RECOMMENDATIONS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
ON ANTICOMPETITIVE REGULATIONS
FOR CONSIDERATION IN DOJ/FTC REVIEWS

1. FEDERAL COMMUNICATIONS COMMISSION

Name and Citation of the Regulation:

Exclusivity and Non-Duplication Rules; 47 C.F.R. §§ 76.92-76.94 and 76.101-76.105

Brief Summary of the Issues:

The FCC's Part 76 exclusivity and non-duplication rules drive up rural consumers' rates for video services and limit access to desired programming; these rules also fail to promote "localism" as intended. The Commission should amend its Part 76 rules that prevent small, rural multichannel video programming distributors (MVPDs) from including within their video packages broadcaster content from neighboring Designated Market Areas (DMAs). This would allow small rural MVPDs to access content from a neighboring DMA to the extent that it is available at a lower rate or to otherwise respond to consumer demand for more relevant broadcast content.

Why is this regulation anti-competitive towards small businesses?

These antiquated exclusivity and non-duplication rules are anti-competitive towards small businesses and detrimental to rural consumers for several reasons. First, they prevent MVPDs from seeking and obtaining alternative sources for obtaining programming demanded by consumers. An MVPD that can find broadcast content at a more affordable rate from a broadcaster in a neighboring DMA – or desires content that is more relevant to the localities it serves – should be able to do so, rather than being compelled to buy from an entity that is given an artificial and antiquated geographic monopoly over content delivered via public airwaves. Second, the monopoly conferred by these rules over content distribution enables broadcasters to increase retransmission consent fees, because the rules lock MVPDs into procuring content from a single seller via government fiat.

How does it create a barrier to entry or undermine free market competition in your industry?

As noted above, if the rules did not preclude MVPDs from procuring content from neighboring DMAs (or any DMA of their choosing), this would create a marketplace for content that should lead to greater competition in the delivery of content to MVPDs and ultimately lower prices for consumers.

Provide any anecdotes, data, and information on compliance costs and burdens.

As just one example of how this practice frustrates rather than furthers competition and consumer interests, one NTCA member forced to "negotiate" only with the DMA to which it is assigned reports that its subscribers are only able to view news and weather for a major metropolitan area several hours away in a neighboring state, leaving these customers with no access to "local" content that informs them as to news emerging from their state capital.

The costs arising out of this government-created monopoly over broadcaster content can best be seen in the massive increases in "retransmission consent" fees (the fees paid for such content) that broadcasters can in turn force upon MVPDs – especially smaller and rural operators. As NTCA's annual survey indicates, its members serve on average roughly 810 television customers (for those offering traditional cable service) or 1,850 television customers (for those offering "IPTV" service not unlike Verizon FiOS). In 2024, the retransmission consent fees paid by NTCA members on average increased by more than $104,000 – or more than $56 per IPTV customer.

What would you like the agency to do?

NTCA has proposed to the FCC in its "delete, delete, delete" proceeding that the agency eliminate the exclusivity and non-duplication rules altogether, and thereby inject much-needed market forces into the retransmission consent process by allowing MVPDs to look to a variety of sellers for broadcast content.

How would this change benefit small businesses?

NTCA's aforementioned survey found that 94% of these small and rural MVPDs had passed along these increased programming costs to consumers, thereby making their video distribution services less competitive as compared to: (a) larger MVPDs with better marketing power or affiliated relationships with broadcasters; or (b) non-traditional video distributors such as YouTube TV that are not subject to such rules. Moreover, nearly one-quarter of survey respondents indicated that they are very likely to discontinue their cable television or IPTV offerings in the future, with nearly 10% noting plans already in place to do so. While eliminating the exclusivity and non-duplication rules would not represent a "silver bullet" in making smaller and rural MVPDs more competitive or overcoming other structural concerns with the notion of retransmission consent, such action would at the very least offer the prospect of creating a freer and more effective marketplace for content than exists today.

