

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

In the Matter of)
)
The Status of Competition in the Market for the) MB Docket No. 17-214
Delivery of Video Programming)

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

October 10, 2017

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in the above-captioned Federal Communications Commission (“Commission”) proceeding.² The Public Notice solicits data and information to update the Eighteenth Report on Video Competition to Congress.³ It requests information on, among other things, the impact of programming prices and retransmission consent fees on multichannel video programming distributor (“MVPD”) business models and competitive strategies, and the impact of marketplace conditions on MVPD competition, innovation, and investment.⁴ NTCA is appreciative that the Public Notice seeks specific comment regarding MVPDs serving in rural areas.⁵

¹ NTCA represents nearly 850 rural rate-of-return regulated local exchange carriers (“RLECs”). All NTCA’s members are full service local exchange carriers and broadband providers, and many also provide wireless, video, satellite, and/or long-distance services.

² Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of *Video Programming*, MB Docket No. 17-214, Public Notice (rel. Aug. 24, 2017) (“Public Notice”).

³ *Id.*, p. 1.

⁴ *Id.*, p. 5.

⁵ *Id.*, pp. 2-3; p. 5

NTCA periodically canvasses its members regarding video and broadband services and a discussion of three of its most recent surveys is included below. The ability of NTCA members' multichannel video programming distributor ("MVPD") subsidiaries to offer an affordable video service to their voice and/or broadband subscribers is vital to competition in the video space and drives the adoption of broadband service. Thus, NTCA offers below several suggestions for changes to the Commission's program access rules that will improve small MVPDs' ability to compete on a level playing field and offer their subscribers an affordable video service with access to the content they demand.

The Commission itself long ago recognized the link between video distribution and broadband adoption.⁶ Yet as NTCA's surveys show, the ever-rising price of content continues to present significant challenges despite the Commission's clear statutory authority to reform its broken program access and retransmission consent rules. Indeed, despite the affirmation in the STELA Reauthorization Act ("STELAR") as to the Commission's broad authority to implement changes under Section 325 of the Communications Act,⁷ the previous Commission chose to take no action last year.⁸ The result of such inaction on any program access or retransmission consent rules is higher video service rates for rural consumers and a failure on the part of the Commission to fulfill its responsibilities under Section 706 of the Telecommunications Act of 1996 to advance broadband deployment. NTCA offers below

⁶ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-180, ¶62 (rel. Mar. 5, 2007) ("Local Franchising Order").

⁷ Public Law No. 113-200, 128 Stat. 2059 (2014).

⁸ *An Update of Our Review of the Good Faith Retransmission Consent Negotiation Rules*, FCC Blog (Jul. 14, 2016), available at: <https://www.fcc.gov/news-events/blog/2016/07/14/update-our-review-good-faith-retransmission-consent-negotiation-rules>.

several suggestions this Commission should implement in short order to ensure an effective, transparent, and well-functioning marketplace for video content.

II. NTCA’S SURVEYS OF ITS MEMBERSHIP CONFIRM THAT QUALITY VIDEO SERVICES ARE VIEWED AS IMPORTANT COMPONENTS OF THE BUSINESS CASE FOR BROADBAND DEPLOYMENT AND A KEY DRIVER OF BROADBAND ADOPTION IN RURAL AREAS

NTCA conducted a Broadband/Internet Availability and Video Services survey of its membership in the spring of 2017, seeking data as of the end of 2016.⁹ Seventy percent of survey respondents indicated that they currently offer video services to their customers, down 2 percent from the previous year. Of those offering video, eighty-six percent offer Internet Protocol Television (“IPTV”), a 2 percent decrease from the previous year, while fifty-one percent offer video services via coaxial cable.¹⁰

Significantly, 98 percent of respondents (a 2 percent increase from last year) – whether they currently provide video or not – stated that access to reasonably-priced programming is a *significant* barrier to the deployment of video services. It is therefore unsurprising that sixty one percent (again, a 2 percent increase from the previous year) also named the challenges associated with making a business case for offering video services as a main impediment to the provision of these services. Furthermore, seventy-six percent (a 3 percent increase) identified the difficulty of competing with other video providers as a major impediment. This is due in

⁹ Figures are derived from an annual survey NTCA sends to its membership. The latest survey was conducted in the spring of 2017, with results released July 2017. The survey received 172 responses, a rate of approximately 29 percent. Based on the sample size, results of this survey can be assumed to be accurate to within ± 6 percent at the 95 percent confidence level. The full survey report is available at <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2016ntcabroadbandsurveyreport.pdf>.

