Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking to Amend the Commission's Rules	)	RM 11728
Governing Practices of Video Programming Vendors	)	

SUPPORTING COMMENTS OF
WTA – ADVOCATES FOR RURAL BROADBAND

WTA – Advocates for Rural Broadband ("WTA") hereby supports the Petition for Expedited Rulemaking of Mediacom Communications Corporation ("Mediacom") to amend the Commission's Rules governing the practices of video programming vendors. See Public Notice (*Deadline Extended for Comment on Mediacom Petition for Rulemaking to Amend the Commission's Rules Governing Practices of Video Programming Vendors*), RM 11728, DA 14-1167, released August 11, 2014.

WTA – Identity and General Position

WTA is a national trade association representing more than 250 small rural telecommunications providers that offer voice, broadband and video services in some of the most remote, sparsely populated and hard-to-serve rural areas of the country. Most WTA members serve fewer than 3,000 access lines in the aggregate, and fewer than 500 access lines per exchange. Whereas the typical WTA member started out as a rural telephone company providing voice services in a farming, ranching, mining or wilderness area that larger telephone companies were not interested in serving, most WTA members have now evolved far down the path toward becoming broadband providers of voice, data and video services. Many WTA members are presently offering cable television ("CATV") or Internet Protocol television

("IPTV") services over traditional coaxial cable facilities or over hybrid fiber-copper digital subscriber line ("DSL") systems or fiber to the home or curb ("FTTH" or "FTTC") facilities.

WTA commends Mediacom for a well researched and well reasoned presentation of the content pricing, channel tying, forced bundling, tier placement, minimum penetration requirement and similar video programming vendor issues that presently plague mid-sized and small CATV and IPTV providers in their efforts to meet their customers' video program needs.[1] At this time, WTA has not completed the internal governance procedures necessary to allow it to take formal positions on the rule changes proposed by Mediacom to address these issues, or to propose rule changes of its own. However, WTA can verify at this time that the video programming issues identified and described by Mediacom also constitute very serious problems for WTA members that provide CATV or IPTV services.

Basic Concerns of WTA Members

Video content costs are so high at the present time that the CATV/IPTV operations of most WTA members either just break even or operate at a loss. These video content costs – both for retransmission consent for off-air network television channels and for access to popular satellite program channels – account for the bulk of monthly CATV/IPTV bills and are escalating so rapidly that most WTA members fear for the future viability of their CATV/IPTV operations. WTA members have been upgrading their networks to provide higher and higher capacity broadband services, and urgently desire to provide their rural customers with the high-

[1] WTA is not aware of its members encountering significant instances of blocking by video programming vendor websites of access by their Internet access service customers, or of disabling by video programming vendors of lawful and non-harmful applications that permit time-shifting and/or space-shifting. If such blocking of access or disabling of applications is significant, it would appear to constitute behavior by websites and third party vendors that would be a violation of the Commission's Open Internet rules if they were Internet service providers. The Commission should take a careful look at Mediacom's allegations, for either: (a) the Open Internet rules should operate in both directions; or (b) websites and vendors that engage in blocking and application disabling activities should not be able to claim the protection of the Open Internet rules.

quality video services well-suited to be delivered over broadband. However, they cannot afford to continue to bear ever-increasing losses on their CATV/IPTV services as their content costs increase much faster than the video service rates their rural customers are willing and able to pay.

These unfortunate circumstances are exacerbated by the fact that the CATV/IPTV operations generally serve only a few hundred or thousand customers, and consequently are not a material audience or revenue source for most video programming vendors. Even in smaller television markets, WTA member CATV/IPTV systems operating beyond the Grade B contours of network television stations do not provide enough of an incremental additional audience to impact Nielsen ratings or advertising rates. Consequently, WTA member CATV/IPTV systems are rarely offered retransmission consent at discounted or otherwise reasonable rates that reflect the facts that they are extending the television station's coverage beyond the area where it could otherwise be viewed and that this extended coverage costs the television station nothing. Rather, the typical network television station negotiation approach with outlying small rural CATV/IPTV systems is: "Here is our retransmission consent agreement containing our restrictive conditions and substantially increased retransmission consent rates that will increase even further in Years 2 and 3. Take it or leave it."

