Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Petition for Rulemaking to Amend the	)	RM 11728
Commission's Rules Governing	)	
Practices of Video Programming	)	
Vendors	)	

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in support of the Mediacom Communications Petition for Expedited Rulemaking submitted on July 21, 2014.[2] NTCA herein supports the Petition, in which Mediacom asks the Commission to open, on an expedited basis, a rulemaking proceeding to examine the video content marketplace and adopt rules to combat video programmers' abusive practices that unnecessarily raise Multichannel Video Programming Distributors' ("MVPDs") costs and limit consumer choice.

II. THE COMMISSION SHOULD IMMEDIATELY INITIATE A RULEMAKING PROCEEDING TO EXAMINE AND ADOPT PROVISIONS TO LIMIT VIDEO PROGRAMMERS' ABILITY TO LIMIT CONSUMER CHOICE

NTCA supports the initiation of a rulemaking proceeding to examine and curb video programmers' abuse of the substantial market power they have in the video content market. As Mediacom discusses in great detail in its Petition, video programmers often use tactics such as forced "tying" or "bundling" and other abusive practices that impede consumer choice, increase

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[1] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

[2] Mediacom Communications Corporation, Petition for Rulemaking to Amend the Commission's Rules Governing Practices of Video Programming Vendors (fil. Jul. 21, 2014) ("Petition").

end-user rates unnecessarily, and hinder broadband deployment and adoption in rural areas. NTCA urges the Commission to open a rulemaking to shine light on such potentially abusive practices and to ultimately adopt rules to limit such behaviors that harm consumers.

A. RLECs' Ability To Access Video Content At Affordable Rates And According To Reasonable Terms And Conditions Drives Broadband Deployment And Adoption In Rural Areas

The ability to offer video services to subscribers is essential to the viability of rural telecommunications providers. Rural telecommunications providers have evolved into full-service companies, providing broadband connections to homes, business and schools and libraries in the rural areas they serve. The ability to offer video service at affordable rates is critical to achieving the Commission's broadband deployment goals. RLECs have found that their ability to offer an affordable video service – that offers consumers "must have" content, such as regional sports networks and other premium content – as part of a bundled video/broadband package increases broadband adoption rates.[3]

Though rural telecommunications providers are actively deploying video service, most state that access to content on reasonable terms and conditions is the biggest hurdle they face. Small video providers face substantial discrimination in prices and access to programming. Ninety-nine percent of respondents to a recent NTCA survey stated that access to reasonably priced programming was a barrier to the provision of video programming.[4]

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[3] Rural carriers that are able to bundle video with broadband services have experienced broadband adoption rates that are nearly 24 percent higher than those rural carriers that offer broadband alone. *See*, National Exchange Carrier Association comments, GN Docket Nos. 09-47, 09-51, 09-137 (fil. Dec. 7, 2009), p. 6.

[4] NTCA 2013 Broadband/Internet Availability Survey Report (May 2014). http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcabroadbandsurveyreport.pdf

For rural consumers to continue to receive high-quality voice, video and broadband service, small MVPDs must have non-discriminatory access to content according to reasonable prices, terms and conditions

B. Video Programmers Have The Ability To, And A Long Demonstrated Record Of, Abusing Their Market Power In Ways That Impede Consumer Choice And Unnecessarily Increase Consumer Rates

Like Mediacom, NTCA and other associations representing small MVPDs[5] have long advocated for the Commission to curb the abusive market practices of video programmers. As the Mediacom Petition correctly notes, these abusive practices take many forms, each of which increase MVPDs' costs and impede consumer choice.

For one, video programmers often engage in "wholesale bundling" or "tying" practices that force MVPDs to purchase unwanted channels in order to gain access to the video content that consumers demand. As Mediacom states in their Petition, the largest video programmers each have a small number of channels that garner wide popularity and a number of other channels that do not command the same ratings.[6] Video programmers typically offer MVPDs one choice, that is, to purchase both the popular and less popular channels as a "bundle," leaving the small video providers represented by NTCA with the unenviable choice of either forgoing the popular channels that their customers demand or purchasing channels that they do not want. This unnecessarily increases these MVPDs' costs, which are passed on to consumers or absorbed by the MVPDs. It also diverts resources that could be utilized by smaller providers to invest in their broadband networks and/or other innovative products and services that their consumers want.

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[5] Comments of OPASTCO and NTCA, MB Docket No. 12-203 (fil. Sep. 10, 2011).

[6] Petition, p. 7.

