

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

In the Matter of)
)
The State of Competition in the)
Communications Marketplace) GN Docket No. 26-78

**COMMENTS OF
THE FREE STATE FOUNDATION**

Randolph J. May
President

Andrew Long
Senior Fellow

Free State Foundation
P.O. Box 60680
Potomac, MD 20854

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I. Introduction and Summary

The Free State Foundation ("FSF") hereby responds to the Office of Economics and Analytics' biennial request for comment on the state of competition in the communications marketplace.¹ In 2026,² the hallmarks of the communications marketplace are competition and convergence. Wherever legacy regulations do not interfere, countless providers efficiently deliver communications – in whatever form (text, voice, video) – over a range of ubiquitously available IP-based distribution platforms. With respect to both content and connectivity, competition abounds.

As such, to achieve its goals, this next competition report need only identify additional opportunities to tear down rusty silos, repeal expired rules, and employ the various tools in the Commission's toolbox to achieve further deregulation – the DELETE,

* 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 See generally Public Notice, *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, GN Docket No. 26-78, DA 26-333 (released April 6, 2026), available at <https://docs.fcc.gov/public/attachments/DA-26-333A1.pdf> (*Public Notice*).

² The *Public Notice* seeks "information, data, and statistics for 2024 and 2025, as well as information on any notable trends and developments that have occurred during early 2026." *Id.* at 2. The pace of change in the communications marketplace is so rapid, however, that these comments focus primarily on the current state of play.

DELETE, DELETE proceeding; rulemakings; forbearance; waivers; sunset provisions; and so on. This will encourage further private investment (which has surpassed \$2.2 trillion since 1996³), accelerate deployment timelines, and, more broadly, eliminate unnecessary red tape.

Specifically, the Commission should acknowledge the true scope of the consumer-driven broadband marketplace (not some artificially contrived and constrained "broadband" marketplace) and, in response, take action to advance the transition to all-IP networks; eliminate unreasonable permitting hurdles at every level of government; continue to take swift action to resolve pole-attachment disputes; and take measures necessary to keep the spectrum pipeline flowing.

To unlock the full potential of unfettered competition to benefit consumers in the video programming marketplace, the Commission should: (1) reject calls to extend antiquated regulations applicable to facilities-based distributors to over-the-top providers – and instead eliminate those regulations altogether; (2) direct a fresh set of eyes to the regulated relationship between local broadcast television stations and facilities-based distributors, including asking whether in 2026 (a) there remains a factual predicate for the retransmission consent regime, and (b) there might be a more direct and efficient way to promote localism than taking steps to prop up legacy revenue streams (*e.g.*, sports-driven advertising sales); and (3) going beyond the proposal to eliminate set-top box reporting requirements and sunsetting *all* of its rules implementing the navigation device provisions of the 1996 Telecommunications Act.

³ See USTelecom | The Broadband Association, "New Report: Broadband Providers Invested Nearly \$90 Billion in 2024 – Driving Connectivity, Innovation, and Opportunity Nationwide" (October 21, 2025), available at <https://ustelecom.org/new-report-broadband-providers-invested-nearly-90-billion-in-2024-driving-connectivity-innovation-and-opportunity-nationwide/?tid=All#0>.

II. The Broadband Marketplace Is Bigger Than "Broadband"

Regarding the IP-based distribution platform – that is, Internet access – it certainly is time for government writ large to acknowledge what individual consumers long have accepted as a given: that, for in-home service, providers of "fixed broadband services," "mobile wireless services," and "satellite communications services" (differentiating terms of art employed in the *Public Notice*) in fact are fungible services that compete head-on for customers. If one were to summarize broadband marketplace developments over the last few years in just a few words, it would be that consumers have been migrating to fiber, 5G (both mobile and fixed wireless access (FWA)), and low-Earth orbit (LEO) satellite offerings. Some representative data points:

- In its "2025 North American FTTH Deployment and Market Update," the Fiber Broadband Association reported 39.3 million "homes-connected" as of September 2025.⁴
- According to James Brumley of *The Motley Fool*, "T-Mobile and Verizon now serve a total of 15.5 million FWA customers after launching these services just a few years ago. It's no coincidence that Comcast's and Charter's high-speed internet customer base began shrinking around that same time."⁵
- AT&T added 292,000 FWA subscribers and the same number of fiber subscribers in the first quarter of 2026 alone.⁶

⁴ See Fiber Broadband Association, "2025 North American FTTH Deployment and Market Update" (December 17, 2025) available at https://fiberbroadband.org/wp-content/uploads/2026/02/25.fba_RVA2025MarketReport.01.19.2026F.pdf.

