



August 15, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Ex Parte Notice

**Re: Review of the Commission's Program Access Rules and Examination of
Programming Tying Arrangements
MB Docket No. 07-198**

Dear Ms. Dortch:

Attached please find a letter to Chairman Kevin J. Martin from the Organization for the Promotion and Advancement of Small Telecommunications Companies, the National Telecommunications Cooperative Association, the Rural Independent Competitive Alliance, and the Western Telecommunications Alliance requesting Commission action in MB Docket No. 07-198.

In accordance with FCC rules, this letter is being filed electronically in the above-captioned docket.

Sincerely,

/s/ Stephen Pastorkovich

Stephen Pastorkovich
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August 15, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Review of the Commission's Program Access Rules and Examination of
Programming Tying Arrangements
MB Docket No. 07-198**

Dear Chairman Martin:

On behalf of rural local exchange carriers (LECs) that offer, or are actively considering offering, voice, broadband data, and video services to consumers in high cost rural areas, the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the National Telecommunications Cooperative Association (NTCA), the Rural Independent Competitive Alliance (RICA), and the Western Telecommunications Alliance (WTA) respectfully request that the Commission complete its examination of program access rules and programming tying arrangements in the above-captioned proceeding at the earliest opportunity.¹

Rural LECs are integral parts of the small communities they serve. They are uniquely suited to bringing advanced telecommunications capabilities to their customers, and have proven their dedication to overcoming the distinctive challenges of serving high cost areas while lacking economies of scale. However, in addition to these obstacles, rural LECs also must also overcome a daunting business case for the "triple play" of voice, broadband data, and video services. The business case is further undermined by ever-increasing rates and discriminatory terms for programming that is necessary to maintain a viable video service. Forced tying, where providers are required to carry certain programming in exchange for access to must-have content, and must usually place channels in specified tiers that raise consumers' rates, is a growing problem that urgently requires the Commission's attention. As explained more fully below, forced tying of programming impedes consumer choice in the multichannel video programming distributor (MVPD) market, while serving as a significant barrier to further broadband deployment in areas served by rural LECs.

¹ See also American Cable Association (ACA) *ex parte* notice, MB 07-198 (fil. Jul. 17, 2008); Coalition for Competitive Access to Content (CA2C) *ex parte* notice, MB 07-198 (fil. Jul. 24, 2008); letter from the Media Access Project, *et. al.*, MB 07-198 (fil. Jul. 25, 2008); and letter from the Consumers Union, MB 07-198 (fil. Aug. 12, 2008).

I. The Commission has established that there is an intrinsic link between video and broadband deployment.

The Commission has correctly found “that a provider’s ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated.”² This finding is consistent with the experiences of rural LECs that also serve as broadband data providers and MVPDs. When video is offered jointly with broadband services, penetration rates increase. This encourages further investments in broadband infrastructure, as called for by Section 706 of the Telecommunications Act of 1996.³

II. The Commission has established that small MVPDs and their customers are particularly vulnerable to the competitive harms and adverse consumer impacts caused by forced tying.

The Commission has clearly outlined the “competitive harms and adverse impacts” that forced tying cause to small MPVDs and their customers.⁴ In essence, small MVPDs are routinely left with the choice of paying what the programmers dictate and accepting forced carriage of channels in specified tiers, or lose customers due to a lack of must-have content. Small MVPDs are particularly vulnerable to forced tying because they do not have leverage in negotiations for programming due to their smaller subscriber bases.⁵ Considering the intrinsic link between the ability to offer video services and broadband deployment, it is clear that forced tying impedes both video competition and further investment in broadband infrastructure. The Commission should therefore adopt reforms discussed below to remove these impediments to video competition and broadband deployment.

III. The American Cable Association and the National Telecommunications Cooperative Association have proposed modest reforms of existing rules that would provide a deregulatory, market-based approach to reducing barriers to broadband infrastructure investment and enhancing video competition.

Many program access regulations are outdated and no longer reflect the technological and marketplace realities that rural LECs face. As the MVPD industry has

² *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, 22 FCC Rcd 5101, 5132-33, ¶62 (2007).

³ *See, Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 07-51, 22 FCC Rcd 20235, 20257-20258, ¶¶46-47 (2007).

⁴ *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).

⁵ *Ibid.*

evolved, program access rules have inadvertently served to lock in the ability of large programmers to dictate “take it or leave it” rates and terms, contrary to the Commission’s rules⁶ and the principles of open market negotiations. The American Cable Association⁷ and the National Telecommunications Cooperative Association⁸ have proposed modest reforms that would update the Commission’s program access rules and improve procedures in such a manner as to encourage genuine negotiations between parties. By promoting real negotiations, the proposed reforms would also encourage content prices to more closely reflect market values, rather than be subject to the stranglehold of a few large programmers.

In order to encourage additional investment in broadband infrastructure, advance video competition, and inject free market elements into the program access regime, we request that the Commission complete its examination of program access arrangements at the earliest opportunity. Thank you very much for your attention to this important matter.

Sincerely,

**THE ORGANIZATION FOR
THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

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⁶ *Id.*, 22 FCC Rcd 17863-17864, ¶¶122-123.

⁷ ACA comments, MB 07-198 (fil. Jan. 3, 2008), pp. 44-46.

⁸ NTCA comments, MB 07-198 (fil. Jan. 4, 2008), pp. 24-25.

**THE RURAL INDEPENDENT
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cc: Commissioner Michael J. Copps
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