In some instances, video programmers do offer MVPDs the ability to purchase these popular channels on an *a la carte* basis. Unfortunately, NTCA members, like Mediacom, typically find that the individual channels are offered at a price "at such a high level that it is uneconomical for the MVPD not to agree instead to take the bundle that includes the unwanted services."[7]

Mediacom is also correct in pointing to the increased use of such "tying" tactics as it is related to "must-have" sports content that cannot possibly be duplicated elsewhere. As the Petition notes, programmers are increasingly migrating local sports content to Regional Sports Networks. In addition, certain sports conferences are launching their own networks, and the ability to provide customers with access to these networks can make or break a small MVPD. Moreover, these networks are among the most expensive to purchase from the video programmers, and because they are included in the forced "tying" or "wholesale bundling" arrangements, the costs of these networks are borne by the entirety of an MVPDs' consumer base, whether all want that sports channel or not.

Forced tying of content is a prevalent and pernicious problem faced by small MVPDs in the market today. NTCA estimates that in order to obtain carriage rights for the 10 most widely distributed channels, small MVPDs must contract for, pay for and distribute 120 to 125 channels, many of which consumers typically do not want and do not watch. Again, this added cost of content that consumers do not demand is a waste of resources that could be put to better use in providing consumers with other, innovative services or extending video and/or broadband services to additional rural consumers.

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[7] *Id.*, p. 8.

Video programmers also have several other tactics that impede consumer choice and limit MVPDs' ability to offer subscribers lower cost options. These include "forced tiering," by which a condition of purchasing "must have" content is that the MVPD place a channel or a group of channels in its top one or two programming tiers (in terms of number of subscribers). This practice makes it impossible for rural MVPDs to offer truly basic, stripped down service tiers that can be offered at very affordable rates and that many subscribers actually desire. This is the very antithesis of consumer choice. Mediacom describes in its Petition the numerous ways in which programmers are able to force these types of arrangements on MVPDs that often have little choice but to comply for fear of losing access to premium video content.[8]

Mediacom also discusses video programmers' use of volume discounts. Large MVPDs demand significant volume discounts that the smaller MVPDs that NTCA represents are unable to obtain. As Mediacom notes, because programmers' loss of revenue from these discounts is made up by increasing the rates charged to smaller MVPDs, volume discounts are no more than " a massive transfer of wealth from subscribers in rural and small markets to giant distributors and it is far from clear that there is or ever can be any valid justification for discriminatory pricing by video programmers."[9]

Beyond these practices, Mediacom also points to how these abusive practices are spreading to the market for online video content. As the Petition notes, and as NTCA and others have discussed in other proceedings,[10] a recent dispute between content provider Viacom and certain cable providers over *traditional video content* reportedly led Viacom to block access to

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8 *Id.*, pp. 10-13.

9 *Id.*, p. 23.

10 Reply Comments of NTCA, GN Docket No. 14-28 (fil. Sep. 15, 2014).

otherwise free and available *online content* for the broadband Internet access subscribers of at least some cable companies.[11] Such blocking of "free" online content is relevant here, as it constitutes yet another weapon that video programmers have in their arsenal when it comes to their ability to engage in the abusive practices discussed above. Moreover, video programmers have for years required MVPDs wishing to gain access to desired video content to not only take and pay for undesired video programming, but to also pay for and provide its subscribers access to broadband, or other, web-based content. This requirement is imposed as a condition of access to the desired content whether or not the broadband customer subscribes to the video service, whether or not the broadband customer is situated within the video service territory and whether or not the customer even utilizes the broadband content. The MVPD pays the content provider a set amount on a per broadband subscriber basis, a cost that is ultimately borne by all broadband subscribers.

In short, the practices discussed above unnecessarily increase rural MVPDs' costs and prevent them from offering affordable service packages, offering consumers meaningful choice amongst service packages, and to invest in new and improved products and services – including improving the quality and reach of their broadband networks. These practices also limit rural MVPDs' ability to effectively compete – or enter in the first place – the video services market, which also diminishes consumer choice. The Commission should therefore initiate a proceeding to fully examine these practices – including their impact on consumers, competition, and as noted below, broadband deployment and adoption – and consider rules to restore balance to this market.

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[11] *Viacom Dispute: Small Cableco Customers Can't Access Free Web Content*, Telecompetitor (May 7, 2014), available at: http://www.telecompetitor.com/viacom-dispute-small-cableco-customers-cant-access-free-web-content/.

III. CONCLUSION

As noted in detail above, practices such as forced "tying" and "tiering" and volume discounts increase small and midsize MVPDs' costs, diverting resources that could be used to invest in broadband deployment and upgrades. Thus, the abusive practices of video programmers are much more than anti-consumer choice – as if that alone does not justify Commission action here – they also impede the Commission's broadband deployment and adoption goals. NTCA therefore urges the Commission to investigate and curb such action via a rulemaking proceeding opened on an expeditious basis.

Respectfully submitted,

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