⁵ James Brumley, "Where Are Comcast and Charter's Internet Customers Going? Here." *The Motley Fool* (May 7, 2026), available at <https://www.fool.com/investing/2026/05/07/where-are-comcast-and-charters-internet-customers/>. See also Patricia Battle, "Spectrum loses 120,000 internet customers as competition rises," *MSN* (May 2, 2026), available at <https://www.msn.com/en-us/money/companies/spectrum-loses-120-000-internet-customers-as-competition-rises/ar-AA22feW9> (reporting that Charter Communications, Inc., Chief Financial Officer Jessica Fischer stated on an April 24th earnings call that "[w]e continue to see expanded fixed wireless competition and higher mobile substitution, as well as ongoing fiber overlap growth at a rate similar to prior quarters").

⁶ See AT&T Press Release, "AT&T Reports Strong First-Quarter 2026 Financial Results" (April 22, 2026), available at https://investors.att.com/~/_media/Files/A/ATT-IR-V2/financial-reports/quarterly-earnings/2026/1Q-2026/ATT_1Q26_Earnings_Release.pdf.

- Starlink roughly doubled its U.S. subscriber base in 2025 to approximately 2.7 million, thereby becoming one of the ten largest ISPs in the country.⁷

Importantly, while fiber obviously exceeds the upstream and downstream thresholds determined by both the FCC's definition of "broadband" and the relevant statutory definitions established by Congress in the Infrastructure Investment and Jobs Act for the Broadband Equity, Access, and Deployment (BEAD) Program – 100 Megabits per second (Mbps) downstream and 20 Mbps upstream (100/20) – both 5G and LEO offerings (at least in their current, consumer-facing incarnations) easily clear the downstream bar but fall slightly short in the opposite direction. For purposes of assessing whether effective competition exists, however, this is a distinction without a difference.

To be sure, the formal definition of "broadband" may represent a helpful line-drawing exercise for the purpose of determining which locations should and should not be eligible for government subsidies. In addition, it is important to acknowledge that the 100 Mbps downstream and 20 Mbps upstream benchmarks do align with the technologically neutral intent of Congress, particularly when contrasted with the rejected 100 Mbps symmetrical targets admittedly favored by the Biden administration in order to prioritize fiber-based networks. But as Free State Foundation scholars have pointed out on numerous occasions, the definition of "broadband," regrettably, is not rooted in real-world consumer behavior and, therefore, is incapable of advancing the development of sound policy.⁸

⁷ See Abby Larkin, "Study: With 2.7 Million Subscribers, Starlink is a Top 10 U.S. ISP," *Broadband Breakfast* (May 14, 2026), available at <https://broadbandbreakfast.com/study-with-2-7-million-subscribers-starlink-is-a-top-10-u-s-isp/>. According to the study by New Street Research, only 20 percent of new Starlink subscribers are former cable broadband subscribers. *Id.*

⁸ See, e.g., Randolph J. May and Andrew Long, "The FCC Should Define 'Broadband' Based on Actual Consumer Usage," *Perspectives from FSF Scholars*, Vol. 18, No. 34 (August 24, 2023), available at <https://freestatefoundation.org/wp-content/uploads/2023/08/The-FCC-Should-Define-Broadband-Based-on-Actual-Consumer-Usage-082423.pdf>, at 6-7 ("For purposes of Section 706, how much bandwidth is