Although many WTA members are included among the 900-to-1,000 members of the National Cable Television Cooperative ("NCTC") with access to purchase many satellite program services through NCTC,[2] it appears that the program content rates they pay through NCTC are still significantly higher than those paid by the large CATV multiple system operators

[2] Other WTA members jointly purchase programming through the National Telco Television Consortium ("NTTC").

("MSOs") and the direct broadcast satellite ("DBS") networks.[3] With respect to those national and regional satellite video programming vendors that refuse to sell their content through NCTC and/or NTTC, WTA member CATV/IPTV systems are in an even less material and more vulnerable negotiating position than with respect to local network television stations. Virtually all "negotiations" are on a "take it or leave it" basis, and rates and conditions increase with virtually every renewal.

Retransmission Consent and Satellite Channel Price Increases

During recent years, both retransmission consent rates and satellite programming rates have increased at a rate much higher than the Consumer Price Index, Wholesale Price index, or any other generally accepted measure of price levels and inflation. For example, Phillip Dampier reports that the cost of basic cable has risen 3.5 times the rate of inflation over the past fifteen years because of the demands from networks for higher programming fees.[4]

For example, one rural midwestern WTA member has already received a retransmission consent proposal for the 2015-2017 period from a network television affiliate that calls for increases in the per-subscriber retransmission consent rate of 50% for 2015, 65% for 2016 and 75% for 2017. Another rural midwesterrn WTA member has recently received a proposed retransmission consent agreement from a substantial multiple television station owner demanding compensation during the 2015-2017 period that more than doubles the current per-subscriber rate. A rural western WTA member reports that the 2015-2017 retransmission

[3] Because the rates charged by most video programming vendors are confidential rather than transparent, WTA cannot presently prove the existence of these suspected price differentials. However, several WTA members that operate near MSOs and compete with DBS networks believe that the price differentials between their services and the MSO/DBS services can be explained only if the MSO/DBS services are paying much lower rates for their video content.

[4] http://stopthecap.com/2014/06/05/independent-cable-companies-unify-against-cable-tv-programmer-rate-increases (visited 9/29/14).

consent contracts it has recently received from the ABC, CBS, FOX, NBC and Univision network affiliates in its television market contain increases of from 100 percent to 175 percent over its current retransmission consent rates. Finally, a southwestern WTA member has indicated that the retransmission consent contract it has recently received from a multiple television station owner begins with a rate increase of 47 percent for 2015 and ends with a 100 percent increase over the current rate for 2017. If past is prologue, these television stations will not significantly (if at all) reduce their compensation demands during “negotiations” and the WTA members will be forced to decide during the week between Christmas and New Year’s Eve whether to pay the increased price and increase their CATV/IPTV rates once again, or to reduce the quality of the CATV/IPTV service they offer by dropping one or more stations that provide regional news and weather but are not generally obtainable by their subscribers off the air.[5]

Similarly, Viacom sought earlier this year to double the per-customer rates for virtually all of its satellite channels (including Nickelodeon, TV Land and BET) that were being purchased by many WTA member CATV/IPTV operations through NCTC.

Wholesale Bundling and Channel Tying Demands

Increasingly WTA member CATV/IPTV operations are forced to purchase (and require their customers to purchase) weaker and less popular program channels as an express or implied (but actual) condition of obtaining popular channels. It is not clear why this practice has not yet been prohibited or restricted under the anti-tying provisions of antitrust law.

[5] Given that retransmission consent impasses generally take place at the end of a year, CATV/IPTV subscribers are often further annoyed and disrupted by the fact that they miss such popular programming as college football bowl games, NFL playoff games and the Oscar awards even if the retransmission consent compensation differences are resolved during January.