¹⁰ These figures total over 100 percent as multiple providers use more than one type of medium to deploy MVPD services, depending on a variety of factors.

large part to the inherent disadvantages RLECs encounter serving high-cost, sparsely populated areas, having a lack of scale and scope as compared to larger MVPDs and finding it increasingly difficult to access programming at reasonable rates.

In addition, in a separate joint survey conducted in 2015, nearly one-fourth of NTCA's members reported that ninety percent or more of their service areas cannot receive an over the air broadcast signal and must pay to receive local news, weather or sports. This fact further underscores that broadcast content is indeed "must have" content for small MVPDs and highlights the need to address rising retransmission consent rates and broadcasters' negotiation tactics that drive up rural consumers' rates.

For all NTCA members, the ability to offer quality video services is an essential component of the business case for broadband deployment (including upgrading of existing broadband plant) and can serve as a driver of broadband adoption in rural areas. A video strategy is therefore an important component to promoting the long-term viability of most rural telecommunications providers. As noted above, IPTV is the most commonly deployed video delivery platform among NTCA members, and it is dependent upon much of the same network infrastructure as broadband Internet access services. Furthermore, customers are often incented to obtain both video and broadband services when they are offered in a bundle of services at a discount. Consequently, factors that impede the provision of affordable video services in RLEC service areas adversely affect broadband deployment and adoption as well.

Any MVPD's ability to successfully deploy video services requires access to desirable content under reasonable terms and conditions. A variety of behaviors and strategies employed by programmers and broadcasters make it particularly difficult, however, for small rural carriers in particular to offer content in competitive retail packages that reflect what their subscribers

want and can afford. The Commission can help enhance consumer choice, and encourage additional broadband adoption and deployment, by reforming retransmission consent rules and taking other actions to ensure access to content as outlined below. For example, Commission action is also needed to correct various anticompetitive behaviors by content providers, such as forced tying and tiering. Programmers also engage in unfair bargaining tactics, such as the inclusion of mandatory non-disclosure provisions in contracts that obscures the market value of content, as well as threatening that “must have” content will be withheld during the re-negotiation process. The Commission should address the outdated retransmission consent regime and take steps to inject transparency and market forces into an artificial regulatory-supported regime that has for too long undermined the viability of rural video providers.

III. THE COMMISSION HAS THE LEGAL AUTHORITY AND A CONGRESSIONAL DIRECTIVE TO REFORM ITS PROGRAM ACCESS RULES

In the plain text of section 325(b)(3)(A) of the Cable Act of 1992 (“Cable Act”), Congress instructed the Commission “to govern the exercise by television broadcast stations of the right to grant retransmission consent.”¹¹ This language sets forth direct and unmistakable authority to the Commission to set, and, if necessary, revise, ground rules for a retransmission consent regime that will enable broadcasters and programmers to receive fair payment for their material, in a manner consistent with other legislative goals, including increased consumer access to video programming. The authority to “govern” is of little meaning if such actions are not within the Commission’s authority. Moreover, Section 325 also instructed the Commission to account for “the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier...” while ensuring that the retransmission consent

¹¹ 47 U.S.C. § 325(b)(3)(A).

regime does not conflict with the need “to ensure that the rates for the basic service tier are reasonable.”¹² In short, the text of section 325 is explicit in its direction to Commission to protect the public interest with respect to broadcasters’ grant of retransmission consent rights to MVPDs.

The Commission has additional authority as part of its obligation to ensure that broadcast licensees act in furtherance of “the public interest, convenience, and necessity.”¹³ Behaviors that prevent MVPDs from providing consumers with signals that are broadcast over the public airwaves under reasonable terms and conditions, and that lead to blackouts, are clearly contrary to the public interest. This is especially the case, as explained more fully below, when such behaviors also impede the deployment of broadband infrastructure.

