

**Response of WTA – Advocates for Rural Broadband
to Senate Commerce, Science, and Transportation Committee Questions on STELA
Reauthorization**

March 17, 2014

I. Introduction

WTA – Advocates for Rural Broadband (WTA)¹ offers these comments in response to the letter released by Senators Jay Rockefeller, John Thune, Mark Pryor, and Roger Wicker of the Senate Commerce, Science, and Transportation Committee requesting public input on the proposed reauthorization of the Satellite Television Extension and Localism Act (STELA). WTA commends the Senators for taking the initiative to seek public comment and for committing to analyze the overarching video market during their review of current law.

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.

As relatively new entrants in the video market, WTA's members urge Congress to take this vital opportunity to ensure that the video marketplace is fair for small rural video providers

¹ WTA 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.

who consistently struggle to obtain video content at reasonably comparable or affordable prices while competing against large national video distributors. To assist in the overall reform process, 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 legislative solutions that will 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 Federal Communications Commission (FCC) has recognized, these bundles help to encourage and sustain broadband adoption² 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 an important 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 experience by investing in network caching solutions and continuous upgrades to high-capacity broadband infrastructure.

² Federal Communications Commission, Connecting America: The National Broadband Plan (2010), 172.

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

Existing retransmission consent and video market rules had 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 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 higher per subscriber retransmission consent fees than competing national video distributors. Further, broadcasters have unfair regulatory advantages including the network non-duplication rule, basic channel buy-through requirements that force consumers to buy broadcast tiers in order to obtain premium channels, and "sweeps week" blackout protections. These rules prevent rural telcos from seeking alternative access to network programming, decrease consumer choice, and provide broadcasters with protections that are unavailable to rural telco MVPDs during popular sporting or cultural events such as the Super Bowl.

To make matters worse, content owners frequently engage in anticompetitive practices including forced tying and 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 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. 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.

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. Some rural areas may not even be able to receive the over-the-air signal of one or more major network broadcast signal 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. Congress Must Act to Level the Playing Field for Rural Telcos Attempting to Offer Competitive MVPD Services

WTA urges Congress to take the opportunity, while contemplating the reauthorization of STELA, to enact broader video law reforms 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 broadcast signals to 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.

Congress should repeal 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, Congress should prohibit content owners, both broadcast and non-broadcast, from engaging in forced tying and forced tiering. 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, Congress should empower the FCC to 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. In the spirit of STELA and its predecessors where Congress acted to ensure DBS providers were able to enter the video market, these provisions would enable rural telcos to successfully enter the MVPD market. With a rural telco MVPD entrant, 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, Congress should fix the long broken DMA and broadcast signal issues that prevent some rural consumers from viewing their preferred local broadcast signal and other consumers from being able to watch over-the-air broadcasts.