists in 2025 for Rules Targeting Traditional Video Providers," *Perspectives from FSF Scholars*, Vol. 20, No, 13 (March 6, 2025), available at https://freestatefoundation.org/wp-content/uploads/2025/03/No-Basis-Exists-in-2025-for-Rules-Targeting-Traditional-Video-Providers-030625.pdf, at 5 (emphasis added).

broadcasters' ability to compete effectively in the broadly pitched battle for consumer engagement.

Accordingly, the Commission should delete – or, where necessary, recommend that Congress repeal – artificial constraints on what facilities-based MVPDs may or must include in the consumer-facing offerings they curate, including "must carry,"[36] program access,[37] leased access,[38] network non-duplication protection,[39] and syndicated program exclusivity.[40] Only if this is accomplished, at the same time the Commission, or Congress if need be, should consider deleting media ownership rules – such as the national ownership cap[41] and local television ownerships limits[42] – that are premised upon an outdated and overly narrow view of the marketplace in which local broadcasters compete for viewers.

VII. Conclusion

For the foregoing reasons, the Commission should delete the rules identified above as well as any others predicated upon the contrary-to-fact assumption that, in 2025,

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[36] *See* 47 U.S.C. § 534, 47 CFR § 76.56.
[37] *See* 47 U.S.C. § 536, 47 CFR §§ 76.1000-76.1004. *See also* Randolph J. May, "Stopping Regulatory Encroachment on Broadband," *FSF Blog* (December 7, 2011), available at https://freestatefoundation.blogspot.com/2011/12/stopping-regulatory-encroachment-on.html ("[I]n reality, there is a persuasive argument the existing program carriage requirements should be eliminated, especially in light of First Amendment concerns raised by the government mandating carriage of particular programming.").
[38] *See* 47 U.S.C. § 532, 47 CFR §§ 76.970-76.977. *See also* Seth L. Cooper, "Improving the FCC's Cable Leased Access Proposal," *FSF Blog* (June 5, 2018), available at https://freestatefoundation.blogspot.com/2018/06/improving-fccs-cable-leased-access.html ('[T]aking into account the First Amendment free speech rights of cable operators in conjunction with today's competitive video market, the Commission should consider deregulating even more.").
[39] *See* 47 CFR §§76.92-95 (cable), 47 CFR §§ 76.120-122 (DBS).
[40] *See* 47 CFR §§ 76.101-110 (cable), 47 CFR §§ 76.120, 76.123-76.130 (DBS).
[41] *See* 47 CFR § 73.3555(e).
[42] *See* 47 CFR § 73.3555(b).

facilities-based MVPDs maintain a position of dominance in the highly competitive video-distribution marketplace.

Respectfully submitted,

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