Mark M. Gailey
President
Kelly Worthington
Executive Vice President

Response of WTA – Advocates for Rural Broadband to the House Energy and Commerce Committee's White Paper on Regulation of the Market for Video Content and Distribution

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In its White Paper on *Regulation of the Market for Video Content and Distribution,* the House Energy and Commerce Committee ("Committee") requests public comment on several issues regarding the current model for regulation in the video content and distribution marketplace and whether certain developments in the market necessitate legislative action.

WTA – Advocates for Rural Broadband ("WTA") is a national trade association representing more than 280 small rural telecommunications providers that serve some of the United States' most remote, difficult and expensive-to-reach areas and are providers of last resort to those communities. Most WTA rural local exchange carrier ("RLEC") members serve fewer than 3,000 access lines in the aggregate and fewer than 500 access lines per exchange. Whereas WTA members were predominately providers of voice services over traditional copper telephone networks during the early 1990's when the Cable Act of 1992 and Telecommunications Act of 1996 were being debated and enacted, they have now evolved far down the path toward becoming providers of increasingly higher-capacity broadband data, video and voice services over more and more fiber-intensive hybrid fiber/copper networks. They are also in the midst of converting from Time Division Multiplexing ("TDM") to Internet Protocol ("IP") technology.

The main challenge WTA members face in providing high-quality and affordable video services to their customers is the escalating cost of acquiring retransmission consent for broadcast network stations and distribution rights for "must have" satellite program channels. This isn't a challenge faced solely by WTA members; content prices are increasing at a rapid rate for all multichannel video program distributors ("MVPDs"). However, WTA members—many of

Headquarters 1361 Elm St., Suite 7, Helena, MT 59601 T: 406.443.6377 www.w-t-a.org
DC Office 317 Massachusetts Avenue, NE, Suite 300 C, Washington, DC 20002 T: 202.548.0202

which have fewer than 1,000 video customers and few of which have more than 3,000 video customers—have virtually none of the market power necessary to convince content providers to lower their per-subscriber prices or ease their carriage terms. Even where they are able to participate in larger buying groups such as the National Cable Television Cooperative ("NCTC"), WTA members believe that they pay significantly higher prices per subscriber than the larger multiple CATV system and Direct Broadcast Satellite ("DBS") operators for most or all content, and that there is no meaningful economic basis for the lower prices or volume discounts furnished to the large operators. The combination of above-average and increasing content prices charged to small rural video providers with the limited and below-average incomes of many rural residents has resulted in a "video price squeeze" that has affected WTA members and other small rural video distributors more severely than the rest of the industry that benefits from lower programming costs as a result of volume-based and other price discounts.

Beyond the exponentially increasing per-subscriber costs of video programming charged by broadcasters and satellite video programmers, anti-competitive practices such as forced tying and tiering further limit the ability for WTA members to provide their customers with the content they want without also having to purchase and charge their customers for additional and undesired content.

The provision of video services constitutes an excellent opportunity for WTA members and other rural telephone companies to provide services desired by their rural customers, to encourage increased adoption of broadband by their existing and potential rural customers, and to generate additional revenue streams needed to deploy higher capacity broadband facilities in a world where critical universal service support programs are increasingly limited. Unfortunately, as a result of the aforementioned content pricing and carriage conditions, many WTA members have video businesses that are barely profitable, break even, or operate at a loss. A few WTA members have already shuttered their video businesses because they could not justify continuing losses with little or no relief in sight, and more are seriously considering doing so.

Several reforms to current regulation of the video distribution market can help alleviate the financial squeeze experienced particularly by rural video providers. Congress needs to limit the blank check that Section 325(b) of the Communications Act gives to commercial broadcast stations that has been increasingly abused by the demands of major network affiliates for increasingly onerous compensation for providing their written retransmission consent.

Congress also needs to address the increasing concentration of the video content industry that is responsible not only for rapidly increasing prices for the most popular satellite video channels, but also for increasingly intrusive tying and tiering conditions that increase the costs of CATV and IPTV providers and force them to sell service packages that are larger and more expensive than their subscribers want.

WTA recognizes that regulation of retransmission consent and satellite video program prices would be extremely complex, and would be likely to implicate constitutional issues as well as economic and administrative difficulties. However, WTA believes that there are effective ways to address the foregoing problems that do not entail price regulation.

