



May 23, 2016

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Expanding Consumers' Video Navigation Choices, MB Docket No 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80; Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test, MB Docket No. 15-216.

Dear Ms. Dortch:

On Thursday, May 19, 2016, the undersigned and Brian Ford from NTCA – The Rural Broadband Association, together with member company representatives, Trent and Susan Boaldin of Epic Touch, Toni Rivas and Scott Warunek from Valley Telephone Cooperative, Inc., and Tim Brinkman from Garden Valley Telephone Co. (collectively, “the Group”) met separately with Commissioner O’Rielly and his advisor Robin Colwell, Marc Paul from Commissioner Rosenworcel’s office, David Grossman from Commissioner Clyburn’s office and Jessica Almond from Chairman Wheeler’s office.

The Group discussed the challenges rural providers face in providing video service to their subscribers. Specifically, they focused on the difficulties small providers have in negotiating retransmission consent agreements with broadcasters and the Commission’s proposals regarding set top boxes.

The Group discussed the fact that customers currently want a traditional linear product and many rural customers who cannot receive over-the-air broadcast signals must rely on their local video provider for local news, weather and sports. They discussed the unsustainable rising costs of broadcast programming, “take it or leave it” contracts and the bundling of undesired programming with the broadcast programming along with tiering requirements.

The Commission was urged to bring some fairness into the negotiating process by increasing transparency. Currently, the good faith negotiation standard does not require broadcasters to share information, justify their explanation for rejecting offer terms, or substantiate reasons for their negotiating positions. A reciprocal duty to disclose would allow MVPDs access to

Marlene H. Dortch

May 23, 2016

Page 2 of 2

information about retransmission consent rates, including base rates and volume discounts, and permit small MVPDs to better assess the prices being offered during negotiations. Similarly, the Commission was urged to declare as “per se” bad faith, non-disclosure clauses that prevent video providers from sharing the terms of their contracts with their advocates, regulators, and legal bodies. Shining a light on the process would likely ease the price discrimination between large, incumbent MVPDs, who are able to secure volume discounts and smaller providers who do not possess the leverage to negotiate favorable terms.

The Group also urged the Commission to address forced bundling. Broadcasters routinely engage in program tying by conditioning retransmission consent upon carriage of other programming. This practice harms consumers by increasing the cost of video service for unwanted programming and is anticompetitive to video providers attempting to differentiate their service in the market.

The group also discussed set top boxes, explaining that providing a set top box is one of the most expensive aspects of their operations and that they do years of testing before introducing new boxes to the customer to ensure it is compatible and will not degrade the customers’ experience. The potential cost of retrofitting systems to comply with a new standard was discussed, as well as changes in the marketplace that will be halted if the Commission moves forward with new rules.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the rules of the Federal Communications Commission, a copy of this letter is being filed via ECFS.

Sincerely,

Jill Canfield

Jill Canfield

Vice President – Legal & Industry, Assistant
General Counsel

cc: Commissioner O’Rielly
Robin Coldwell
Jessica Almond
Marc Paul
David Grossman