Nor, for that matter, does the definition of "broadband" perform a true gating function for BEAD Program funding eligibility. According to Ookla Research™, Starlink's LEO satellite offering, which was awarded over \$730 million to connect roughly a half-million locations,⁹ at present only consistently and reliably delivers upstream speeds that meet or exceed 20 Mbps in 22 states,¹⁰ although both its downstream and upstream speeds continue to improve. However, its overall performance, which exceeds 100 Mbps downstream and comes close to 20 Mbps upstream,¹¹ *does* closely resemble that of both 5G mobile and FWA services: T-Mobile, for example, reports typical 5G mobile speeds ranging from 144 to 561 Mbps (download) and 6 to 34 Mbps (upload) and typical 5G FWA speeds ranging from 170 to 498 Mbps (download) and 12 to 55 Mbps (upload).¹² In the spirit of "what's good for the goose is good for the gander," if Starlink's service is deemed for subsidy purposes to be "broadband" despite its inability to reliably deliver upstream speeds that surpass the (admittedly arbitrary) 20

needed for a connection to be deemed 'advanced telecommunications capability'? The FCC should develop an evidence-based response to this question by soliciting from the interested public detailed and highly specific factual information regarding current and near-future real-world usage."); Michelle P. Connolly, "Mindfully Wasteful Spending: The Definition of Broadband," *Perspectives from FSF Scholars*, Vol. 18, No. 20 (May 18, 2023), available at <https://freestatefoundation.org/wp-content/uploads/2023/08/Mindfully-Wasteful-Spending-The-Definition-of-Broadband-051823.pdf>, at 2 ("The FCC's definition is supposed to represent the *minimum threshold* for service to officially count as broadband service. It is not supposed to represent the minimum needed for a household with five gamers, two live streamers, and two grandparents streaming to two ultra-high-definition 4K TVs 24 hours a day. Nor should it.") (emphasis in original).⁹ See Nicole Ferraro, "House Dems raise 'deep concern' over Starlink's BEAD wins," *Light Reading* (April 3, 2026), available at <https://www.lightreading.com/satellite/house-dems-raise-deep-concern-over-starlink-s-bead-wins> ("After the Trump administration rewrote the rules for BEAD in favor of lower costs and tech neutrality, SpaceX's Starlink officially picked up \$733.5 million in 45 of the 56 states and territories to serve 472,604 locations.") (citation omitted).

¹⁰ See Sue Marek, "Starlink Hits New Highs in the U.S.," *Ookla* (May 5, 2026), available at <https://www.ookla.com/articles/starlink-hits-new-us-highs> (reporting that during "the second half of 2025, Speedtest users on Starlink in every state but Alaska were able to get median download speeds of 100 Mbps or higher" but that in only 22 states were Starlink users "able to get median upload speeds of 20 Mbps or higher").

¹¹ See *id.*

¹² See T-Mobile, "Performance Metrics," available at <https://www.t-mobile.com/responsibility/consumer-info/policies/internet-service/network-speed-performance-metrics>.

Mbps bar, then so, too, should other options popular with consumers and capable of similar speeds, whether fixed or mobile.

It follows logically from there that this next competition report should not repeat the familiar refrain that fixed and mobile broadband services "are either complementary or independent of each other."¹³ As Free State Foundation Adjunct Senior Fellow Seth Cooper argued in a January 2025 *Perspectives from FSF Scholars* critiquing the 2024 competition report, the Commission should "abandon viewing alternative broadband delivery technologies as entirely separate and recognize there is a broader broadband market characterized by competition among fixed and mobile broadband services."¹⁴

In terms of what other specific steps the Commission might take to further foster continued private investment – and, by direct extension, heightened broadband competition – it should focus on ways to eliminate unnecessary red tape affecting the pace of broadband infrastructure deployment via whatever administrative levers are at its disposal. These include continuing to use the DELETE, DELETE, DELETE

¹³ See, e.g., 2024 Communications Marketplace Report, *In the Matter of Communications Marketplace Report*, GN Docket No. 24-119 (released December 31, 2024), available at <https://docs.fcc.gov/public/attachments/FCC-24-136A1.pdf>, at 111 (citations omitted).

