

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Promoting Innovation and Competition in ) MB Docket No. 14-261  
the Provision of Multichannel Video )  
Programming Distribution Services )

**REPLY COMMENTS  
OF  
NTCA – THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”) hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”)<sup>1</sup> in the above referenced docket. In its NPRM, the Commission seeks comment on whether to expand the definition of “multichannel video programming distributor” (“MVPD”) to include services that make available for purchase multiple linear streams of video programming, regardless of the technology used to distribute the programming.

**I. INTRODUCTION**

NTCA is a national association of nearly 900 members. All of NTCA’s members are rural incumbent local exchange carriers (“RLECs”), many of whom also provide video, wireless and broadband services to their rural communities. Many NTCA members also act as competitive carriers in other rural towns and outlying areas, offering voice, video, broadband, and wireless to consumers and businesses. The provision of video services is a key to the ability

---

<sup>1</sup> Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services, Notice of Proposed Rulemaking, MB Docket No. 14-261, FCC 14-120 (rel. Dec. 19, 2014).

of NTCA's members to deliver robust broadband services to consumers in high-cost areas. Access to video content at affordable rates and under reasonable terms and conditions is needed not only to generate greater video competition, but also to help justify network investments and boost adoption of broadband in rural areas. A substantial majority of respondents to NTCA's most recent video survey,<sup>2</sup> nearly 77 percent, indicated that they currently offer video services to customers.<sup>3</sup> Significantly, 98.6 percent of respondents – whether they currently provide video or not – stated that access to reasonably-priced programming is a significant barrier to the provision of video services. It is therefore unsurprising that 48.6 percent also named the challenges associated with making a business case for offering video services as a main impediment to the provision of these services. RLECs encounter inherent disadvantages serving high-cost, sparsely populated areas, and lack the scale and scope as compared to larger MVPDs and seek to use a variety of technologies to do so.

## **II. THE FCC SHOULD ADDRESS OPEN PROCEEDINGS TO ADDRESS COMPETITIVE IMBALANCES IN THE CURRENT MVPD MARKETPLACE**

NTCA joins those comments who argue that the Commission should first address open proceedings to remedy competitive imbalances that continue to impact the current MVPD marketplace.<sup>4</sup> The MVPD rules have remained largely unchanged in the last 18 years, despite

---

<sup>2</sup> NTCA 2013 Broadband/Internet Availability Survey Report (released May 2014). <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcabroadbandsurveyreport.pdf>

<sup>3</sup> Internet protocol television (“IPTV”) was the most common delivery technology cited by respondents, at 80.3 percent. Legacy coaxial cable was used by 55 percent, while only 7.4 percent reported offering video via direct broadcast satellite. These figures total more than 100 percent as many respondents use more than one technology depending on the needs of their service areas.

<sup>4</sup> *See, e.g.,* Comments of USTelecom.

drastic changes in the video marketplace. Broadcasters are in a much stronger position to abuse market power, to the detriment of MVPDs and the consumers they serve. In response to a recent NTCA survey, 85 percent of members who reported having difficulties negotiating retransmission consent agreements stated that access to reasonably priced content was a challenge, and 90 percent reported that they had difficulty negotiating with the broadcasters because the offers were presented as “take it or leave it.” MVPDS, in particular small MVPDs, need the Commission to step in and help address the inequities in negotiating power created or exacerbated by the current rules.

In 2011, in response to a Petition for Rulemaking, the Commission initiated a proceeding to revise its rules relating to the retransmission consent framework. The proposed reforms to the good faith negotiating standard would help achieve important public policies and help level the playing field for current MVPDs engaged in negotiations. The Commission’s record supports a prohibition on network interference in retransmission consent negotiations between local broadcasters and MVPDs. The record also supports a finding that the Commission has sufficient statutory authority to order interim carriage during retransmission disputes.<sup>5</sup>

In 2014, the Commission next initiated a related rulemaking regarding its network non-duplication and syndicated exclusivity rules. The rules as they currently exist harm consumers. While the exclusivity rules were originally based on the Commission’s concern that a cable system’s duplication of local programming via the signals of distant stations was not a fair method of competition with broadcasters because of the real or perceived inferior bargaining

---

<sup>5</sup> See, Comments filed in Notice of Proposed Rulemaking, Amendment of the Commission’s Rules Related to Retransmission Consent, 26 FCC Rcd. 2718, FCC 11-31 (Mar. 2011).

power of broadcasters as compared to cable systems, the scales long ago tipped in favor of the broadcasters. Each broadcast station is “essential programming” for any MVPD and current rules dictate that a MVPD may get each from only one source – no matter the price.