Whereas Phillip Dampier, *supra*, reports that the average household watches approximately 16 television channels with any degree of regularity, the major video programming vendors package their channels so as to force CATV and IPTV operators to purchase many channels that they do not want in order to get those that their subscribers want. The ABC/ESPN/Disney media entity appears to be a major offender here, requiring CATV and IPTV operators to take a significant number of "classic" (*i.e.*, re-runs of old games) and regional sports channels that are of little or no interest to major parts of the country in order to obtain its premier ABC Family, ESPN and Disney channel. One WTA member reports that CATV/IPTV operators in the West have been forced to take the ESPN Southeastern Conference ("SEC") sports channel in which they and their subscribers had little interest, place the SEC channel on their lowest tier, pay a significant monthly rate for the SEC channel, and add new equipment to receive it – all if they wanted to be able to continue offering the popular ABC Family and Disney channels.

Bundling and channel tying forces both CATV/IPTV operations and their customers to take and pay for additional channels that they do not really want, and that they would not purchase if offered individually. The resulting 100+ channel CATV/IPTV "white elephants" serve no "purpose" other than to increase the revenues and profits of a small number of video programming vendors at the expense of consumers who end up either losing service or service quality, or paying ever-increasing rates for CATV/IPTV service without any corresponding increase in quality, value or enjoyment.

Tier Placement and Minimum Penetration Requirements

Tier placement and minimum penetration requirements work hand-in-hand with bundling and channel tying requirements, for they prevent CATV/IPTV operators from placing weaker and less popular program channels on additional tiers that many consumers may decide not to purchase. By requiring their weaker and less popular channels to be placed on specific tiers or on the most popular tier or tiers (*i.e.*, those with high minimum penetration rates), video program vendors can make sure that CATV/IPTV providers and their customers actually take and pay for the weaker and less popular channels subject to bundling and channel tying arrangements.

Discriminatory Volume-Based Discounts

Viacom appears to have been charging WTA member CATV/IPTV operations about 30-to-40 percent more per customer through NCTC than it was charging DBS providers.

It is not clear how or why these substantial price differentials are justified. Normally, an economic justification for price differentials might be found to result from; (a) differing costs of production and distribution; (b) economies of scale in billing, collection and administrative costs; and/or (c) differing risks of non-payment and default.

With respect to video programming, the production costs are complete when the program is finalized for distribution, and do not increase no matter how few or many consumers receive and view the distributed program. Likewise, the cost of distribution via a broadcast signal or a satellite beam is fixed at the time of transmission and does not change significantly due to the number of ultimate recipients.

Whereas billing, collection and administrative costs, as well as the risk of non-payment or default, may differ between large and small entities, it is not clear whether (and, if so, how much) they differ among large entities such as NCTC, the various MSOs and DBS providers. Whereas NCTC has fewer customers (approximately 5 million aggregated small company subscribers) than other video distributors such as Comcast (approximately 21 million subscribers), Direct TV (approximately 20 million subscribers), Dish Network (approximately 14 million subscribers) and Time-Warner Cable (approximately 11 million subscribers),[6] it would appear that, once an entity reaches a certain substantial size (for example, a million subscribers), economies of scale and risk differentials become relatively stable and comparable. Moreover, WTA members report that the "billing and collection" process for most video programming vendors consists of the CATV/IPTV operator sending the vendor each month the applicable subscriber count plus a check or electronic funds transfer in the amount of that subscriber count times the governing per-subscriber rate. In other words, many video programming vendors do not have any billing costs, and need only track and account for payments.

At minimum, the Commission should undertake a thorough study to examine and analyze the basis of the substantial and apparently discriminatory volume discounts provided by video programming vendors to certain of their large customers, and to determine whether these volume discounts are reasonable and economically justified, or whether they should be prohibited or restricted.

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[6] Subscriber estimates found in Phillip Dampier article, *supra*.

Conclusion

Although WTA is unable to take formal positions on the rule changes proposed by Mediacom or to propose its own modifications, WTA hopes that the information contained in its comments provide further context under which the Commission may consider the Petition. WTA and its members are eager to work with the Commission and stakeholders to address the major issues inhibiting competition in the video marketplace, beginning with an expedited rulemaking to consider the state of the market and Mediacom's proposals.

Respectfully submitted,
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