



September 2, 2015

***Ex Parte* Notice**

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

**RE: *Ex Parte* Notice in MB Docket No 10-71  
Amendment of the Commission's Rules Related to Retransmission Consent**

Dear Ms. Dortch:

On August 31, 2015, Brian Ford and the undersigned from NTCA – The Rural Broadband Association (“NTCA Representatives”) met separately with Maria Kirby from Chairman Wheeler’s office and Alison Nemeth in Commissioner Pai’s office. The NTCA Representatives also met with Chanelle Hardy from Commissioner Clyburn’s office on September 1, 2015. The purpose of these meetings was to discuss the Commission’s forthcoming Notice of Proposed Rulemaking reviewing the good faith standard for retransmission consent negotiations.<sup>1</sup>

The NTCA Representatives explained that many of its nearly 900 rural broadband providers offer video services to their communities and that video is a key driver for broadband deployment and adoption. Rural providers lack scale and scope and are inherently disadvantaged when negotiating contracts for content, and 98 percent of respondents to a recent survey indicated that access to reasonably priced content is a significant barrier to video deployment. Sixty-three percent reported that making a business cases was a significant barrier to video deployment, up significantly from 49 percent a year ago.

The transition from digital to broadcast signals disproportionately affected rural consumers. In some rural areas of the country, 90 percent or more of consumers lack access to over-the-air broadcast content and must rely on a Multichannel Video Programming Distributor (“MVPD”) to receive local news weather and network content. Despite this, rural consumers often pay the highest rates for broadcast content.

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<sup>1</sup> See STELA Reauthorization Act of 2014, Pub. L. No. 113-200 § 103(c), 128 Stat. 2059, 2062 (directing the Commission to commence a rulemaking to review its totality of the circumstances test for good faith negotiations).

The NTCA Representatives expressed support for proposals calling for changes to the good faith rules that have been presented to the Commission in recent weeks. Specifically, NTCA is a part of and supports the proposals of the American Television Alliance.<sup>2</sup>

Because NTCA represents the smallest and most vulnerable MVPDs, the NTCA Representatives offered the below additional negotiating positions and contractual provisions that should be considered *per se* violations of the duty to negotiate in good faith:

- To engage in discriminatory pricing for MVPDs serving smaller or rural markets. The customers of rural MVPDs are the least likely to be able to receive over-the-air broadcast signals, yet they pay the most to receive via alternative delivery methods. The NTCA Representatives are aware of no market-based justifications for demanding that small MVPDs pay more for content than their larger counterparts.
- To include Non-disclosure clauses in contracts that prevent MVPDs serving smaller or rural markets from seeking regulatory or legal relief. MVPDs should not be contractually prohibited from sharing the terms of their contracts with their advocacy associations or any regulatory or legal body.
- To offer only last minute take it or leave it proposals. Rural MVPDs report that broadcasters refuse to make offers or negotiate with them until the 11<sup>th</sup> hour, forcing MVPDs to accept unfavorable contract terms under fear of blackout. Broadcasters should be required to make an offer and begin negotiations at least 90 days before a contract is set to expire.

The NTCA Representatives also expressed support for the revision of the network non-duplication and exclusivity rule. They pointed out that revising or eliminating these rules may add competition to the marketplace and create a more level playing field in negotiations. They also explained that localism is unlikely to be harmed as MVPDs have every incentive to offer and pay a premium for local programming on their systems. Consumers want and demand their local news and weather.

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<sup>2</sup> See, e.g., *Ex Parte* Notice of the American Television Alliance in MB Docket No. 10-71 (filed August 27, 2015). The divorce group of MVPDs advocates that broadcaster practices such as program tying, blocking of online content, limitations on importation of out-of-market signals and demands for retransmission consent fees for subscribers who do not receive the station as part of their subscription service should be considered *per se* violations of the broadcaster's duty to negotiate in good faith.

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If there are any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Jill Canfield

Jill Canfield

Vice President – Legal & Industry

Assistant General Counsel

cc: Maria Kirby  
Alison Nemeth  
Chanelle Hardy