



October 29, 2015

Ex Parte Notice

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

**RE: *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 Wednesday, October 28, 2015, Rick Schadelbauer and the undersigned representing NTCA – The Rural Broadband Association (“NTCA”) and Angie Kronenberg and Christopher Shipley from INCOMPAS (jointly “the Associations”) met with Bill Lake, Michelle Carey, Steve Broeckaert, Raelynn Remy and Mary Beth Murphy from the Federal Communications Commission’s Media Bureau to discuss the attached document. The attached document summarizes the results of an on-line membership survey conducted jointly by NTCA and INCOMPAS (formerly COMPTTEL) in September 2015. The Associations presented the results to the FCC staff present and answered questions about content and survey methodology.

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/ Jill Canfield

Jill Canfield

Vice President – Legal & Industry

Assistant General Counsel

cc: Bill Lake
Michelle Carey
Steve Broeckaert
Raelynn Remy
Mary Beth Murphy

Attachment

**NTCA–The Rural Broadband Association and INCOMPAS’
2015 Video Competition Survey**

New survey finds 95% of small MVPDs and new entrants into the video market struggle to obtain reasonably-priced programming, and 40% report retransmission consent fee price increases of more than 100% during the current contract cycle.

Recently, the FCC has shown increased interest in issues that promote video competition, and has issued a Notice of Proposed Rulemaking (NPRM) addressing the good faith negotiating standard in retransmission consent. Furthermore, the Commission is considering an Order to eliminate the agency’s outdated program exclusivity rules.

In September of 2015, NTCA and INCOMPAS (“the associations”) conducted a survey of their membership to gather data and information regarding their provision of video services and their experience negotiating with broadcasters and other entities for content.

The survey was conducted online. The URL was sent to each of the associations’ member companies.

A total of 226 companies participated in the survey, comprised of both NTCA and INCOMPAS member companies. The NTCA respondents are small incumbent providers offering voice, broadband, wireless and video service to rural America, while the INCOMPAS respondents are competitive wireline broadband providers offering residential video (MVPD) , broadband, and voice services.

Based on this sample size, the results of this survey can be estimated to be accurate within +/- 6% at the 95% confidence level.

SURVEY RESULTS

Overview – Video Service Provision

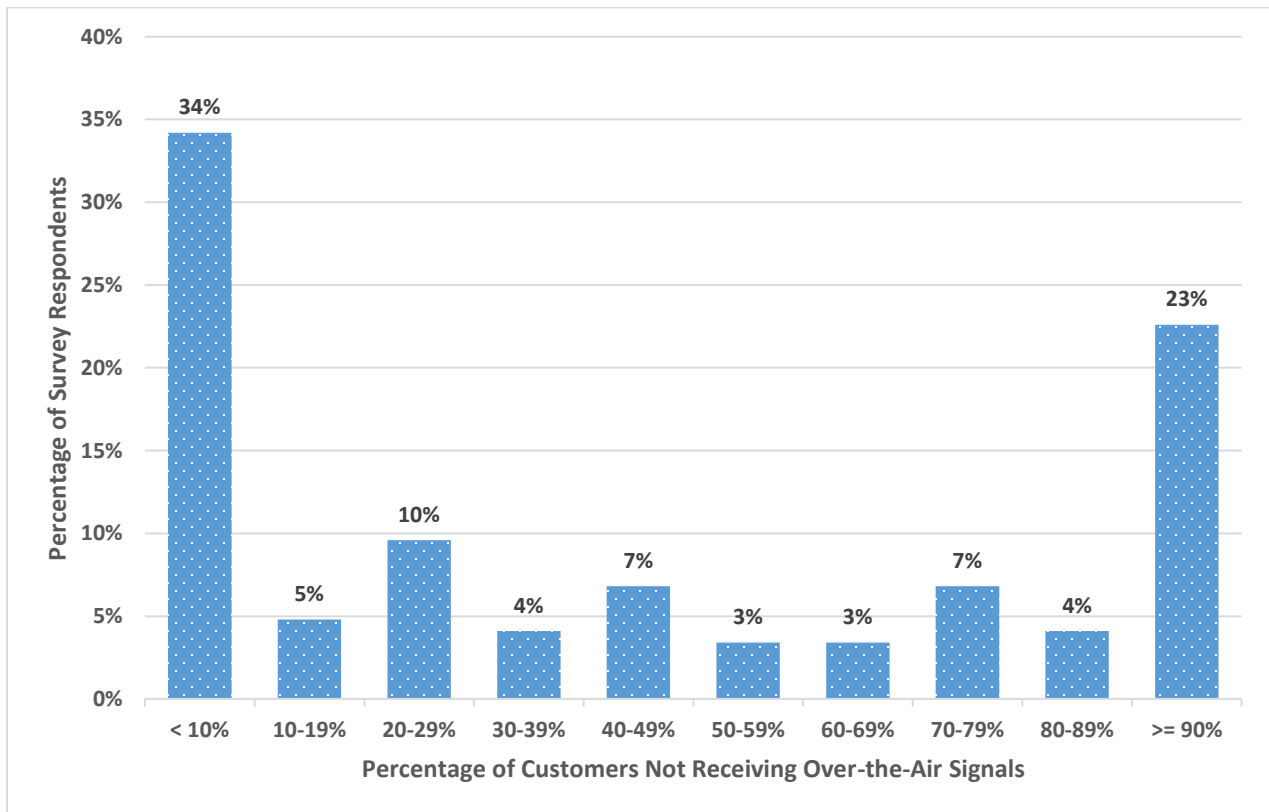
- **87%** of survey respondents currently provide video service. Of those who do not, **31%** plan to do so in the immediate future, **38%** do not, and **31%** are not sure.
- **77%** of those providing video service do so via IPTV, **47%** via Cable TV, and **2%** via resale DBS. **6%** do so via some other means. (Among the INCOMPAS member companies only, **100%** use IPTV, **40%** cable and **40%** resale DBS.)¹
- **49%** compete with an incumbent cable company or non-DBS provider some portion of their service territory, **10%** in 100% of their service territory, and **40%** do not face competition. (Among INCOMPAS members only, all face competition: **29%** compete in some portion of their service territory, and **71%** in 100% of their service territory.)

