Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Expanding Consumers' Video Navigation Choices	)	MB Docket No. 16-42
	)	
Commercial Availability of Navigation Devices	)	CS Docket No. 97-80
	)	
	)	

Comments of WTA – Advocates for Rural Broadband

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Date: April 22, 2016

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EXECUTIVE SUMMARY

While WTA appreciates the goals of the Commission to ensure competition in the delivery of video services, it believes that the free market is the best place for innovative solutions and services to develop. WTA urges the Commission to conduct a comprehensive assessment of ongoing innovation in the marketplace for video services and associated navigation devices, as well as the costs and benefits of the imposition of the NPRM's proposals upon small multichannel video program distributors ("MVPDs") and their customers prior to adopting such rules. If the Commission finds that additional regulation is necessary to increase set-top box competition in the overall video marketplace, despite ongoing innovation, then it should exempt analog cable systems and small MVPDs from such regulation due to the fact that their compliance costs would substantially outweigh the minuscule or nonexistent impact of their market segment upon such set-top box competition.

It makes no sense to impose new set-top box regulations and additional related costs upon small MVPDs that are already losing money or barely breaking even due to burgeoning programming content costs and that lack the size and scale necessary to have influence regarding either the development and adoption of industry standards for set-top boxes, or the actual design, production and programming of such boxes. The unfortunate result will be either further significant rate increases to their already over-burdened customers, or the hastening of the exit of small MVPDs from the market for MVPD services. Such an exemption would allow valuable limited resources to be dedicated to advancing broadband deployment in the rural service areas served by small MVPDs rather than put toward regulatory compliance.

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WTA-Advocates for Rural Broadband ("WTA")[1] hereby submits these comments in response to the Notice of Proposed Rulemaking ("NPRM")[2] seeking comment on a proposal that seeks to "assure a commercial market for devices that can access multichannel video programming and other services offered over multichannel video programming systems."[3] WTA urges the Commission to conduct a comprehensive assessment of ongoing innovation in the marketplace for video services and associated navigation devices, as well as the costs and benefits of the imposition of the NPRM's proposals upon small multichannel video program distributors ("MVPDs") and their customers.

In particular, RLEC-affiliated and other small MVPDs that serve a few hundred or thousand video customers lack the size and scale necessary to have influence regarding either the development and adoption of industry standards for set-top boxes, or the actual design,

[1] WTA – Advocates for Rural Broadband is a national trade association representing more than 300 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

[2] *Expanding Consumers' Video Navigation Choices*, FCC 16-18, MB Docket No. 16-42; CS Docket No. 97-80 (rel. Feb. 18, 2016) ("*Unlock the Box NPRM*").

[3] *Unlock the Box NPRM*, ¶ 1.

production and programming of such boxes. Manufacturers and vendors needing to sell hundreds of thousands or millions of such devices have no incentive to survey or consider the signal formats and needs of small MVPDs whose potential customer purchases would not constitute even a rounding error on their financial statements. Given the absence of benefits to equipment manufacturers and vendors, it makes no sense to impose new set-top box regulations and additional related costs upon small MVPDs that are already losing money or barely breaking even due to burgeoning programming content costs. The unfortunate result will be either further significant rate increases to their already over-burdened customers, or the hastening of the exit of small MVPDs from the market for MVPD services. If the Commission finds that additional regulation is necessary to increase set-top box competition in the overall video marketplace, then it should exempt analog cable systems and small MVPDs from such regulation due to the fact that their compliance costs would substantially outweigh the minuscule or nonexistent impact of their market segment upon such set-top box competition.

I. Innovation and Competition in Distribution and Delivery of Video Services is Already Happening Without Regulatory Intervention, and Technological Mandates Will Result in Higher Costs and Few Benefits for Consumers.

It is no secret that Internet Protocol ("IP") has revolutionized the way consumers watch video programming. Likewise, IP is revolutionizing the way MVPDs offer video programming to their customers with more operators upgrading to IP-based services and increasingly exploring TV Everywhere and streaming on-demand offerings. These changes are occurring steadily and without intervention by the Commission. For example, some of WTA's members have begun offering local broadcast stations and other independent networks over their managed IP networks delivered via devices offered by Roku. These and similar services are undergoing constant change and appear likely to be available on more consumer devices such as mobile phones, tablets, computers, and Smart TVs as innovation continues.[4]