The Commission holds further ancillary authority under sections 303(r) and 4(i) of the Act. Section 303(r) instructs the Commission to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions”¹⁴ of Title III of the Act. The Commission’s authority is also elucidated in section 4(i), calling upon it to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”¹⁵ Furthermore, the Commission has previously asserted its ancillary authority to enhance consumers’ access to programming.¹⁶

¹² *Id.*

¹³ 47 U.S.C. § 309(a).

¹⁴ 47 U.S.C. § 303(r). *See also, Cellco P’ship v. FCC*, 700 F.3d 534, 543 (D.C. Cir. 2012).

¹⁵ 47 U.S.C. § 154(i).

¹⁶ Review of the Commission’s Program Access Rules and Examination of Programming *Tying Arrangements*, First Report and Order, 25 FCC Rcd 746 ¶¶ 71-72 (2010) (“*2010 Program Access Order*”) (relying on the Commission’s ancillary authority to establish standstill rules for program access disputes).

The Commission’s ability to address content provider practices that hinder broadband deployment is further buttressed by ancillary authority conveyed through section 706. This section mandates that the Commission “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” using a variety of means, including the utilization of “methods that remove barriers to infrastructure investment.”¹⁷ Perceiving the linkage between video and broadband services, the Commission has used its ancillary authority under section 706 to modify rules related to video services, specifically in the 2007 *Local Franchising Order*,¹⁸ and later the same year in the *Multiple Dwelling Unit Order*.¹⁹

Given the proven link between access to video content and broadband deployment, the antiquated retransmission consent regime is clearly a barrier that section 706 requires the Commission to remove without delay. By following the recommendations provided below, the Commission will enhance transparency and improve the fundamental workings of the video market, as required by the Cable Act of 1992, and will remove barriers to broadband investment and deployment as directed by section 706 of the 1996 Act.

IV. THERE ARE SEVERAL REFORMS TO THE COMMISSION’S PROGRAM ACCESS RULES THAT WILL SPUR BOTH GREATER COMPETITION IN THE MVPD MARKET AS WELL AS PROMOTE BROADBAND ADOPTION IN RURAL SERVICE AREAS

As antiquated and arbitrary rules artificially undermine transparency and hinder the effective functioning of a video content marketplace, the Commission can and should use this

¹⁷ 47 U.S.C. § 1302(a).

¹⁸ Local Franchising Order, ¶ 62.

¹⁹ *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-189, ¶47 (rel. Nov. 13, 2017) (“*Multiple Dwelling Unit Order*”).

proceeding to thoroughly investigate anti-competitive practices of video programming vendors and take certain steps to address market failures enabled by outdated rules.

A. The Commission Should Facilitate Transparency To Allow Rural MVPDs To Gauge Market Rates For Programming

One significant barrier to the provision of video and broadband services by small MVPDs is the pervasive use by programmers of mandatory non-disclosure agreements. An effective market – if one exists at all – cannot function in the absence of competition and transparency between buyers and sellers. Mandatory non-disclosure agreements demanded by content providers in contracts for programming prohibit MVPDs from disclosing the rates they pay, even to policymakers who may request this information. Most importantly, these agreements prevent MVPDs from learning the true market value of video content. As MVPDs cannot confirm that the price at which programming is being offered to them is even roughly comparable to what other buyers in the marketplace are paying for the same content, their ability to negotiate fair and reasonable rates is compromised from the outset.

To facilitate transparency and enable marketplace forces to police behavior, broadcasters utilizing public airwaves should, as a condition of their license, be required to publicly disclose, in an easily accessible manner, the lowest fee they will charge, prior to any volume discount. Put another way, if the claim of broadcasters is that the market is working, that notion should be put to the test by allowing all participants in the market to discern what the market actually is. Hidden “ask” and “bid” prices do not a market make. Ownership information should also be publicly disclosed, in a clear manner that does not obfuscate controlling or substantial ownership interests.

