



November 2, 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:

NTCA–The Rural Broadband Association (“NTCA”) and INCOMPAS (jointly, “the Associations”) submit this letter in response to the National Association of Broadcasters’ (“NAB”) *ex parte* letter in this docket, dated October 28, 2015. In its letter, NAB attempts to discount the Associations’ video competition survey results using inflammatory language and specious accusations.

The Associations are confident in the survey results. They demonstrate the reality faced by the Associations’ members, and were never intended to measure any broad video marketplace trends. Rather, they confirm that video programming remains a significant barrier for both Associations’ members serving residential consumers.

Indeed, the Associations regularly survey their members, and most surveys, including the video competition survey, are structured under the guidance of an economist to maximize the integrity and reliability of the data received. This particular survey was performed as a systematic means of capturing quantitative data surrounding numerous member complaints about the rising cost of broadcast content. Notwithstanding the claims of the NAB regarding the record at the Federal Communications Commission, the results were presented, in person, to staff in the Media Bureau and the final report, in its entirety, was attached to an *ex parte* filing and is on the record.¹

The overarching goal of this survey is to quantify to some extent the anecdotal information we have been receiving from our members for years regarding their difficulties obtaining access to video content. In that respect, the survey has served its purpose as it reaffirms the direct link between the offering of video programming and broadband adoption rates, the challenges small

¹ See, *Ex Parte* of NTCA – The Rural Broadband Association and INCOMPAS, *Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, MB Docket No. 14-216 (filed Oct. 29, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001331403>.

businesses and new entrants face when trying to negotiate content contracts and provides a percentage comparison between the rising costs of broadcast and non-broadcast content.² Furthermore, it provides NTCA and INCOMPAS members a means of making their voices heard in Washington.

NAB states that there is “no evidence of a marketplace failure” and that the “available evidence increasingly suggests otherwise.”³ NAB crafts an argument that seems to use technology trends to support outrageous fee hikes. But normally, when competition in a market is introduced, prices fall. The Associations argue conversely that despite increased consumer choice, the cost of content continues to increase, thereby demonstrating the market failure.

The Associations encourage NAB to work with its members to waive the nondisclosure clauses in their contracts so that the public and policy makers can finally see for themselves how this “marketplace” is really working. We are confident that our survey results would be confirmed, rather than contradicted, by such disclosures.

Sincerely,

/s/ Jill Canfield

Jill Canfield

Vice President – Legal & Industry

Assistant General Counsel

NTCA–The Rural Broadband Association

/s/ Angie Kronenberg

Angie Kronenberg

Chief Advocate & General Counsel

INCOMPAS

² NAB bemoans the fact that no information was provided regarding the actual amounts of any fees. However, as NAB is well aware, actual fee information lurks in the shadows due to restrictive non-disclosure clauses that prevent MVPDs from disclosing the terms of their contracts, including actual fees paid, to the public, policy-makers and the Associations.

³ See Notice of *Ex Parte* Communication from Rick Kaplan, National Association Broadcasters, in MB Docket No. 10-71, 15-216 (filed October 28, 2015).