2. FEDERAL COMMUNICATIONS COMMISSION

Name and Citation of the Regulation:

MVPD Regulations; 47 C.F.R. Part 76 generally, including but not limited to the following rules: must carry (47 CFR § 76.62), franchising (47 CFR § 76.41), regulatory fees (47 CFR § 1.1155), emergency alert (47 CFR § 11.11), children's television commercial limits (47 CFR § 76.225), program exclusivity rules (47 CFR § 76.101-110), notice and reporting requirements (e.g., 47 CFR § 76.1600), rules relating to political programming (47 CFR § 76.205-206), sponsorship identification (47 CFR § 76.1615), public inspection file requirements (47 CFR § 76.1700-1716), commercial leased access (47 CFR § 76.970-977), ownership rules and restrictions (47 CFR § 76.501), subscribership limits (47 CFR § 76.503), limits on carriage of vertically integrated programming (47 CFR § 76.1301-1302), regulation of services, facilities, and equipment (47 CFR § 76.601-640), technical standards (47 CFR § 76.605), and customer service rules (47 CFR § 76.309).

Brief Summary of the Issues:

In addition to the specific focus on the exclusivity and non-duplication rules noted earlier, the FCC should undertake a comprehensive review of its Part 76 rules to determine how it can "level the playing field" as between "traditional" MVPDs (which include cable television and IPTV providers) and "virtual" MVPDs (which include operators like YouTube TV) – the latter of which are generally not subject to many of the FCC's Part 76 rules.

Why is this regulation anti-competitive towards small businesses?

Mandatory fees and compliance costs arising out of the Part 76 rules present a distinct challenge to smaller and rural MVPDs as they try to compete with larger "traditional" MVPDs that have more resources to manage these requirements and greater bargaining power to negotiate for reductions in the mandatory fees that must be paid to monopoly sellers of broadcast content. And, to the extent that "virtual" MVPDs are exempt from certain Part 76 requirements, this offers larger national operators like Google's YouTube TV a leg up in directly competing for customers.

To be sure, "legacy" regulations should not become a drag on the transition within the video market, and nothing herein should be taken as advocating for a more regulatory approach for any entity. The FCC should look instead at its regulatory regime for MVPDs and examine what has worked to protect consumers and/or advance statutory requirements set forth by Congress, and what has not, and then consider what should be kept, discarded, or modified. NTCA members operating in what is a competitive and low-margin (if not unprofitable altogether) business yet attempting to meet the demands of their

communities are disadvantaged by a lack of regulatory parity, and are saddled with staggering compliance costs that the Commission should look to eliminate where possible. Releasing legacy providers from unnecessary and outdated regulations would go a long way towards enabling them to compete on an even playing field and serve their rural communities.

How does it create a barrier to entry or undermine free market competition in your industry?

As noted above, the fact that different kinds of MVPDs operate on different terms simply because they leverage different technologies represents an asymmetric regulatory framework that skews marketplace choices.

Provide any anecdotes, data, and information on compliance costs and burdens.

As NTCA found in its annual survey referenced earlier in these responses, many smaller providers are considering whether and to what degree to remain in the video distribution marketplace at all in the face of rising costs and competition. When some of the most significant competitors in the video distribution marketplace do *not* have to comply with most, if not all, of the vast array of rules cited above, this only exacerbates the dynamics prompting smaller traditional video distributors to considering exiting the market altogether.

What would you like the agency to do?

NTCA has proposed to the FCC in its "delete, delete, delete" proceeding that the agency undertake a comprehensive review of its Part 76 rules to determine where measures could be amended or eliminated to relieve burdens that apply uniquely and disproportionately to smaller and rural MVPDs.

How would this change benefit small businesses?

As noted above, NTCA members face substantial challenges in remaining competitive in the video distribution marketplace; many have already exited this marketplace altogether as a result, and others are considering it. This not the byproduct exclusively of marketplace dynamics, but rather is driven in no small part by an antiquated regulatory regime that gives broadcasters monopolistic control over content and gives certain MVPDs regulatory flexibility based upon nothing more than how long they have been in the distribution business and the technology they used in entering the space.

