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WESTERN TELECOMMUNICATIONS ALLIANCE

Action Item: Access to Video Content

An increasing number of rural local exchange carriers (LECs) are providing video services over broadband connections in order to offer a competitive alternative to rural consumers. For the past several years, rural LECs have been at the forefront of competitive video offerings.

A positive correlation has been established between broadband subscribership and the entry of rural carriers into the "multichannel video programming distribution" (MVPD) market. Research has shown that when rural carriers offer video and broadband services together, more customers subscribe to broadband.

This increased "take rate" makes it more economical for rural carriers to expand broadband availability into higher cost areas. Therefore, the entry of rural LECs into the video marketplace not only increases consumer choice, it helps achieve the goal of furthering broadband deployment in rural communities.

Approximately 75 percent of rural LECs provide video services. In addition to traditional cable TV, rural carriers now use a variety of technologies and delivery mediums to serve as MVPDs. These include digital subscriber line (DSL), fiber-to-the-home, and Internet protocol television (IPTV).

Although rural LECs are doing their best to offer video services, significant barriers remain. Efforts by rural LECs to provide video competition using broadband technologies are hindered by a daunting business model that is largely the result of excessive prices and onerous conditions demanded by content providers. These barriers, in turn, impede efforts to deploy more broadband and related advanced services to the rural communities served by these carriers.

Congress should encourage the FCC to update the retransmission consent process and permit arbitration to settle disputes in order to prevent customers from losing service.

Current retransmission consent rules were originally designed to encourage localism before the mergers of broadcast and cable networks. However, these rules are now used to extract additional revenue from video service providers by forcing them to purchase content regardless of consumer demand. For instance, retransmission consent rules can result in mandatory "tying" arrangements that require MVPDs to purchase unwanted channels, or place them in specific tiers, in order to secure "must-have" content demanded by consumers. Carriers should have more flexibility to craft programming tiers that offer consumers lower-cost alternatives and are more closely aligned to the demands of the local market.

Negotiations between MVPDs and broadcasters are the preferred method of resolving contractual differences. Yet in cases where parties cannot reach agreement, customers have lost access to channels and content they demand. Rural LECs should be able to invoke arbitration to ensure that their customers do not lose access to programming that they seek, and to prevent the loss of service to consumers.

Congress should encourage the FCC to close the "terrestrial loophole" in Sec. 628 of the 1992 Cable Act that allows programmers to withhold programming from small MVPDs.

Section 628 of the 1992 Cable Act contains program access provisions to ensure that consumers and their video providers have access to programming that is necessary to maintain a viable service. Sec. 628 was written when nearly all programming was delivered to MVPDs via satellite. Increasingly, however, video programs are being supplied to MVPDs via terrestrial fiber networks. This "terrestrial loophole" permits some programmers to withhold programming from, or impose unreasonable conditions and charges on, small MVPDs and their customers.

The loophole should be closed because it thwarts competition in the video market while also hindering broadband investment. The FCC has correctly found that programmers that have interests in large cable systems (i.e., vertically integrated programmers) retain the ability and incentive to withhold programming from their competitors. The FCC has listed many concrete examples showing that programmers deny access to programming when permitted to do so.

Therefore, extension of the program access rules to terrestrially-delivered cable-affiliated programming is necessary to facilitate video competition and to reduce barriers to investment in advanced services infrastructure. The FCC has the authority under the Cable Act to level the playing field between large cable providers and small, competitive MVPDs by closing this loophole.

Congress should facilitate rural LECs' entry into the MVPD marketplace by sanctioning the use of shared head-ends.

It is not unusual for rural LECs to jointly invest in a video head-end in order to more economically provide video services to customers. However, some content providers impose unreasonable restrictions on the use of shared head-ends, stifling the emergence of video competition and bundled video/broadband offerings. Congress should pass legislation that would end unreasonable restrictions on the use of economical shared head-ends.

Congress should investigate other impediments to rural LECs' ability to access video content at reasonable rates and terms.

Such impediments include:

- Clauses that require a pre-determined percentage increase in the price for content per year, regardless of any factors relevant to the programming's cost.
- Predatory pricing experienced by small MVPDs competing against large cable companies, where the large company drastically lowers its prices and offers "promotional" incentives in order to drive small competitors out of the market.
- Content producers that grant exclusive contracts, abusing their market power to preclude competitors from accessing content that is necessary to attract customers.
- Content providers that impose unwarranted technological requirements that impede the delivery of video signals using new technologies.
- Content providers that force carriers to pay extra for video content based on the number of broadband subscribers, even if these broadband subscribers are not able to receive video services.

Organization for the Promotion and Advancement of Small Telecommunications Companies
21 Dupont Circle NW, Suite 700
Washington, DC 20036
Phone: 202/659-5990; Fax: 202/659-4619

For more information, contact: Randy Tyree, rxt@opastco.org; Stuart Polikoff, sep@opastco.org; Steve Pastorkovich, sfp@opastco.org; or Brian Ford, bjf@opastco.org.

Western Telecommunications Alliance
317 Massachusetts Ave. NE, Suite 300C
Washington, DC 20002
Phone: 202/548-0202; Fax: 202/548-7668

For more information, contact: Derrick Owens, derrick@w-t-a.org; or Eric Keber, eric@w-t-a.org.