



September 20, 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;
Promoting the Availability of Diverse and Independent Sources of Video
Programming, MB Docket No. 16-41**

Dear Ms. Dortch:

On Monday, September 19, 2016 the undersigned with NTCA–The Rural Broadband Association (“NTCA”)¹ met with David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Mignon Clyburn. The parties discussed the “Fact Sheet”² released by the Federal Communications Commission (“Commission”) in its set-top box (competitive navigation) proceeding on September 8, 2016 as well as the reportedly forthcoming Independent Programming Notice of Proposed Rulemaking (“NPRM”).³

NTCA first expressed its support for the permanent small provider exemption as detailed in the Fact Sheet. This permanent exemption for small multichannel video programming distributors (“MVPDs”) serving fewer than 400,000 subscribers is important to preserve the ability of many small MVPDs to remain a viable alternative for rural consumers without undermining or interfering with broader Commission objectives. Although details on most “competitive navigation proposals” to date have been scant, NTCA has throughout this proceeding pointed to the expected significant costs that small MVPDs would incur in connection with either the

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 Chairman Wheeler’s Plan to Increase Choice and Innovation in Video, “Fact Sheet” (rel. Sep. 8, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0908/DOC-341152A1.pdf.

³ September 2016 Open Commission Meeting, Federal Communications Commission, <https://www.fcc.gov/news-events/events/2016/09/september-2016-open-commission-meeting>.

“Information Flows” proposal put forth by the Commission in February 2016⁴ or the “Apps Alternative”⁵ proposal put forth by a group of large cable providers in June 2016.⁶ Similarly, application of the rules as detailed in the Fact Sheet would appear to require substantial network modification costs.⁷ Any such costs would come at a time when small MVPDs already face significant challenges in the video business, particularly as content prices continue to strain their ability to remain viable and when most small MVPDs are at best operating on a “break even” basis.

NTCA then sought additional detail on the current iteration of the Commission’s proposal. While it reportedly includes certain elements of both the Information Flows and Apps Alternative proposals, like those other concepts, the latest proposal lacks detail sufficient for small MVPDs in particular to fully assess its ramifications. Absent process that includes additional detail and opportunity for input, neither these small providers nor the Commission itself can ascertain fully the proposal’s effect on small MVPDs or whether various alternative approaches would better serve the Commission’s goals. As such, given the current record and best efforts to date at estimating impacts, NTCA expressed support for the best approach, as outlined in the Fact Sheet, to adopt an exemption for small MVPDs serving fewer than 400,000 subscribers.

⁴ 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”).

⁵ *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); *Ex parte* letter from Rick Chessen and Neal Goldberg, National Cable & Telecommunications Association, *et al.* to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (Jul. 21, 2016).

⁶ *See*, Comments of NTCA, MB Docket No. 16-42, CS Docket No. 97-80 (fil. Apr. 22, 2016), pp. 7-11; *Ex parte* letter from Michael Romano and Brian Ford, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (Jul. 15, 2016) (discussing: (1) gateway and security system costs and the costs of conducting the proper testing, as well as hardware, software, and middleware costs throughout MVPD networks implicated by the Information Flows proposal as well as costs necessary to modify headends, back-office systems, central office facilities and content servers to comply with the proposal; and (2) app development costs, as well as costs required to deploy an application programming interface necessary to enable an app to have access to the video content provided to the subscriber, modifications to headends, transcoding costs, and costs for updated Digital Rights Management software implicated by the Apps Alternative); *see also*, Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (Aug. 25, 2016).

⁷ Certain of these costs will be similar to those implicated by the original Apps Alternative and detailed by ACA in its August 25, 2016 *ex parte* letter. However, the latest iteration of the Apps proposal as summarized by the Fact Sheet appears to contemplate that MVPDs would be required to deliver their content via apps compatible with multiple devices or deliver the network code necessary for device manufacturers to create their own “native” apps. Moreover, the Fact Sheet also proposes to require MVPDs to support an integrated search function, although the standards for compliance with that provision will be determined by a standards body.

With respect to the Independent Programming NPRM, NTCA requested that this proceeding go beyond the February 2016 Notice of Inquiry and seek comment on a wide range of issues related to programming diversity. NTCA specifically suggested that the NPRM seek comment about forced bundling and penetration requirements and potential restrictions on such practices as well as Most Favored Nation clauses limit the ability of independent programmers to reach mutually satisfactory deals with 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,

By: /s/ Brian J. Ford
Brian J. Ford
Senior Regulatory Counsel

cc: David Grossman