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3. FEDERAL COMMUNICATIONS COMMISSION

Name and Citation of the Regulation:

Mandatory Disaster Information Reporting System (DIRS) Reporting (47 C.F.R. § 4.18)

Brief Summary of the Issues:

The FCC established the Disaster Information Reporting System (DIRS) to allow communications providers to report service outages to the FCC during significant weather events, which would be announced by the FCC in a Public Notice. In 2024, the FCC revised the DIRS rules to require cable, wireless, wireline and interconnected VoIP providers to submit daily infrastructure status reports in areas where the FCC has activated DIRS. Requiring daily reporting during an emergency is especially burdensome for small businesses because their small staff size necessitates redirecting staff resources from recovering from a storm to satisfy reporting requirements, and these requirements are exacerbated by the fact that many of these small businesses are physically located in the areas they serve – meaning they are directly affected themselves by the incidents. Meanwhile larger competitors often are not located in the specific areas affected by such incidents, and they have more staff available to file daily reports. These rules therefore place a disproportionate burden on smaller local businesses, which in turn can affect their competitiveness in the marketplace as their ability to restore service is disproportionately affected by such reporting requirements.

Why is this regulation anti-competitive towards small businesses?

Unlike their larger counterparts, small rural communications providers are typically situated in the communities they serve and, on average, have only a few dozen employees. In the aftermath of a disaster, these small companies are immersed in the business of assessing damage and restoring service. Furthermore, these small businesses often must operate in the face of direct impacts on employees and offices that have also incurred damage.

Obligations to collect and report information daily during an emergency impose tremendous costs and burdens on small providers while simultaneously distracting from their ability to respond to the needs of customers and employees. Unlike large providers with multiple offices spread throughout the United States, small providers are situated in the communities they serve. As a result, when disaster strikes, if the provider's infrastructure is damaged, the disaster may have also damaged the provider's office and employees' homes - the staff may be sheltering in place or addressing losses more generally. Staff may also be focused on confirming where and what is causing a network

outage and prioritizing network restoration. Fulfilling reporting requirements takes crucial staff time away from such restoration, and can place smaller local providers at a competitive disadvantage when larger operators can focus on restoring service more quickly because they have other (often distant) resources available to comply with these reporting rules.

How does it create a barrier to entry or undermine free market competition in your industry?

Filing the requisite daily DIRS report requires providers to devote critical time during an emergency to fulfill a reporting requirement that is not used to help providers restore communications where needed. Instead, the FCC has stated DIRS reporting is necessary to "determine whether the outages likely could have been prevented or mitigated had the service providers involved followed certain network reliability best practices, and whether such practices are employed broadly in the industry." (*Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346, 15-80; ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, 39 FCC Rcd 623 (2024)) Requiring daily infrastructure reports does not hasten the repair or restoration of service to consumers and, in fact, compelling reporting in the midst of emerging issues is more likely to divert resources from the very job of restoring service for small providers and their communities.

Provide any anecdotes, data, and information on compliance costs and burdens.

As just one example of how this requirement impedes service restoration by small communications providers, when severe flooding occurred in one provider's community, all of the provider's employees were needed to respond to the emergency. Furthermore, only one employee was likely familiar enough with the outage specifics to be able to provide the information required by the FCC. As a result, if the DIRS reporting requirement had been in place during that flooding event, the employee would have had to devote time to submitting the report instead of sandbagging the provider's central office and working with other employees to carry out the provider's emergency response plan.

What would you like the agency to do?

NTCA has proposed to the FCC in its "delete, delete, delete" proceeding that the agency revise 47 C.F.R. § 4.18 of its rules to allow communications providers who seek the agency's assistance during a disaster to file according to a schedule that meets their needs and abilities and does not take staff time away from service restoration. The FCC could also require providers to file a more detailed report within a reasonable period after the provider has addressed the immediate needs of a disaster and restored service.

How would this change benefit small businesses?

Eliminating the requirement for communications providers to file a report while in the midst of responding to a disaster will allow a small provider to focus every member of its staff to restoration and recovery of the communications service, as well as efforts to prevent additional outages or damage if immediate actions are not taken.