¹⁴ Seth L. Cooper, "The FCC's 2024 Communications Marketplace Report: Time for a Broader View of Competing Broadband Services," *Perspectives from FSF Scholars*, Vol. 20, No. 5 (January 24, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/01/The-FCCs-2024-Communications-Marketplace-Report-Time-for-a-Broader-View-of-Competing-Broadband-Services-012425.pdf>, at 1.

proceeding;¹⁵ exercising its forbearance authority; issuing waivers; eliminating rules; and so on. Some specific examples:

- The Commission should follow through on its proposal to exercise its Section 10 forbearance authority to expedite the transition to all-IP networks, as we urged it to do in comments submitted in January.¹⁶
- It should "clear away state and local permitting delays and regulatory cost barriers for deploying wireline facilities in public rights-of-way" as part of the Build America agenda, as Randolph May and Seth Cooper argued in Free State Foundation comments filed in November 2025.¹⁷
- It should continue to utilize its "accelerated docket" to expedite the resolution of pole-attachment disputes that impede the deployment of broadband infrastructure.¹⁸ According to the Advanced Communications Law and Policy Institute at New York Law School, pole-related delays could impose as much as \$4.63 billion in costs and significantly delay the timing of BEAD Program infrastructure buildout.¹⁹

In addition, the FCC should continue to take interagency coordinated actions to keep the spectrum pipeline flowing so that wireless services – both licensed and unlicensed – have the capacity required to keep up with consumer demand. The imminent

¹⁵ See generally Reply Comments of the Free State Foundation, *IN RE: DELETE, DELETE, DELETE*, GN Docket No. 25-133 (filed April 28, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/04/FSF-Reply-Comments-FCCs-DELETE-DELETE-DELETE-Proceeding-042825.pdf>, at 1 (identifying regulations "that should be repealed or modified because they are beyond the Commission's statutory authority or contravene constitutional dictates, or because, as a matter of policy, in today's marketplace they are no longer necessary and are burdensome and costly").

¹⁶ See Comments of the Free State Foundation, *In the Matter of Advancing IP Interconnection, Accelerating Network Modernization, Call Authentication Trust Anchor*, WC Docket Nos. 25-304, 25-208, 17-97 (filed January 20, 2026), available at <https://freestatefoundation.org/wp-content/uploads/2026/01/FSF-Comments-IP-Interconnection-Final-012026.pdf>. See also Andrew Long, "Forbearance: The Fast Lane to Implementing Modern All-IP Networks," *Perspectives from FSF Scholars*, Vol. 20, No. 43 (October 24, 2025).

¹⁷ Comments of the Free State Foundation, *Build America: Eliminating Barriers to Wireline Deployments*, WC Docket No. 25-253, available at <https://freestatefoundation.org/wp-content/uploads/2025/11/FSF-Comments-Eliminating-Barriers-to-Wireline-Deployments-Final-111825.pdf>, at 1.

¹⁸ See, e.g., Joseph V. Kennedy, "FCC Rules on the Comcast/Appalachian Power Dispute: Speeding Decisions, Reducing Costs and Expanding Broadband," *FSF Blog* (February 9, 2026), available at <https://freestatefoundation.blogspot.com/2026/02/fcc-rules-on-comcastappalachian-power.html> ("The Commission's order was significant because it used new powers, proposed by the Free State Foundation, to reach its decision.").

¹⁹ See Broadband Expanded, "Lingering Utility Pole Issues Could Raise Costs and Delay BEAD Buildout" (May 12, 2026), available at <https://broadbandexpanded.com/posts/beatpoles>.

AWS-3 auction and the planned upper C-Band auctions are welcome steps,²⁰ but more capacity is needed.

III. The Video Programming Marketplace Is More Than "TV"

Regarding the relevant subset of primarily IP-based material – that is, video programming – it is critical to appreciate that "TV" no longer accurately describes the product that consumers desire. Thanks to rampant competition, consumers today seek out specific content, content that is delivered by an admittedly dizzying menu of distributors. This is not a bug; it is an essential feature of the competitive landscape policymakers long have pursued. The current turbulence, accurately viewed, is nothing more than the inevitable transition from "TV" of old to the still-in-production pro-consumer future of abundant choices for accessing video.

Except, that is, for the legacy regulations that have lost their relevance but remain in place – as well as the resistance to their removal from those that benefit from the status quo.²¹

²⁰ See Public Notice, "Auction of Advanced Wireless Services (AWS-3) Licenses, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 113, Bidding Scheduled to Begin June 2, 2026," AU Docket No. 25-117 (December 18, 2025), available at <https://docs.fcc.gov/public/attachments/DA-25-1075A1.pdf> (setting a start date – June 2, 2026 – for Auction 113, which will make available 65 megahertz of AWS-3 spectrum), News Release, "FCC Proposes Upper C-Band Rules for 2027 Auction," GN Docket No. 25-59 (November 20, 2025), available at <https://docs.fcc.gov/public/attachments/DOC-415448A1.pdf> (announcing that the Commission had voted on a Notice of Proposed Rulemaking that could result in the auction of up to 180 megahertz of mid-band spectrum in the Upper C-band).

