

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

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 14-16
Competition in)
the Market for the Delivery of Video)
Programming)

Comments of WTA – Advocates for Rural Broadband

I. Introduction

WTA – Advocates for Rural Broadband (“WTA”)¹ offer this response to the Federal Communications Commission’s Notice of Inquiry soliciting data, information, and comment on the state of competition in the delivery of video programming for the Commission’s Sixteenth Report.²

WTA’s members are rate-of-return regulated ILECs (“rural telcos”) that serve some of the most rural and remote areas of the country with voice and data services. Many of these companies and cooperatives have also entered the video market utilizing a variety of distribution technologies that vary company to company and often within a company’s geographically large service area. These technologies include telco-IPTV, coaxial cable systems, and other forms of innovative managed online streaming services where local channels and other content are combined with over-the-top online streaming options.

¹ WTA – Advocates for Rural Broadband is a trade association representing approximately 250 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 *In re* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Federal Communications Commission, MB Docket No. 14-16, Notice of Inquiry (2014).

As relatively new entrants in the video market, WTA's members urge the FCC to ensure that the current rules governing the video marketplace are fair for small rural video providers who consistently struggle to obtain video content at reasonably comparable or affordable prices while competing against large national video distributors. To assist the FCC in its analysis, WTA offers the following description of the importance of rural telcos offering competition in the video market, the problems rural telcos face in providing a competitive video service, and the regulatory solutions that will help to end the unfair regulatory advantages enjoyed by broadcasters and end content owners' unfair market practices.

II. The Importance of Telco-based Video Competition in Rural Markets

Through their entrance into the video market, rural telcos offer consumers an important competitive alternative to Satellite TV providers (DBS), as well as small independent cable MVPDs that usually do not offer service outside of population centers. Further, by providing video delivery services, WTA's members are able to offer valuable discounts for consumers by bundling together voice, data, and video services. As the FCC has recognized, these bundles help to encourage and sustain broadband adoption³ and allow rural consumers to have access to a choice of video services comparable to urban and suburban areas.

Rural telcos are on the forefront of offering hyper-local programming through their MVPD services including coverage of local high school sports, weather, and other public interest programming. In addition to their MVPD offerings, rural telcos often serve as an important local source for the sale of and support for online video streaming solutions such as Roku and Apple TV. Rural telcos play a critical role in supporting online video services by ensuring their broadband networks are ready to support the rapidly increasing demand for video streaming. Unlike large broadband providers in urban markets that have succeeded or are projected to succeed in receiving financial support from online video services for their network investments, rural telcos have been working on their own to ensure a seamless online video streaming

³ Federal Communications Commission, Connecting America: The National Broadband Plan (2010), 172.

experience by investing in network caching solutions and continuous upgrades to high-capacity broadband infrastructure.

III. Current Rules Governing the Video Content Market Threaten Rural Telcos' Ability to Offer a Competitive MVPD Service

Existing retransmission consent and video market rules have failed to ensure a level playing field for rural telcos as they enter the video market. Rural telcos face consistent challenges in acquiring programming from broadcasters and other content owners at comparable and reasonable prices. Unfair regulatory advantages available to broadcasters based on out of date video laws, combined with anti-competitive practices from both broadcasters and other content companies that take advantage of rural telco's small customer base have resulted in dramatic price increases for broadcast and affiliated non-broadcast content. During retransmission consent negotiations, broadcast stations are able to offer prices on a near take-it-or-leave-it basis with little room for price flexibility. As a result, rural telcos are forced to pay high retransmission consent fees that are often much higher per subscriber than paid by competing national video distributors.

The ever-increasing retransmission consent prices are due in part to the unfair regulatory advantages that broadcasters have including the network non-duplication rule, MVPD basic channel buy-through requirements, and "sweeps week" blackout protections. Under the network non-duplication rules, MVPDs are prohibited by rule from seeking alternative sources of programming when prices for broadcast programming in their areas are doubling or tripling. This rule restricts competition among broadcast stations and results in artificially high retransmission prices. Similarly, the basic channel buy-through rules (that do not apply to DBS competitors) essentially force consumers to pay for broadcast programming that is otherwise available to them free over the air. Finally, the "sweeps week" blackout protections that prohibit MVPDs from dropping programming during times where network ratings are determined provide broadcasters with protections that are unavailable to rural telco MVPDs. This clear advantage has been used by broadcasters to time retransmission consent negotiations to occur around popular sporting or cultural events such as the Super Bowl, thus creating powerful leverage for broadcasters in

negotiations leading to higher prices for retransmission consent agreements. Ultimately, these unfair regulatory advantages prevent rural telcos from seeking alternative access to network programming, decrease consumer choice, and serve to raise prices for MVPDs and consumers.