Similarly, companies that have traditionally offered MVPD services over analog or digital cable networks – including some new telco MVPDs – have pursued upgrades to their networks to enable delivery of video programming in IP.[5] However, such transitions are costly and often require hundreds of thousands of dollars and several years to complete. The Commission should not take steps at this time that would disrupt or hinder this progress, including imposition of technological mandates that would require conversions to all-IP delivery before providers have the resources and market conditions to support such transitions.[6]

As the American Cable Association ("ACA") has noted, some small cable operators have explored navigation device distribution deals with TiVo via their participation in the National Cable Television Cooperative ("NCTC").[7] Whereas the NPRM seeks to spur development of an

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[4] The market has progressed even in the short time since the Commission launched this rulemaking. For example, NeoNova announced a service that provides content "via Roku devices, iOS and Android mobile apps, and web browsers . . . [NeoNova] can now offer our ISP partners the ability to provide both local and national content in easy-to-use applications at affordable prices on all these devices." Press Release, *ViewLocal Successed YourStream TV, Changing the Game in Video for ISPs*, April 6, 2016, http://neonova.net/blog/press-release/neonova-introduces-multi-platform-streaming-service-viewlocal/ (last accessed April 19, 2016).

[5] Vendors are increasingly providing comprehensive solutions for MVPDs that make video programming available over a wide variety of consumer devices. For example, SkitterTV "allows [consumers] to watch TV using off-the-shelf set top boxes" like Roku. *See* SkitterTV FAQ, https://www.skittertv.com/faq.php (last accessed April 19, 2016). *See also* Eric Freund, Vice President of Product Marketing, *What's Your OTT Pay TV Strategy?*, Minerva Official Blog, http://www.minervanetworks.com/what-is-your-ott-pay-tv-strategy/ (last accessed April 19, 2016) (promoting exploration of support for Roku and Amazon Fire TV by traditional MVPDs).

[6] The Commission previously provided an exemption for small cable systems that lack the resources to retransmit high-definition broadcast signals due to the substantial cost. *See HD Small Cable Exemption Order; Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Fifth Report and Order, 27 FCC Rcd 6529 (2012); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Sixth Report and Order, 30 FCC Rcd 6653 (2015).

[7] Letter from Ross J. Lieberman, Senior Vice President of Regulatory Affairs, American Cable Association, to Marlene Dortch, Secretary, Federal Communications Commission at 3 (Feb. 11, 2016).

array of third-party devices enabled by standards for information delivery and content protection from which MVPDs can choose,[8] such “standards” are also rarely, if ever, interpreted and implemented in the same way by those utilizing them. This leads to substantial difficulty in developing services compatible with a range of varying standards interpretations. There is also substantial risk that the market and MVPDs will not converge on a common resolution. Accordingly, developing MVPD services that are compatible with large numbers of set-top boxes and applications only becomes more challenging and expensive. The most likely results of such an endeavor are higher costs for MVPDs and higher prices for consumers without any true offsetting service quality increases.

When weighing the costs and benefits of its proposal, the Commission should also consider the quality of service benefits offered by provider-supplied set-top boxes leased to consumers at no additional charge or at cost. Providers have an incentive to use affordable and effective equipment to deliver their services and ensure high quality of service. Small MVPDs are constantly looking for ways to reduce operating costs including by utilizing increasingly sophisticated navigation devices.[9] Quality of service concerns are strong drivers behind the trend for small MVPDs to upgrade their networks and navigation devices to enable remote monitoring and troubleshooting capabilities that prevent truck rolls and reduce operating costs as well as costs to consumers.

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[8] *Unlock the Box NPRM*, ¶¶ 35, 41 (proposing to require MVPDs to provide service discovery, entitlement, and content delivery information (“the Information Flows”) in “published, transparent formats that conform to specifications set by Open Standards Bodies”).

[9] *See also Annual Assessment for the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Sixteenth Report, 30 FCC Rcd 3253, ¶324 (“*16th Video Competition Report*”) (noting that “MVPDs . . . continue to develop and refine their leased CPE offerings to improve the consumer experience, lay the groundwork for future technological changes in network technologies, and provide value to the operator”).