The most comprehensive and effective solution would be to require MVPDs to sell all of their program services or channels to the public on an *a la carte* basis, and to prohibit any local cable franchise or program contract provisions that impair or preclude such *a la carte* pricing. In the alternative, Congress could make *a la carte* pricing by MVPDs voluntary rather than mandatory, but still prohibit any local cable franchise or program contract provisions that would impair or preclude an MVPD's option to adopt *a la carte* pricing. The advantage of *a la carte* pricing is that commercial broadcast stations and satellite content providers could charge whatever they wish for their programming, and their prices would not be regulated. Rather, their focus would have to change: (a) from forcing MVPDs to purchase and package expensive channels that are not wanted by all of their subscribers; (b) to offering their channels to the public at prices that are designed to meet their audience and advertising revenue objectives. *A la carte* pricing would be a major benefit to consumers, who would be able to design their own video services and purchase the channels they actually watch rather than paying for hundreds of channels in which they have little or no interest.

Other potential retransmission consent reforms include: (a) prohibiting commercial television stations from requiring retransmission consent compensation from MVPDs that serve areas beyond the viewable range of their over-the-air signals; and (b) requiring commercial television stations to include complete and non-redacted copies of all operative retransmission consent agreements in their public files, and to list the rates for all of their existing retransmission consent agreements in clearly marked and readily accessible sections of their websites. Rural MVPDs perform a major service for commercial television stations by extending their signals beyond the areas (once known as Grade A and Grade B contours) where they can be viewed off-

the-air, and thus enable the broadcasters to charge advertisers for audiences that they otherwise would not be able to reach. Congress should prohibit commercial television stations from charging compensation for retransmission consent in areas where they cannot provide a viewable off-the-air signal of acceptable quality. In the alternative, retransmission consent compensation in such areas should be limited to a percentage (*e.g.*, 10%) of the weighted average compensation rate charged by the broadcast station within its off-air service territory. Another proposed reform -- requiring the disclosure of retransmission consent agreements and compensation -- would increase transparency for consumers and distributors alike.

Satellite video programming vendors should also be subject to transparency requirements with respect to the video channels they distribute over the public airwaves in interstate commerce. Again, WTA sees no need to regulate the general ability of content providers to set the prices they feel are appropriate; it only requests that these prices be required to be listed in clearly marked and readily accessible sections of their websites. However, where content providers offer volume discounts or other price breaks to certain video distributors, they should be required to demonstrate legitimate business reasons and specific economic justifications for such arrangements.

Lastly, Congress should eliminate the network non-duplication and syndicated exclusivity rules because there is no evidence that the rules meet their intended goals of fostering local programming.

Responses to the Committee's Specific Questions

1. **Broadcasters face a host of regulations based on their status as a "public trustee."**
    a. **Does the public trustee model still make sense in the current communications marketplace?**

At its conception, the "public trustee model" provided that private licensees would get exclusive rights to control and use broadcast spectrum at no charge and in turn would have a series of public interest obligations, including public affairs programming, local programming, equal employment opportunities, and access for the disabled. WTA leaves it to others to debate the impacts of market changes on the public trustee model, but believes the Committee must consider the extent to which broadcast television stations are satisfying their local programming and other public interest obligations.

It is also imperative that the Committee considers whether and how current retransmission consent practices are consistent with a public trustee model. In particular, the CATV/IPTV systems of WTA members and other rural video providers allow broadcast stations to be viewed in rural households far beyond the range of their off-air signals. Yet, notwithstanding this expansion of their audiences and their advertising revenues without any cost, broadcast stations have continuously and substantially increased the retransmission consent fees they charge rural CATV and IPTV systems. Furthermore, after the implementation of the Digital Transition and Public Safety Act in 2009, broadcast signals do not carry as far as before and are less able than their analog signal counterparts to overcome topographic and other obstacles. As a result, small rural MVPDs now, more than ever before, are assisting broadcasters to meet their public trustee obligations by extending their signals to viewers who are otherwise unable to receive a good quality signal or any signal at all.

Whereas broadcasters for the first decade after the development of the retransmission consent regime did not charge for retransmission consent but rather relied on other carriage requirements, broadcasters have begun charging MVPDs increasingly large per-subscriber fees in addition to requiring other burdensome carriage conditions. Furthermore, whereas national networks previously paid affiliate stations to air their programming, the national networks appear increasingly to be dictating the terms of retransmission consent in addition to demanding larger and larger portions of retransmission consent fees from their affiliates through reverse compensation payments. Because small rural MVPDs in particular increasingly assist broadcasters to meet their public trustee obligations at the same time that they are forced to accept without any meaningful negotiation substantial increases in retransmission consent fees, WTA proposes that commercial television stations be prohibited from charging compensation for retransmission consent in areas where they cannot provide a viewable off-the-air signal of acceptable quality. In the alternative, retransmission consent compensation in such areas should be limited to a percentage (*e.g.*, 10%) of the weighted average compensation rate charged by the broadcast station within its off-air service territory. Limiting the ability of broadcasters to charge fees for retransmission consent outside of their actual off-air coverage areas would be an equitable adjustment that would more closely align with the notion of broadcasters as public trustees.