¹ Totals exceed 100% as respondents may utilize more than one means of providing video service.

- **72%** of survey respondents have considered eliminating certain broadcast and/or non-broadcast programming and/or refrained from entering a market altogether as a result of rising programming costs.
- **12%** have ceased offering video service in a market where they previously offered service.
- **74%** have experienced video subscriber losses in any market in the past year.

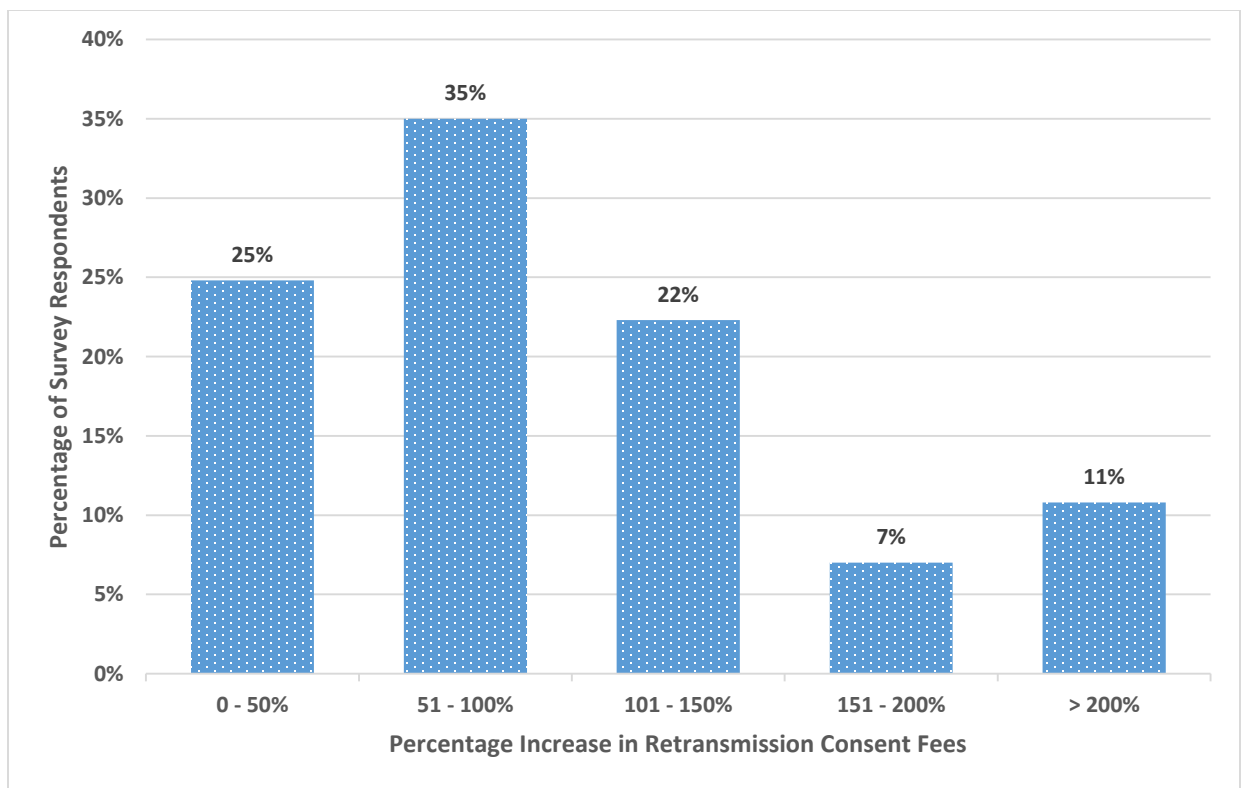
Importance of Providing Video

- **52%** have experienced an uptick in broadband adoption in the markets in which they provide video service.
- Respondents were asked what percentage of their service area households cannot receive over-the-air broadcast signals. **34%** of respondents reported that 10% or less of their customers cannot receive over-the-air broadcast signals, while a total of 40% responded that 50% or more of their customers could not receive over-the-air broadcast signals. In fact, **23%** reported that 90% or more of their customers cannot obtain over-the-air broadcast. The complete results are as follows:



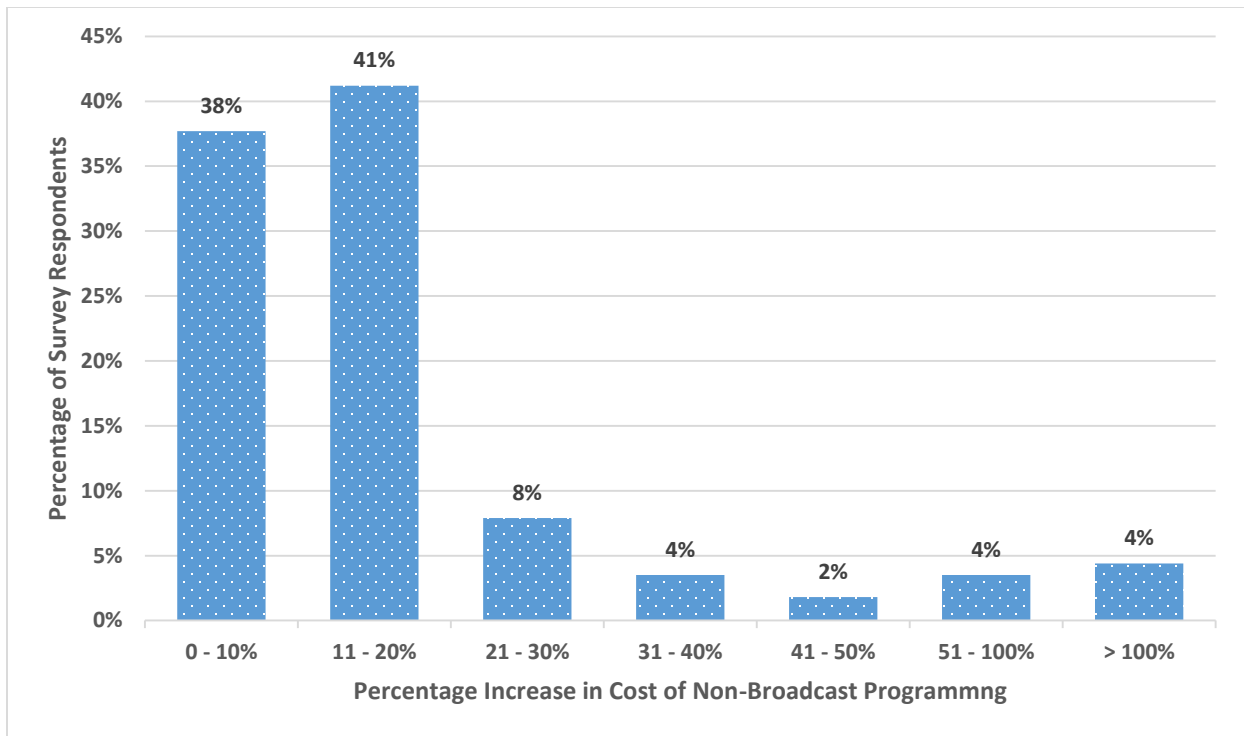
Barriers and Challenges to Providing Video

- The single biggest barrier to providing video service is obtaining access to reasonably-priced programming, cited by **95%** of respondents. Other barriers cited include competing with other providers (**53%**), making a business case for video (**53%**), the cost of necessary customer premise equipment (i.e., set top box) (**36%**), cost of necessary network equipment (**35%**), obtaining/acquiring customer premise equipment (**4%**), obtaining/acquiring network equipment (**4%**), and obtaining financing (**2%**).²
- **40%** reported percentage increases in retransmission consent fees during the current contract cycle in comparison to the previous contract cycle of more than 100%. **11%** reported increases of more than 200%. The complete results are as follows:



- **38%** reported percentage increases in the cost of non-broadcast programming during the current contract cycle in comparison to the previous contract cycle of between 0 and 10%. **41%** reported increases of 11 to 20%. The complete results are as follows:

² Totals exceed 100% as respondents were allowed to select more than one barrier.