B. The Commission Should Prohibit Programming Vendors From Requiring Rural MVPDs To Pay For Undesired Programming In Order To Gain Access To Desired Programming

NTCA has consistently opposed the commonly employed practice of forced “tying” provisions under which programmers require MVPDs to purchase content they do not want to obtain the “must have” content that their subscribers demand. Forced tying is one of the most prevalent and pernicious problems faced by rural MVPDs and only serves to drive up the retail price of their service offerings. Rural MVPDs have found that in order to provide customers with access to the 10 most requested channels, it is necessary to pay for and distribute dozens of additional programming channels.

The Public Notice asks if large MVPDs have a competitive advantage, relative to smaller MVPDs.²⁰ While larger MVPDs are able to persuade programmers to allow them to offer less expansive, and therefore less expensive, service packages to consumers (commonly known as “skinny bundles”), the channel lineups in rural MVPDs’ service tiers remain the same or continue to grow ever larger and more expensive, due to the forced tying practices of network program providers and local broadcasters. The FCC itself aptly recognized a decade ago that this problem is particularly pronounced for rural MVPDs and their customers, yet years later it remains a common practice that harms rural consumers.²¹

²⁰ Public Notice at 5.

²¹ See, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition, MB Docket No. 07-29, Review of the Commission’s Program Access Rules and Examination of Program Tying Arrangements*, MB Docket No. 07-198, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17862-17863, ¶ 120 (2007) (stating that “we note that small cable operators and MVPDs are particularly vulnerable to such tying arrangements because they do not have leverage in negotiations for programming due to their smaller subscriber bases.”).

In short, forced tying unnecessarily increases rural MVPDs' costs and prevents them from offering affordable and diverse service packages. This limits rural MVPDs' ability to effectively compete in the video services market and diminishes consumer choice. The Commission should therefore ban forced tying immediately.

C. The Commission Should Prohibit Mandatory Broadband Tying, Where Rural MVPDs Must Pay Per-Subscriber Fees for Non-Video Broadband Customers

To obtain “must-have” video content, some programmers have required rural MVPDs to pay an additional fee based on the number of broadband subscribers they serve, regardless of whether or not those customers subscribe to video services. This practice, commonly known as “broadband tying,” amounts to a forced payment on a per-customer basis for access to online content (regardless of whether the customer views it), in addition to purchasing subscription video programming. Broadband tying goes well beyond the realm of any reasonable condition for access to traditional subscription video content. Programmers have also cut off access to their online content for customers of MVPDs with whom the programmer is engaged in a retransmission consent dispute, ensuring that customers are “caught in the middle” and further illustrating the need to reform the imbalance in the current rules.

While parties may wish to negotiate packages that incorporate the optional tying of broadband content with subscription video programming, programmers that have engaged in broadband tying have typically done so in a “take-it-or-leave-it” manner that violates the Commission’s “good faith” requirements. If an alternative is eventually offered by a programmer, the rates involved are so prohibitive as to effectively force the rural MVPD to accept the broadband tying or forgo the “must have” content.

Additionally, some programmers have required rural MVPDs to promote their web sites. Also, some require MVPDs to submit payments for, and promote web sites to, broadband customers that not only do not subscribe to a carrier's video service, but are also located outside of the MVPD's video service territory.

Each of the practices described above is an unfair practice that forces rural broadband providers to either absorb the additional costs or raise their end-user rates for broadband, neither of which benefits rural consumers. Moreover, higher rates for broadband discourage broadband adoption, contrary to Commission goals. The Commission should therefore prohibit the use of mandatory broadband tying provisions in contracts for video content.

