

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
 ) MB Docket No. 20-31  
Implementation of Section 1003 of the )  
Television Viewer Protection Act of 2019 )

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

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these Comments in response to the proposal by the Federal Communications Commission (“Commission”) to revise the rule governing good faith negotiation of retransmission consent and to implement provisions of the Television Viewer Protection Act of 2019 (“TVPA”).<sup>2</sup> Specifically, the Commission proposes to implement section 1003(a)(3) of the TVPA by amending its rules to allow small multichannel video programming distributors (“MVPDs”) to negotiate retransmission consent through a qualified buying group that includes a large station group.<sup>3</sup> The Commission further proposes to define “qualified buying group” to mean “an entity that negotiates on behalf of

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<sup>1</sup> NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

<sup>2</sup> In the Matter of Implementation of Section 1003 of the Television Viewer Protection Act of 2019, *Notice of Proposed Rulemaking*, MB Docket No. 20-31, FCC 20-10 (rel. Jan. 31, 2020) (“*Notice*”).

<sup>3</sup> *Notice* at n. 1.

MVPDs that collectively serve no more than 25 percent of all households receiving service from *any* MVPD in a given local market.”<sup>4</sup> NTCA supports the Commission’s proposal as an initial step toward fixing the broken retransmission consent process; however, as NTCA has commented previously on multiple occasions, the Commission must do more.<sup>5</sup>

One of the challenges smaller MVPDs face in negotiating retransmission consent is their vastly unequal bargaining power due to their size as compared to that of programmers. While larger MVPDs are able to persuade programmers to allow them to offer less expansive, and therefore less expensive, service packages to consumers (commonly known as “skinny bundles”), the channel lineups in rural MVPDs’ service tiers remain the same or continue to grow ever larger and more expensive, due to the forced tying practices of network program providers and local broadcasters. This is accompanied by ever increasing retransmission fees. Surveys conducted by NTCA revealed that retransmission consent fees increased in 2019 by an average of \$53,969 as compared to the previous negotiating cycle, a \$10,000 increase over 2018.<sup>6</sup> NTCA is therefore hopeful that allowing smaller MVPDs to negotiate retransmission agreements through a larger buying group will allow them to obtain access to programming at a more reasonable rate than is currently possible.

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<sup>4</sup> *Notice* at ¶ 1 (emphasis original).

<sup>5</sup> *See, e.g.*, Comments of NTCA – The Rural Broadband Ass’n, MB Docket No. 17-318 (March 19, 2018); Reply to Opposition of NTCA – The Rural Broadband Ass’n and WTA – Advocates for Rural Broadband, MB Docket No. 16-142 (Apr. 23, 2018); Comments of NTCA – The Rural Broadband Ass’n, MB Docket No. 17-214 (Oct. 10, 2017).

<sup>6</sup> This amounted to an average of 34.8% of total operating expenditures in 2019. *See* Broadband/Internet Availability Survey Report, NTCA – The Rural Broadband Ass’n (Dec. 2019) at p. 21 (available at <https://www.ntca.org/sites/default/files/documents/2019-12/2019%20Broadband%20Survey%20Report.pdf>) (“2019 Broadband Survey Report”).

Large MVPDs are able to negotiate a favorable rate because they provide broadcasters with a larger number of potential viewers that generate additional advertising revenue. In contrast, a broadcaster can extract higher per-subscriber rates from small and mid-size MVPDs because the broadcaster loses little by denying the smaller MVPD access to programming. Smaller MVPDs, however, often do not have the option of simply discontinuing video programming. A 2015 NTCA survey, for instance, found that for nearly one-quarter of NTCA members, ninety percent (90%) or more of customers cannot receive an over-the-air broadcast signal.<sup>7</sup> Often, these same customers turn to their local broadcast station (accessible only through their MVPD) for important weather alerts and news relevant to their local area. Consequently, smaller MVPDs have little choice but to pay the substantial increases in retransmission fees and then pass those fees on to subscribers. As one provider noted, “trying to explain why [subscribers] have to pay for free tv is extremely difficult, especially because they can’t get some of those channels over the air!”<sup>8</sup>

The ability of NTCA members’ MVPD subsidiaries to offer an affordable video service to their voice and/or broadband subscribers is vital to competition in the video space and drives the adoption of broadband service. For all NTCA members, the ability to offer quality video services is an essential component of the business case for broadband deployment (including upgrading of existing broadband plant) and can serve as a driver of broadband adoption in rural

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<sup>7</sup> See NTCA – The Rural Broadband Association and INCOMPAS’ 2015 Video Competition Survey, at p. 2 (available at [https://www.ntca.org/sites/default/files/documents/201801/NTCA\\_2015VideoCompetitionSurvey.pdf](https://www.ntca.org/sites/default/files/documents/201801/NTCA_2015VideoCompetitionSurvey.pdf)).

<sup>8</sup> “The Video Conundrum: To Offer or Not to Offer,” by Marsha Zager, *Rural Telecom* (Fall 2018) at p. 24.

areas.<sup>9</sup> A video strategy is therefore an important component to promoting the long-term viability of most rural telecommunications providers.

The Commission can help enhance consumer choice and encourage additional broadband adoption and deployment by reforming retransmission consent rules and taking other actions to ensure access to content. For example, Commission action is also needed to correct various anticompetitive behaviors by content providers, such as forced tying and tiering. Programmers engage in unfair bargaining tactics, such as the inclusion of mandatory non-disclosure provisions in contracts that obscure the market value of content and threatening to withhold “must have” content during the re-negotiation process if MVPDs do not agree to programmers’ initial price. Therefore, while allowing smaller MVPDs to create a buying group to negotiate retransmission agreements is a worthwhile first step, the Commission should continue to address the outdated retransmission consent regime and take steps to inject transparency and balance into a system that has become far too unbalanced and inconsistent with the rules’ purpose, to the detriment of consumers and small MVPDs.

For the reasons stated above, NTCA supports the Commission’s proposal to modify existing retransmission rules to allow small MVPDs to form a buying group with other MVPDs, both large and small, to attempt to have better bargaining power when negotiating retransmission agreements. However, much more remains to be done to level the playing field between MVPDs and programmers. NTCA therefore urges the Commission not to stop here but to use the instant proceeding as a first step of many toward amending rules governing retransmission.

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<sup>9</sup> Nearly half (45.8%) of NTCA members responding to a 2019 survey indicated that offering a video service is important for customers, with 21.3% stating that this is very or extremely important. *See* 2019 Broadband Survey Report at p. 23.

Respectfully submitted,



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