²¹ See Comments of the Free State Foundation, *IN RE: DELETE, DELETE, DELETE*, GN Docket No. 25-133 (filed April 11, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/04/FSF-Comments-DELETE-DELETE-DELETE-041125.pdf>, at 3 ("By deleting rules that no longer serve the American public – and, in some instances, identifying for Congress statutes 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.").

As co-author Andrew Long has documented over the past five years,²² along with other Free State Foundation scholars before and during that time,²³ the era of dominant facilities-based MVPDs – cable, direct broadcast satellite (DBS), telco TV – is on a steady downward trajectory. Consumers are rejecting the big "cable" bundle – and the associated set-top box – in ever-growing numbers in favor of content streamed over the Internet.

As Mr. Long noted in a January post to the *FSF Blog*, according to Nielsen, streaming video's share of total viewing reached an all-time high in December 2025: 47.5 percent.²⁴ And in their most recent quarterly earnings reports, Charter Communications, Inc., reported a loss of 60,000 total video subscribers²⁵ and Comcast Corporation reported a loss of 322,000 total video subscribers.²⁶ These represent merely the most recent data

²² See, e.g., Andrew Long, "Deregulation Is the Cure for the Video Regulatory Disparity," *FSF Blog* (June 9, 2025), available at <https://freestatefoundation.blogspot.com/2025/06/deregulation-is-cure-for-video.html>; 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>; 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-Degline-of-Traditional-MVPDs-050824.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>.

²³ See, e.g., Daniel A. Lyons, "A Rational Response to Market Maturity – Why the Charter-Cox Merger Serves the Public Interest," *Perspectives from FSF Scholars*, Vol. 20, No. 41 (October 17, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/10/A-Rational-Response-to-Market-Maturity---Why-the-Charter-Cox-Merger-Serves-the-Public-Interest-101725.pdf>; Michael O'Rielly, "DOGE Shouldn't Overlook the Outdated Video Regulations," *Perspectives from FSF Scholars*, Vol. 20, No. 2 (January 6, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/01/DOGE-Shouldnt-Overlook-the-Outdated-Video-Regulations-010625.pdf>; Randolph J. May, "Deregulating the Video Marketplace," *Perspectives from FSF Scholars*, Vol 13, No. 31 (August 2, 2018), available at <https://freestatefoundation.org/wp-content/uploads/2019/05/Deregulating-the-Video-Marketplace-080218.pdf>.

²⁴ See Andrew Long, "Streaming Continues to Surge as Short-Form Video Reshapes Consumer Habits," *FSF Blog* (January 27, 2026), available at <https://freestatefoundation.blogspot.com/2026/01/streaming-continues-to-surge-as-short.html>.

²⁵ See Charter Communications, Inc., "Charter Announces First Quarter 2026 Results" (April 24, 2026), available at <https://corporate.charter.com/newsroom/charter-announces-first-quarter-2026-results>.

²⁶ See Comcast Corporation, "Investor News Details" (April 23, 2026), available at <https://www.cmcsa.com/news-releases/news-release-details/comcast-reports-1st-quarter-2026-results>.

points in a downward trend spanning years. In fact, the lone fiscal quarter in recent memory during which a facilities-based MVPD – Charter – was able to grow its subscriber base was attributed to its innovative, "if you can't beat 'em, join 'em" strategy, whereby it bundles free access to popular streaming services with its legacy video product.²⁷

However, in response to the rising popularity of primarily one vMVPD – YouTube TV, which reportedly had 9.3 million subscribers at the end of 2025 and is expected to surpass Charter to become the largest MVPD by 2027²⁸ – there have been numerous calls to revive a rulemaking from 2014 and expand the definition of an MVPD to include vMVPDs, thereby subjecting the latter to the same retransmission consent regulations that apply to the former.²⁹