D. The Commission Should Prohibit Programming Vendors From Requiring Rural MVPDs To Place Content In Specific Service Tiers

Related to the problem of forced tying, content providers also dictate the makeup of programming tiers and thereby prevent small MVPDs from offering consumers the flexibility of lower-cost skinny bundles, while increasingly providing these options to larger competitors. NTCA's members report that programming vendors also require "forced tiering," where certain channels be placed in specific service tiers or that a certain percentage of subscribers receive the channels, forcing rural MVPDs to include these channels in the most popular tier(s) of service they offer. Rural MVPDs should be free to create and market "skinny" video programming tiers to meet the demands of their subscribers. However, the practice of "forced tiering" makes it impossible for rural MVPDs to craft flexible service tiers that can be offered at very affordable rates and that their subscribers actually desire. It also prevents rural MVPDs from offering service packages that help to distinguish themselves from their competitors or are tailored to their customers' interests. By prohibiting video programmers' use of forced tiering arrangements, the Commission could encourage product

differentiation and competition among video service providers in rural areas, while enabling consumers to access the diverse content they desire at affordable rates.

E. Favorable Pricing Should Be Available To Small MVPDs

It is widely believed that the prices that small and mid-size MVPDs pay for broadcast programming per subscriber are much higher than that paid by large MVPDs. There is no cost based reason for small providers to pay more than large. The signal delivery to small and large MVPDs use the same signal, antenna, satellite and other broadcaster equipment. Large MVPDs are able to negotiate a favorable rate because they provide broadcasters with a larger number of potential viewers that generate additional advertising revenue. In contrast, a broadcaster can extract higher per-subscriber rates from small and mid-size MVPDs because it loses little by denying them access to programming. Broadcasters who negotiate low prices for large MVPDs are likely making up the difference on the backs of small MVPDs and their customers. Also, as noted above, small and mid-size MVPDs are prevented from determining the true market value of the programming they attempt to acquire due to mandatory nondisclosure provisions required by broadcasters as a condition of access.

Though small and mid-size MVPDs often provide service to rural areas not served by large MVPDs, they often compete for subscribers in the lower-cost towns and suburban markets that dot the much broader rural landscape. A small or mid-size MVPD cannot effectively compete for customers with a large MVPD in these relatively more attractive markets if the large company is receiving lower rates for programming.

These harms and disparities could be partially rectified by a rule that would allow small and mid-size MVPDs to request the same prices and conditions from any of the other existing retransmission consent agreements that a broadcast station has entered into distinguish

themselves from their competitors. By prohibiting video programmers' use of forced tiering arrangements, the Commission can encourage product differentiation and competition among video service providers in rural areas, while enabling consumers to access the content they desire at affordable rates.

V. THE COMMISSION SHOULD MONITOR THE MARKET FOR “OVER THE TOP” WEB-BASED VIDEO SERVICES TO ENSURE THAT EXCLUSIVE ARRANGEMENTS DO NOT PREVENT RURAL MVPDS AND BROADBAND PROVIDERS FROM GAINING ACCESS TO CERTAIN WEB-BASED VIDEO CONTENT

The Public Notice seeks data and information regarding the ability of consumers to access Online Video Distributor (“OVD”) services²² which, as the Notice also observes, continue to expand and evolve.²³ Consumers' growing demand for OVD services are no less pronounced in rural areas than in urban or suburban markets. Indeed, as noted *supra*, many rural consumers are unable to obtain over-the-air broadcast signals,²⁴ leaving them dependent on MVPD and/or OVD services for their video needs. In addition to televisions connected to streaming devices, “smart TVs” that can access OVD services directly, as well as tablets and smart phones that typically connect through a home's Wi-Fi router, proliferate in rural markets as they do in more urban and suburban areas.

The bandwidth requirements to meet this ever-increasing consumer demand constitutes one of the many challenges NTCA members encounter providing broadband in rural areas. RLECs strive to bring high-speed, low-latency broadband services to consumers in sparsely populated, high-cost areas. Not only do last-mile networks need considerable investment and

²² Public Notice at 3.

²³ *Id.* at 5.

²⁴ See Section II, *supra*, noting that NTCA's 2015 joint survey with INCOMPAS found that nearly one-fourth of NTCA's members reported that ninety percent or more of their service areas cannot receive an over the air broadcast signal.

maintenance to keep pace with consumers' increasing demand for multiple streams of high-definition video per premises, but RLEC costs for backbone connectivity are also higher than those encountered by their counterparts with greater scale and lower-cost service areas.

