

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

Accessibility of User Interfaces, and Video)
Programming Guides and Menus)

MB Docket No. 12-108

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in support of the American Cable Association (“ACA”) Petition for Waiver (“ACA Petition”) filed June 15, 2018² in the above-captioned Federal Communications Commission (“Commission”) proceeding.³ The ACA Petition seeks a waiver from Section 79.108 of the Commission’s rules for a small and narrowly tailored class of Multichannel Video Programming Distributors (“MVPDs”) that will be unable to fully comply with the requirements at issue due to the lack available of compliant solutions. More specifically, the ACA Petition seeks:

(1) a partial waiver, applicable to small and mid-size MVPDs that utilize quadrature amplified modulation (“QAM”) technology, from the requirements of Section 79.108 as they apply to two-way service offerings (e.g., video on demand) and

(2) a full waiver, for small and mid-size MVPDs that offer any video programming channels in only analog format or do not offer broadband Internet access to their residential video subscribers, from the requirements of Section 79.108.

¹ NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² Petition for Waiver of the American Cable Association, MB Docket No. 12-108 (fil. Jun. 15, 2018).

³ *Media Bureau Seeks Comment on American Cable Association’s Petition for Waiver of Accessible User Interfaces Requirements*, MB Docket No. 12-108, Public Notice, DA 18-659 (rel. Jun. 25, 2018).

The Commission should grant the relief as sought by ACA, as the request meets the standard applicable to 47 C.F.R. § 1.3. Section 1.3 states that the Commission’s “rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”⁴ The “good cause shown” standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest.⁵ Generally, waiver of the Commission's rules is granted when both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.⁶

As discussed further below and in detail in the ACA Petition, good cause exists to grant the relief as requested. Special circumstances exist to warrant a deviation from the strict application of Section 79.108, as the market for compatible devices has not developed in the way the Commission envisioned when adopting the provision. Despite the Commission’s assumption that the demands of larger MVPDs for compliant solutions would drive the availability of compliant devices for small and mid-size providers, such has not proven to be the case. As a result, full compliance with the provision would require certain classes of small and mid-size MVPDs to reengineer almost entirely their existing video distribution networks at a cost that could render their business financially untenable going forward. Strict adherence to the rule would therefore not be in the public interest, and grant of the relief as requested would enable small and mid-size providers unable to comply with the rule to remain viable and to continue to

⁴ 47 C.F.R. § 1.3.

⁵ Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

⁶ NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

offer a valuable service to their communities. Moreover, it must be emphasized that the requested waiver would only apply to a small and narrowly tailored class of MVPDs. That, and the fact that most consumers across the nation have access to Dish and Directv as options for accessing a Section 79.108 compliant device,⁷ will ensure that nearly every consumer in need of such a device can obtain one.

As ACA states in its petition,⁸ the market for navigation devices capable of compliance with the rules at issue has not developed in the manner anticipated by the Commission. When adopting Section 79.108 with a phased-in compliance timeframe for MVPDs of all sizes, the Commission stated that:

We recognize that smaller operators generally lack the market power and resources to drive independently the development of MVPD headend or customer premises equipment [and]...it is the large cable operators that generally dictate equipment features to manufacturers and commonly get priority in the delivery of that equipment.⁹

In other words, the Commission anticipated that navigation equipment compliant with Section 79.108 would be developed by vendors in response to the demands of larger MVPDs, and then would essentially “trickle down” to small and mid-size providers. Unfortunately, that has not been the case. As ACA notes (and NTCA can confirm based on feedback provided by members

⁷ Directv states on their website that their service is available to any consumer with a view of the southern sky. <https://www.directpackages.com/faqs/directv-availability/> (last visited Jul. 10, 2018). Dish states that their service is available nationwide. <https://www.dish.com/available-nationwide/> (last visited Jul. 10, 2018).

⁸ ACA Petition, pp. 6-8.

⁹ *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the TwentyFirst Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-138 (rel. Oct. 31, 2013) (“Accessible User Interfaces Order”), ¶ 115.

and the vendor community), the Section 79.108 solutions utilized by larger MVPDs are in effect proprietary, compatible with their networks as they exist today but not with those of other providers.¹⁰ For a number of small and mid-size MVPDs, utilization of solutions available to larger providers would require a total reengineering of their networks akin to starting from scratch and rebuilding their systems from the ground up. In addition, the TiVo wholesale platform, as well as compliant solutions available to IPTV providers, are compatible *only* for MVPDs with certain, specific network configurations.¹¹ For certain classes of MVPDs (QAM providers offering two-ways services, such as video on demand), compatible devices are only partial solutions, and as a result certain covered functions as required by Section 79.108 will not be available to the end-user.¹²

This reality, and the marketplace developments (or lack thereof in this instance) as discussed above, arise against the backdrop of a MVPD marketplace that has been, charitably speaking, unkind to small and mid-size providers. Content prices continue to rise unabated by either congressional or Commission action.¹³ Consumers continue to “cut the cord” at a fairly rapid pace.¹⁴ In short, for most small and mid-size MVPDs, the business is break-even at best –

¹⁰ See ACA Petition, pp. 8-14.

¹¹ *Id.*, p. 8.

¹² *Id.*, pp. 9-11.

¹³ See ACA Members Believe Retrans Fees Will Rise 88% by 2020, Multichannel News (Feb. 16, 2018), <https://www.multichannel.com/news/aca-members-believe-retrans-fees-will-rise-88-2020-418199>.

¹⁴ See Cord-Cutting Explodes: 22 Million U.S. Adults Will Have Canceled Cable, Satellite TV by End of 2017, Variety (Sep. 13, 2017), available at: <https://variety.com/2017/biz/news/cord-cutting-2017-estimates-cancel-cable-satellite-tv-1202556594/>.

and the expenditures necessary for system-wide network modifications necessary to comply with Section 79.108 would likely force them to exit the market entirely.

That said, as the ACA Petition makes clear, small and mid-size MVPDs have not as a group disregarded the needs of consumers that could benefit from accessible navigation devices. To the contrary, a number of these MVPDs, despite the state of the marketplace as discussed above, anticipate being able to comply with the provisions by December 2018. Yet, for the small and narrowly tailored classes of providers for which ACA seeks relief, compliance with the rules will be prohibitively expensive if not entirely impossible. Grant of the relief as requested by ACA would therefore be in the public interest.

Respectfully submitted,



By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President –
Industry Affairs & Business
Development
mromano@ntca.org

By: /s/ Brian J. Ford
Brian J. Ford
Senior Regulatory Counsel
bford@ntca.org

4121 Wilson Boulevard
Suite 1000
Arlington, VA 22203
703-351-2000

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