We assert that the very existence of vMVPDs (there are others in addition to YouTube TV, including DIRECTV (formerly known as DIRECTV Stream), Sling TV, Hulu + Live TV, and FuboTV) undermines the factual basis justifying regulatory intervention in carriage negotiations between facilities-based MVPDs and local broadcast

²⁷ See, e.g., Bevin Fletcher, "Charter returns pay TV to net adds in Q4," *StreamTV Insider* (January 30, 2026), available at <https://www.streamtvinsider.com/technology/charter-returns-pay-tv-net-adds-q4> ("The latest Q4 result follows video improvements earlier in 2025 when Charter successfully stemmed pay TV bleeding (losing 64,000 in Q3 and 73,000 in Q2) on the back of its reimagined SVOD bundling strategy and pricing and packaging revamp.") (citations omitted). See also Andrew Long, "The Proposed Charter-Cox Merger: A Pro-Consumer Response to Today's Competitive Communications Marketplace," *Perspectives from FSF Scholars*, Vol. 20, No. 28 (June 10, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/06/The-Proposed-Charter-Cox-Merger-061025.pdf>, at 4 ("In September 2023, Charter and Disney announced a landmark agreement that reshaped the traditional MVPD bundle by incorporating Disney+, ESPN+, and (upon launch) the ESPN flagship offering into Charter's video packages.") (citation omitted).

²⁸ See "Omdia: YouTube TV on track to become the largest US Pay-TV operator by 2027" (December 11, 2025), available at <https://omdia.tech.informa.com/pr/2025/dec/omdia-youtube-tv-on-track-to-become-the-largest-us-pay-tv-operator-by-2027>.

²⁹ See generally *In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking (released December 19, 2014), available at <https://docs.fcc.gov/public/attachments/FCC-14-210A1.pdf>.

television stations – that is, that facilities-based MVPDs (and, more specifically at the time the Cable Act of 1992 was passed, cable operators³⁰) maintain bottleneck control over the sole distribution path for those stations.³¹

Accordingly, we urge the Commission, in conjunction with this next competition report (if not sooner), to initiate a notice of inquiry that takes a fresh look at, among other things: (1) the overall status of competition in video programming distribution as it exists in 2026; (2) the evolving relationship between local broadcast television stations and MVPDs; (3) the continuing need for the retransmission consent regime; (4) the impact of competition in the broader video programming marketplace for sports rights;³² and (5) any appropriate and direct steps the Commission and/or Congress might take to promote localism (weather, news, emergency alerts) given the changing competitive landscape.

While it is true that, historically speaking, local broadcast television stations have relied upon both retransmission consent fees and sports-driven advertising revenues to fund local content, that does not necessarily justify efforts to maintain or expand outdated

³⁰ See generally 47 U.S.C. §§ 534, 535.

³¹ So, too, does the rationale for dismissing transaction-specific retransmission consent-related concerns set forth in the Media Bureau's order approving the Nexstar/TEGNA deal. See Andrew Long, "A Close Read of the Media Bureau's Nexstar/TEGNA Order Exposes the Fallacy of the Retransmission Consent Regime," *Perspectives from FSF Scholars*, Vol. 21, No. 18 (April 17, 2026), available at <https://freestatefoundation.org/wp-content/uploads/2026/04/A-Close-Read-of-the-Media-Bureau-Nexstar-TEGNA-Order-041726.pdf>.

³² See Joseph V. Kennedy, "Sports Streaming Gives Fans More Choices Than Ever: Keep the Competition Alive," *Perspectives from FSF Scholars*, Vol. 21, No. 21 (May 1, 2026), available at <https://freestatefoundation.org/wp-content/uploads/2026/05/Sports-Streaming-Gives-Fans-More-Choices-Than-Eve-Keep-the-Competition-Alive-050126.pdf>, at 6 ("Rather than piecemeal reform of streaming sports programming, it would be best to rationalize the broader communications market so that companies can compete in an open market to provide the most value to consumers in whatever form they want."); Andrew Long, "Consumer Choice in Sports Proves that Video Competition Abounds," *FSF Blog* (March 11, 2026), available at <https://freestatefoundation.blogspot.com/2026/03/consumer-choice-in-sports-proves-that.html> ("[N]umerous distributors are choosing to offer live sporting events, in addition to the original and licensed content that they carry, to win and retain customers. That competition-fueled decisionmaking benefits consumers through lower costs and greater choice. It therefore should be celebrated, even as it unavoidably disrupts existing revenue models.").

regulations – particularly those that do not promote overall consumer welfare – solely to protect existing business models. A notice of inquiry could shed valuable light on these issues.