Any issues with a provider-supplied set-top box can typically be easily and quickly remedied by simply replacing the box at no charge to the customer. In contrast, in the event of malfunctions of a third-party box purchased at retail by the consumer, the customer is most likely to blame the MVPD for poor service in the first instance rather than first pursuing a complaint and remedy with the set-top box manufacturer.[10] The MVPD will likely have to address the customer's complaints with a truck roll to determine whether its service or the third-party box is the cause of the service issue. Not only will MVPDs expend valuable limited resources to troubleshoot issues they likely have no ability to remedy, but these MVPDs will risk losing customers as a result of what the customer perceives as faulty MVPD service caused by third-party devices. Resources spent addressing these issues would be better spent investing in additional broadband deployment. The Commission must keep in mind these potential costs to MVPDs and consumers when determining whether to move forward on its proposals.

In the event the Commission determines that additional Section 629 rules are necessary despite ongoing innovation in the marketplace and the lack of concrete benefits for consumers, it should exempt all-analog cable systems and other small MVPDs from such requirements as it is not necessary in order to assure that a commercial market for navigation devices exists and because requiring small provider compliance would be unduly burdensome.

[10] MVPDs and Internet service providers often see this in the context of the customer purchasing a low quality WiFi router at a retail store for a "more affordable" price. The Commission should consider this situation when determining whether to allow purchase navigation devices out-right. *See Unlock the Box NPRM*, ¶ 86.

II. The Commission Should Adopt a Permanent Exemption for All-Analog Cable Systems from the Proposed Section 629 Rules.

The NPRM tentatively concludes that the Commission should adopt an exemption from the rules developed in this proceeding for all-analog cable systems.[11] All-analog cable systems typically are operated by very small providers, predominantly in rural areas that have heretofore lacked the financial resources to upgrade to higher-capacity digital facilities. The majority of all-analog systems still in operation today serve fewer than 1,000 subscribers. Small providers (many of which operate analog cable systems) are also typically subject to the highest costs not only with respect to system operation and maintenance but also the highest programming costs due to their small size. As a result (and similar to the small operators of hybrid or all-digital cable and IPTV systems) all-analog cable systems generally operate at a loss or on a break-even basis and lack the resources to pursue substantial network upgrades and changes at this time.

All-analog cable systems were exempt from the original separation of security rules,[12] and the Commission has historically carved out exemptions from technical requirements for all-analog cable systems in other contexts.[13] Furthermore, Congress directed the Commission in the STELAR Act to avoid unduly burdensome proposals to implement Section 629.[14] Because all-

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[11] *Unlock the Box NPRM*, ¶ 81.

[12] *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd 7596, 7599-606 ¶¶ 7-22 (1999).

[13] *See Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 30 FCC Rcd 5012 (2015) (granting a waiver of the audible emergency information rule compliance deadline after recognizing that all-analog cable systems "are generally very small in size, often serve rural areas, and generally lack resources and utilize outdated technologies," face unique challenges in complying with technical mandates, and the per-subscriber cost of upgrading their systems "might cause them to shut down").

[14] Pub. L. No. 113-200, § 106(d), 128 Stat. 2059, 2063-4 (2014) (directing the Commission to establish the DSTAC to develop recommendations concerning "performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform and technology- and platform-neutral software-

analog systems would need substantial upgrades in order to comply with the proposals in the NPRM, and because resources available to such small systems are severely limited typically due to high operating costs and small subscriber bases over which to distribute costs, requiring compliance surely would be unduly burdensome.[15] Consumers in locations served by all-analog cable systems would still benefit from the rules adopted in this proceeding without requiring analog cable operators to undergo substantial system-wide upgrades due to the nationwide presence of two DBS providers.[16] Furthermore, consumers would continue to benefit from the competition resulting from availability of a value-priced alternative to DBS provided by all-analog MVPDs. The Commission should therefore adopt its tentative conclusion to exempt all-analog cable systems from the proposed rules.

III. The Commission Should Adopt a Permanent Exemption for Small MVPDs from the Proposed Section 629 Rules.

Whereas the imposition of new set-top box requirements upon RLEC affiliates and other small MVPDs will not provide any perceptible benefits to equipment manufacturers and vendors, technological mandates historically have the greatest impact on small providers. Not only do small operators lack the time, resources and expertise necessary to participate in the setting of industry standards, they also lack the scale and scope to avoid passing through substantial amounts of their compliance costs to individual customers.[17] Small operators also rely heavily

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based downloadable security system designed to promote the competitive availability of navigation devices").

[15] It's worth noting that analog cable systems typically operate without the need for a set-top box at the customer premise.

[16] *See Amendment to the Commission's Rules Concerning Effective Competition*, Report and Order, 30 FCC Rcd 6574, ¶ 4 (2015) (establishing a presumption of effective competition due to nationwide availability of two DBS providers).

