



June 27, 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**

Dear Ms. Dortch:

On Thursday, June 23, 2016 the undersigned and Jill Canfield with NTCA–The Rural Broadband Association (“NTCA”),¹ met with Marc Paul, Legal Advisor to Commissioner Jessica Rosenworcel. The parties discussed the Notice of Proposed Rulemaking released on February 18, 2016,² in which the Commission seeks comment on how to create a commercial market for devices manufactured by third parties that can access multichannel video programming and other services offered over multichannel video programming (“MVPD”) networks.

Consistent with prior advocacy,³ NTCA first reiterated its concerns with the expected significant costs that MVPDs will incur in connection with the proposals made in the NPRM. While these costs are difficult to quantify in specific terms because there is no standard (or standards) as yet for complying with the proposals and no technology actually exists today as a tested and proven method for MVPDs to provide the “Information Flows” as defined by the NPRM, it is clear that this proposal will involve a near total overhaul of their existing MVPD networks, at the very least including software and hardware upgrades throughout their networks.

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s 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 Expanding Consumers’ Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18 (rel. Feb. 18, 2016) (“NPRM”).

³ See *ex parte* letter from Brian Ford on behalf of NTCA–The Rural Broadband Association to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (fil. Jun. 9, 2016); Comments of NTCA–The Rural Broadband Association, MB Docket No. MB 16-42, CS Docket No. 97-80 (fil. Apr. 22, 2016).

NTCA further stated that small MVPDs already face significant challenges in the video business, particularly as content prices continue to strain their ability to remain viable. The additional costs of compliance with the NPRM’s proposals may be the “tipping point” that leads a number of NTCA members to consider exiting an already break-even (at best) video services market—thereby *reducing* rather than enhancing competition in the availability of video products.

NTCA then noted that a recent alternative approach put forth by a group of larger MVPDs and content creators⁴ should not be viewed by the Commission as a “silver bullet” for resolving small MVPDs’ concerns expressed in response to the NPRM. In particular, while it holds promise in terms of potentially resolving certain copyright, advertising, privacy, and other issues raised by the numerous parties objecting to the NPRM’s proposals,⁵ implementation of the alternative proposal or modified versions of it that may emerge could still come at substantial cost to smaller MVPDs already struggling to operate in an already difficult MVPD market.

NTCA further noted that if action is nonetheless taken—in terms of either the NPRM’s proposals or a version of the alternative proposal discussed above—the Commission should adopt a permanent exemption for small MVPDs. However, any exemption must account for the potential “trickle down” effect that could result from Commission action on either the original or modified proposals. More specifically, as a practical matter, if not properly structured, such an exemption could merely represent a *deferral* and would not eliminate the costs of the NPRM’s proposals. A mandate ostensibly made applicable only to large and mid-size MVPDs is likely to be imposed on smaller providers as a matter of equipment manufacturers’ own response to any order and could limit small MVPDs’ ability to continue the delivery of video service using their existing technology. Thus, an exemption for MVPDs serving 2 million or fewer subscribers would go a long way towards limiting concerns about the “trickle-down effect” of such costs.⁶ However, NTCA reiterated that the potential for the exemption to be undermined in the manner noted above, even if an exemption is granted at the 2 million subscriber level, underscores yet again the reason to avoid adoption of any rules in this proceeding in the first instance.

⁴ *Ex parte* letter from Paul Glist, on behalf of Vme TV, Revolt TV, TV One, NCTA, AT&T/DIRECTV, and Comcast to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (Jun. 16, 2016).

⁵ *See generally*, Reply Comments of NTCA-The Rural Broadband Association, MB Docket No. 16-42 and CS Docket No. 97-80 (fil. May 23, 2016).

⁶ *See, ex parte* letter from Genevieve Morelli, on behalf of ITTA, Frontier Communications, and CenturyLink, and to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (Jun. 14, 2016) (stating that “over 90% of MVPD subscribers would be covered by the Commission’s navigation device rules and the vast majority of consumers throughout the country would have three or more (two DBS providers and a large cable MVPD) open standards device choices under a two million subscriber exemption.”). *See also*, Comments of TIVO, INC, MB Docket No. MB 16-42, CS Docket No. 97-80 (Apr. 22, 2016), pp. 32-34 (supporting an exemption for small MVPDs).

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

Sincerely,
/s/ Brian Ford
Brian Ford
Senior Regulatory Counsel

cc: Marc Paul