The details of these costs of course vary greatly. Distance from the nearest backbone access point is one highly determinative cost factor. Respondents to NTCA's latest Broadband/Internet Availability and Video Services survey indicated that the average distance from their primary backbone Internet connection is 68 miles. In more remote service areas, distances of over 100 miles are not uncommon. Distances to backup connection points, needed to ensure against an outage, fiber cut, etc., can be greater still, if they are even financially feasible.

Some RLECs may obtain at least some of their backbone connectivity from a statewide network of which they are a part owner. This may help alleviate some portion of the expense. When possible, many NTCA members also work with OVDs to install Content Delivery Network ("CDN") devices, which cache content locally and can help reduce transport costs and improve the customer experience. Yet not all RLECs are able to avail themselves of CDN caching and statewide networks. Even if they could, these measures are insufficient to make up for the rising bandwidth demands posed by OVD services, particularly as caching servers may lend some help in managing the costs of such traffic but they do not transfer ultimate financial responsibility for those bandwidth demands to the OVD providers.

Despite the fact that OVD services in many respects undercut traditional MVPD services, NTCA members have nonetheless made extensive efforts to deploy robust broadband networks that facilitate OVD and other online services that consumers demand. However, regulatory constraints unfortunately impede RLECs' ability to invest in technology and broadband

infrastructure that are needed to reliably deliver these services to the end user. Specifically, it has become increasingly clear that caps currently constraining the Universal Service Fund budget render the Fund insufficient to permit many rural consumers to receive the benefits of broadband or, where available, to purchase robust standalone broadband of the kind that many urban Americans take for granted at reasonably comparable rates.²⁵ As NTCA noted earlier this year:

Because of the lack of sufficient funding for the Commission's cost model, 71,000 rural locations will receive lower-speed broadband than the model design would have yielded, and nearly 50,000 may see no broadband investment at all. Moreover, NTCA members indicate that the USF budget shortfall of \$173 million over the next 12 months for cost-based USF recovery will severely harm rural American consumers and businesses in the form of higher prices, lower speeds, and reduced investment by the smaller RLECs dedicated to serving them. Due to the impacts of the budget control imposed on cost-based USF and the uncertainty of changes to that mechanism in future, 183 NTCA member RLECs have indicated that they will reduce their broadband investments over the next 12 months by nearly \$950,000, on average, and must still charge rates for standalone broadband that are on average far in excess of those paid by urban consumers.²⁶

Clearly, the insufficiency of the Universal Service Fund will continue to constrain the ability of RLECs to deploy broadband-capable networks of the kind and capacity necessary to carry OVD services; indeed, the budget control all but compels limited, ratcheted advancement of broadband-capable networks in many rural areas. This will in turn impede the ability of RLECs to fully deploy, maintain, and upgrade broadband networks upon which OVD services rely.

²⁵ See Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, *et al.* (filed May 25, 2016).

²⁶ *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Industry Affairs & Business Development, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 06-122 (fil. July 31, 2017).

In addition, many rural consumers who have access to broadband services will have to pay more for standalone broadband than their urban and suburban counterparts due to the budget control. In a separate survey conducted earlier this year, NTCA members that are not currently offering standalone broadband (*i.e.*, broadband that is not priced in a bundle with voice, video or other services) would need to charge customers an average of \$126 per month, over twice what urban customers pay,²⁷ for the standalone broadband increasing numbers of consumers would prefer. This disparity in turn would very likely restrict consumers' spending choices with regard to video or other online services to which they might otherwise wish to subscribe. The ability of rural providers to facilitate the delivery of OVD services will remain compromised and limited as long as the ability of rural carriers to invest in broadband-capable infrastructure is artificially and arbitrarily constrained.

²⁷ See, *Unpredictable, Insufficient Universal Service Budget Chilling Network Investment and Hurting Rural America*, NTCA Press Release, June 21, 2017, available at <https://www.ntca.org/2017-press-releases/unpredictable-insufficient-universal-service-budget-chilling-network-investment-and-hurting-rural-america.html>.

VI. CONCLUSION

For all of the reasons discussed above, the Commission should reform its program access rules.

Respectfully submitted,



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