Retransmission of broadcast stations has become a cash cow for broadcasters, as they are insulated from market forces and competition. The rules as they currently exist essentially require a small MVPD to pay whatever retransmission rates are demanded by the broadcast station within a given designated market area (“DMA”). The MVPD is not permitted to purchase programming from an alternative broadcast station in a neighboring DMA even if offered at a lower rate. These rules provide broadcasters with a “one-sided level of protection,” and artificially-inflated bargaining leverage in retransmission consent negotiations. The lack of competition leads to higher consumer rates and diminished broadband investment, and it is no longer justified.

NTCA has repeatedly also requested that the Commission address mandatory tying, bundling, and contract non-disclosure provisions imposed by the content providers. Furthermore, a rulemaking regarding program access rules has been open since 2012. The Commission will do little to help MVPDs, whether cable, IPTV or OTT, until it addresses these long standing competitive issues.

### **III. THE COMMISSION SHOULD ENSURE A LEVEL PLAYING FIELD AMONG COMPETING VIDEO PROGRAMMING DISTRIBUTORS**

NTCA’s members use a wide variety of technologies to provide video programming to their subscribers and are among those considering OTT. However, as presented, the NPRM creates different classes of MVPDs. There would be the legacy facilities-based MPVDs subject

to the full panoply of legal and regulatory requirements,<sup>6</sup> and then new OTT MVPDs with few regulatory requirements. The fees and compliance costs incurred by existing MVPDs can translate to tens of thousands of dollars to millions annually, and these costs must be passed on to customers. By contrast, new entrants would not have these fees and would have the opportunity to offer service at a substantially reduced rate and compete unfairly. While some difference in regulations may be necessary and specifically tied to facilities, others are not – and in those cases, the regulations should either be extended to OTT MVPDs as well, or alternatively, eliminated for *all* MVPDs.

As ITTA states in its comments, “it is incumbent on the Commission to ensure ‘that legacy regulations and services [do] not become a drag on the transition to a more modern and efficient use of resources . . . or make it difficult to achieve certain public policy goals.’”<sup>7</sup> It does not make sense to impose unnecessary and expensive legacy requirements on new providers, but as it considers the proper regulatory construct for new providers, the Commission must simultaneously consider releasing legacy providers from unnecessary and outdated regulations. The Commission should not, through regulatory fiat, influence consumer behavior.

---

<sup>6</sup> Regulatory obligations would include must carry, franchising, regulatory fees, emergency alert, V-chip requirements, children’s television commercial limits, program exclusivity rules, several notice and reporting requirements, rules relating to political programming, sponsorship identification, public inspection file requirements, PEG and leased access obligations, cross ownership rules and buy-out restrictions, national subscribership limits, limits on carriage of vertically integrated programming, rate regulation, regulation of services, facilities and equipment, technical standards, customer services rules, equipment compatibility requirements, plug and play rules, privacy protections, and rules relating to the transmission of obscene programming.

<sup>7</sup> Comments of ITTA - The Voice of Mid-Size Communications Companies, p. 17, quoting “Connecting America: The National Broadband Plan,” p. 59 (2010), available at [www.broadband.gov](http://www.broadband.gov).

Incumbents should not be at a competitive disadvantage because of the push to introduce new delivery platforms.

#### **IV. CONCLUSION**

The video marketplace is much evolved since the Commission last made major rule changes. As it considers changing the MVPD definition to include OTT providers of services that make available for purchase multiple linear streams of video programming, it should also review existing rules, updating outdated provisions and creating a level playing field among competing providers.

Respectfully Submitted



By: /s/ Jill Canfield

Jill Canfield

Vice President of Legal & Industry

Assistant General Counsel

3121 Wilson Blvd, 10<sup>th</sup> Floor

Arlington, VA 22203

(703) 351-2000

[jcanfield@ntca.org](mailto:jcanfield@ntca.org)

Dated: April 1, 2015