To make matters worse, content owners frequently engage in anticompetitive practices including forced tying and forced tiering. When engaging in forced tying, content owners require MVPDs to purchase unwanted affiliated content in conjunction with “must have” broadcast or non-broadcast programming. Forced tying increases MVPD content costs by forcing them to carry channels that most of their customers do not demand. This practice is often accompanied by forced tiering where content owners offer prescriptive licensing agreements that force both their content onto the MVPD’s most penetrative tiers.⁴ Forced tiering prevents rural telcos from offering a variety of content packages to their customers. As a result, rural telco video providers are forced to sell large video packages that often include irrelevant and unwanted programming resulting in higher prices to consumers.

More recently, broadcast stations with different owners have started conducting joint negotiations through the use of the shared agents, Shared Sales Agreements (SSAs), and Joint Service Agreements (JSAs). These agreements restrict the level at which broadcast stations must compete against each other for carriage on MVPD systems. If faced with a shared agent during retransmission consent negotiations, rural telcos are then left with the prospect of losing two or more signals within a market at once, resulting in significant pressure to give in to broadcaster demands for higher prices. Even in situations where there is no explicit joint negotiation agreement, JSAs and SSAs often result in such closely overlapping operations between separately owned broadcast stations that the “independently” negotiated retransmission consent agreements are nearly identical. Combined, joint negotiation agreements, JSAs, and SSAs have begun to increase retransmission consent prices for rural telco MVPDs. While they may be

⁴ Forced tiering has been a consistent problem in the past, however recent iterations of licensing agreements have started to require specific penetration requirements in the range of 85% to 90% rather than a more generic requirement such as requiring carriage on the tier with the highest penetration. As a result, it is far more difficult for MVPDs to offer a variety of programming tiers because so much content must be on a tier with 85% or more penetration. Therefore, some rural telco MVPDs can only offer a very basic tier as required by law and a tier that has everything else. This results in less flexibility and higher prices for consumers.

seemingly procompetitive for some purposes such as sharing expensive broadcast equipment, the anticompetitive results of such agreements cannot be ignored.

In addition to the difficulties rural telcos face in obtaining content at reasonable prices, rural telcos must often contend with illogical designated market areas (DMAs) and broadcast signals that fail to reach all or portions of their service area. Since rural telcos operate in large sparsely populated geographic areas, consumers in some portions of their service area may prefer to receive broadcast signals from a different DMA because they feel more connected to the local programming of one area over another. The process for changing DMAs is fraught with complexity and is often complicated by fights between broadcast stations that hope to retain their existing retransmission consent contracts.

Some rural areas may not even be able to receive the over-the-air signal of one or more major network broadcast signals due to a lack of investment in broadcast technologies, the unique topography of that particular rural area, or the inherent properties of digital broadcast signals. Therefore, delivery via an MVPD that has obtained retransmission consent becomes the only reliable method by which consumers in that area are able to view the channel. However, during any hypothetical retransmission consent dispute where a signal is blacked out, some rural consumers are unable to get the broadcast signal by using a digital antenna, despite the existence of public spectrum dedicated to the delivery of those broadcast signals.

IV. The FCC Must Act to Level the Playing Field for Rural Telcos Attempting to Offer Competitive MVPD Services

WTA urges the FCC to enact reforms of its current video regulations that would: eliminate the unfair regulatory advantages held by broadcasters; prohibit content owners from engaging in unfair and anticompetitive negotiation and sales practices; allow MVPDs to have more flexibility in delineating which DMA portions of their service area fall in; require broadcasters to ensure their signals actually reach consumers before they must pay retransmission consent fees; and ensure that small rural telco MVPDs are able to obtain content at comparably reasonable prices to their larger national competitors.

The FCC should analyze possible avenues for repealing or mitigating the network non-duplication, basic tier buy-through, and “sweeps week” protection rules. These rules unfairly advantage broadcasters during negotiations by preventing MVPDs from seeking alternative broadcast signals, forcing consumers to buy broadcast channels, by law, in order to obtain premium channels, and enable broadcasters to engage in brinksmanship during negotiations without fearing reciprocal negotiating tactics during those periods important to broadcast ratings. Additionally, the FCC should prohibit content owners, both broadcast and non-broadcast, from engaging in forced tying and forced tiering by declaring these practices as *per se* bad faith negotiation tactics. These anticompetitive practices unfairly drive up the cost of obtaining programming by foisting unwanted channels on to MVPD systems and into particular channel tiers, preventing MVPDs from offering a variety of flexible content packages resulting in increased prices for consumers. Further, the FCC should implement rules through which small rural MVPDs with subscribership under a certain threshold are able to obtain video content at reasonably comparable prices to the prices larger national MVPDs and to ensure that retransmission consent fees are public information to prevent negotiations from taking place in an information vacuum. The rule changes explored above would encourage additional rural telcos to successfully enter the MVPD market. With telco MVPD entrants, rural areas will benefit from competition between MVPDs, rather than rural areas being ceded to national distributors that do not offer additional local programming and lack the capability to offer high capacity broadband. Finally, the FCC should fix the long broken DMA and broadcast signal issues by granting MVPDs and their consumers the flexibility to determine which DMAs all or parts of their service area are located, thus enabling rural consumers to view their preferred local broadcast signal and be able to obtain over-the-air broadcasts if desired.

Respectfully Submitted,

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