Retransmission Consent Negotiation Challenges

- **69%** of survey respondents have had a broadcaster require them to obtain non-broadcast programming and/or services (e.g., less-popular networks, multicast streams, duplicative stations, significantly-viewed stations, after-acquired or unlaunched programming services, etc.)
- **65%** have been subject to tier placement and/or subscriber penetration requirements that limit the manner in which broadcasting is offered to their subscribers.
- **44%** have been forced to participate in coordinated broadcast contract negotiations (including networks negotiating on behalf of affiliates or a third party negotiating on behalf of multiple non-commonly owned stations across markets.)
- **46%** have faced a requirement that negotiations for broadcast programming take place at the same time as negotiations for other affiliated “must-have” programming (e.g., regional sports networks, highly-rated multicast or lower power stations, popular national programming networks, etc.)
- **49%** have faced a threat to withhold or black out a broadcast station or network in a time period approaching the airing of popular sports, entertainment, or other marquee programming content.

- **45%** have been threatened with invocation of the FCC’s program exclusivity protections during negotiations.
- **5%** have had a broadcaster or other programmer block access (or threaten to block access) to its online content for video subscribers, **2%** for their Internet subscribers, and **9%** for both their video and Internet subscribers (**16%** total.)
- **20%** have faced demands for fees for their voice and/or Internet services subscribers who do not take their video service.
- **22%** have had broadcasters demand fees for programming that is not subject to negotiation.
- **6%** have had broadcasters demand fees for subscribers who do not take broadcast channels (e.g., over-the-air programming, foreign language-only programming, etc.)
- **22%** have faced demands for the placement of limitations on subscribers’ use of lawful devices and/or functionalities.
- **17%** have faced demands for installation of a set-top box in each subscriber’s home on each television receiver. (Among INCOMPAS members only, **40%** have faced such a demand.)
- **48%** have faced contract provisions that prevent disclosure of rates, terms, and/or conditions or a contract proposal or agreement to a governmental entity and/or court of competent jurisdiction.
- **92%** have been unable to obtain a Most Favored Nation (MFN) provision in contracts with broadcasters and/or other programmers.
- **25%** have had a broadcaster restrict access to online streaming and/or other digital transmission rights to broadcast programming.
- **25%** have had a broadcaster propose contractual language that would require them to comply with regulations even if/when the FCC has modified or eliminated their applicability.

Conclusions

- **Sky High Prices: NTCA and INCOMPAS member companies seeking to provide video service to their customers must deal with exorbitant price increases for both broadcast and non-broadcast programming.** Forty percent of survey respondents reported increases in retransmission consent fees of more than 100% during the current contract cycles; 11% reported increases in excess of 200%. And while the percentage increase in the cost of non-broadcast programming seemed tame by comparison—62% of respondents reported increases during the current contract cycle of greater than 10%, and 21% reported increases of greater than 20%—this, too is quite extreme next to the growth in the Consumer Price Index (CPI). The

CPI, a widely recognized measure of overall inflation in the economy, grew by a mere 0.2% between August 2014 and August 2015.³ (Even removing volatile food and energy prices results in CPI growth of only 1.6% over the same time period.⁴) Clearly, programming costs are rising at a rate well in excess of inflation, with the result that our members absorb these costs due to the video competition they face in the marketplace. Such dramatic increases pose a significant threat to the ongoing viability of these small companies' operations, including their ability to upgrade their networks and deploy more broadband.

- **Competition Needs a Package Deal: In order to remain competitive in today's marketplace, NTCA and INCOMPAS member companies need to be able to offer packages of voice, broadband and video.** Today's consumers are increasingly drawn to "triple play" packages — bundled service packages that include voice, broadband and video service. If a provider is unable to provide any one of the three components of the triple play, they are placed at an insurmountable disadvantage compared to larger competitors. Additionally, more than half of survey respondents reported that offering video leads to an uptick in broadband adoption rates. Without the ability to offer video, broadband adoption rates would likely fall, contrary to the Commission's ongoing efforts to increase broadband adoption throughout the country and contrary to the Commission's goal of promoting multiple broadband offerings to consumers.
- **Big Broadcaster Control: Broadcasters hold an overwhelming advantage in contract negotiations, and as a result offer small companies unrealistic contract terms.** Survey results clearly show that NTCA and INCOMPAS member companies are not able to exert any type of leverage in their negotiations with programmers. Actually, "negotiation" may not be the proper term to use, as many companies report having terms of service dictated to them with no opportunity to procure more favorable terms. This one-sided tilt in the balance of power results in outcomes that unfairly favor the programmers, and harm the small providers and, ultimately, their current and potential customers.

³ U.S. Bureau of Labor Statistics, "CPI Detailed Report, Data for August 2015," <http://www.bls.gov/cpi/cpid1508.pdf>, visited October 13, 2015.

⁴ *Ibid.*