[17] *Unlock the Box NPRM*, ¶ 41. The DSTAC report upon which the Commission's proposal is based fails to reflect concerns of small MVPDs largely because no small MVPDs were included among DSTAC participants.

on device manufacturers and middleware vendors to ensure compliance with the Commission's rules and are often the last to obtain innovative solutions as they make their way through the marketplace. Each time vendors must conduct research and development in order to comply with newly adopted mandates, costs increase for not only MVPDs but for their customers as well.

Although analysis of SNL Kagan data predicts that if current trends continue profit margins on video businesses of MVPDs will fall to zero by 2023,[18] the vast majority of small MVPDs already operate at a loss or barely break-even primarily due to increases in the cost of acquiring programming rights exceeding the ability for providers to raise their rates while still retaining customers. Without an end to unsustainable programming costs increases in sight, small MVPDs are increasingly contemplating exiting the MVPD market altogether in order to focus on investment in and delivery of broadband services.[19] Indeed, some WTA members have ceased operating their video services in the last year and many more have openly discussed concerns about the continued viability of their MVPD business. Given the state of the marketplace, any regulation that would require additional investment and compliance costs will only hasten the departure of small MVPDs from the market, resulting in decreased MVPD competition and increased costs without any tangible benefits for consumers. Resources that could be better spent increasing deployment and availability of broadband in furtherance of the Commission's Section 706 goals would be unnecessarily diverted to regulatory compliance.

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[18] *See* Daniel Frankel, *Program Cost Growth Will Drive Pay TV Margins to Zero by 2023, Analyst Says*, April 8, 2016, http://www.fiercecable.com/story/program-costs-growth-will-drive-pay-tv-margins-zero-2023-analyst-says/2016-04-08 (last accessed April 19, 2016).

[19] *See 16th Annual Video Competition Report*, ¶ 70 (noting that the total number of cable systems has been declining and that over 1,000 small and rural cable systems have exited the video market since 2008)

Small digital cable operators would need to either implement changes at head-ends to convert the delivery of their linear cable service in IP or add an additional device at the customer premise to enable conversion into a video stream that could interface with a third party device. Given current resource constraints, requiring a transition to all-IP delivery in just two years as proposed in the NPRM[20] would be unduly burdensome for small MVPDs who are unable to secure financing and/or shift additional costs to consumers due to the upward pressure on retail rates caused by programming cost increases in recent years. Even for those operators already utilizing IP for delivery of MVPD services, substantial middleware changes could be required to ensure compliance with the Commissions rules and interoperability with an unknowable number of standards, third-party devices and applications.[21] Ultimately all of a small MVPD's consumers would bear the cost of compliance, regardless of whether they utilize a third-party or operator supplied box.

Rather than imposing a costly technological mandate on a class of MVPDs that altogether serve fewer than 7% of total MVPD subscribers, exempting small MVPDs would still permit those MVPDs to innovate, upgrade its systems, and adopt solutions complying with the Commission's proposed rules if adoption wouldn't be unduly burdensome in that particular situation.[22]

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[20] *Unlock the Box NPRM*, ¶ 43.

[21] Additionally, the Commission's proposal would result in stranded investment for those MVPDs that have just finished or are in the process of upgrading their networks due to the fact that their existing infrastructure likely will not adhere to yet-to-be-developed standard(s).

[22] The existing CableCard regime is not a viable long-term alternative for achieving the Commission's Section 629 goals for operators because consumers have to-date largely ignored the availability. Despite widespread availability of CableCard-enabled devices, the vast majority of consumers lease navigation devices from MVPDs. Requiring small operators to continue utilizing CableCard would simply lock them into older technologies leaving no room for ongoing innovation, particularly if the Commission's action in the proceeding were successful and the retail navigation device market moves away from the CableCard.

IV. Conclusion

While WTA appreciates the goals o the Commission to ensure competition in the delivery of video services, it believes that the free market is the best place for innovative solutions and services to develop. Ongoing innovation in the existing MVPD and over-the-top markets for video services support this approach. If, however, the Commission believes that regulatory intervention is necessary despite ongoing innovation in the marketplace, it should restrict applicability of its Section 629 rules only to those providers with the ability to impact the commercial availability of navigation devices rather than imposing unduly burdensome technological mandates on those providers least in the position to comply or influence the standard(s) setting process. The Commission should therefore exempt all-analog and small cable systems from application of its proposed Section 629 rules.

Respectfully Submitted,

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