In that regard, we maintain that the decision in the *Public Notice* to group free ad-supported streaming television (FAST) services with facilities-based multichannel video programming distributors (MVPDs) and virtual MVPDs (vMVPDs) rather than with other online video distributors (OVDs) misses the forest for the trees. Yes, all three do provide multichannel service (though FAST services do not retransmit local broadcast television stations). The salient issue, however, is that MVPDs are subject to Title VI of the Communications Act and the Commission's implementing rules, while vMVPDs and FAST services are not.

Finally, we voice our support for the proposal in the *Public Notice* to eliminate the set-top box reporting requirement indirectly born from the failed "Unlock the Box" proceeding initiated in 2016.³³ We note, however, that the reasoning presented for eliminating the reporting requirement makes an equally compelling case for eliminating *all* of the Commission's rules implementing Section 629 pursuant to the sunset provision found in subsection (e).³⁴ Accordingly, we urge the Commission to do so.

³³ See generally 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-content/uploads/2020/09/Closing-the-Lid-on-Unlock-the-Box-Should-End-Video-Device-Regulation-092520.pdf>.

³⁴ See *Public Notice* at 7 ("[S]ince 2020, the *Communications Marketplace Report* has reported a decline in consumer rental of set-top boxes, increased usage of apps to watch MVPD programming on devices other than set-top boxes, and increased availability of video programming services that resemble traditional MVPD products but do not require use of a set-top box.") and 47 U.S.C. § 549(e) ("The regulations adopted under this section shall cease to apply when the Commission determines that (1) the market for the multichannel video programming distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.") (citations omitted).

IV. Conclusion

Given the breadth and depth of competition that exists with respect to both IP-based distribution platforms and IP-delivered content, the Commission in this next competition report should (1) focus on the specific statutory language targeting "laws, regulations, regulatory practices ..., or demonstrated marketplace practices [that] pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services,"³⁵ and (2) aggressively continue to pursue a deregulatory agenda using all of the various tools in its toolbox. Specifically, wherever possible, the Commission should continue to use the procedures available to it to eliminate investment- and innovation-stifling regulations. Those procedures include the DELETE, DELETE, DELETE proceeding; other deregulatory rulemakings; the exercise of its Section 10 forbearance authority; and the use of its waiver authority. And the Commission should encourage Congress to modernize the Communications Act in ways that prioritize the promotion of competition and the maximization of consumer welfare.³⁶

Respectfully submitted,

Randolph J. May
President

³⁵ 47 U.S.C. § 163(b)(3).

³⁶ See, e.g., Randolph J. May, "Congress Should Adopt a 'Skinny' Communications Reform Bill," *Perspectives from FSF Scholars*, Vol. 21, No. 20 (April 30, 2026), available at <https://freestatefoundation.org/wp-content/uploads/2026/04/Congress-Should-Adopt-a-Skinny-Communications-Reform-Bill-043026.pdf>, at 2 (urging Congress to "simply replace the Communications Act's one hundred statutory provisions authorizing the FCC to act in the 'public interest' with language directing the agency to act to promote 'consumer welfare'"); Randolph J. May, "The Telecom Act of 1996 Needs a Deregulatory Overhaul," *Perspectives from FSF Scholars*, Vol. 21, No. 5 (February 4, 2026), <https://freestatefoundation.org/wp-content/uploads/2026/02/The-Telecom-Act-of-1996-Needs-a-Deregulatory-Overhaul-020426.pdf>, at 1 ("The only way for Congress to properly celebrate [the 30th anniversary of the Telecommunications Act of 1996] would be to initiate a serious legislative review that leads to a deregulatory overhaul of the Communications Act.").

Andrew Long
Senior Fellow

Free State Foundation
P.O. Box 60680
Potomac, MD 20854

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