Furthermore, there are reports of national networks increasingly dictating to affiliate stations the consideration and terms for retransmission consent that must be secured in negotiations with

MVPDs in addition to the networks increasingly demanding that affiliates pass along larger and larger portions of retransmission consent revenues in "reverse compensation" to the national networks.[1] Congress should investigate these alleged practices to determine whether they are consistent with the role of broadcasters as public trustees.

b. Which specific obligations in law and regulation should be changed to address changes in the marketplace?

Please refer to the response to Question 1(a) for WTA's response to this question.

c. How can the Communications Act foster broadcasting in the 21st century? What changes in law will promote a market in which broadcasting can compete with subscription video services?

Broadcast television is a free, off-the-air service that already serves as an alternative to "subscription video services" within the coverage area of the broadcast signals. In addition to providing service for free to those who are able to receive its signal off-the-air, a broadcast station can also elect to require an MVPD to carry its channel or alternatively can negotiate retransmission consent agreements with MVPDs for carriage. Any additional measures beyond providing broadcasters free use of a public resource for distribution and the right to demand carriage on competing subscription video services would further unjustly skew the video market in favor of broadcasters at the expense of new and alternative sources of video content.

d. Are the "local market rules" still necessary to protect localism? What other mechanisms could promote both localism and competition? Alternatively, what changes could be made to the current local market rules to improve consumer outcomes?

The "local market rules" (*i.e.*, the network non-duplication and syndicated exclusivity rules) originally written in the 1960s—when traditional cable was the only video distribution other than broadcast—are no longer necessary to protect localism. In the experience of WTA members, the threat of network non-duplication enforcement comes primarily during contentious retransmission consent negotiations when the network affiliate in the Designated Market Area ("DMA") refuses to reduce its compensation demands and threatens to invoke the network non-duplication rule if the CATV or IPTV provider tries to substitute the adjacent market affiliate. WTA is not aware of any instances of enforcement of the syndicated exclusivity rule in recent

[1] *See* Adam Buckman, *Nets Hold Upper Hand in Affiliate Relations*, TVNewsCheck (Jan. 7, 2015), available at http://www.tvnewscheck.com/article/82002/nets-hold-upper-hand-in-affiliate-relations (last accessed Jan. 16, 2015); Brian Stelter, *Network Wants Slices of a New Pie*, New York Times (Jul. 3, 2011) available at http://www.nytimes.com/2011/07/04/business/media/04retrans.html?_r=0 (last accessed Jan. 16, 2015).

years due to the technical complexity and number of syndicated programs and episodes airing at any given time in a DMA.

Furthermore, the video marketplace has changed significantly since the time when broadcasters were the dominant video providers. The local market rules were written when cable was seen as the only viable competitor to local broadcast stations. However, the video distribution market now includes competition from broadcasters, cable providers, telco video providers, national satellite distributors, new over-builders like Google, and linear and on-demand online video distribution platforms. Moreover, the national networks themselves have begun (or have announced plans) to stream over-the-top the same content these rules require cable and satellite providers to black out in order to protect the viewership and advertising revenues of local network affiliates. For example, CBS has announced a stand-alone streaming service for $5.99 per month[2] while NBC has announced its own live-streaming service for all 10 of its network-owned stations.[3] Therefore, the national networks are diluting exclusivity in direct competition with network programming aired on their affiliates, while the network non-duplication rules continue to block adjacent market network affiliates from doing the same thing even if they share a community of interest (for example, by providing in-state news and public affairs programming) with a blacked-out cable community.

Furthermore, there is no evidence that network non-duplication or syndicated exclusivity in today's video marketplace truly fosters local programming as originally intended. According to a Federal Communications Commission ("FCC") report from 2011, local news programming accounted for an average of only 11.5 hours per week, amounting to just 7 percent of broadcast hours.[4] Similarly, the FCC has also found that approximately 30.6 percent of all commercial broadcast stations air no local news programming whatsoever.[5] Broadcast stations cover local public affairs even more sparingly, with an average of just 1.5 hours per week—not even 1 percent of total broadcast hours—of local public affairs programming on commercial broadcast

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[2] *See* Brian Steinberg, *CBS News to Launch Video Streaming Service Thursday*, Variety, (Nov. 5, 2014) available at http://variety.com/2014/tv/news/cbs-news-to-launch-video-streaming-service-thursday-1201348413/ (last accessed Jan. 16, 2015).

[3] *See* Don Reisinger, *NBC Pushes Live Streaming to PCs*, CNET (Dec. 16, 2014) available at http://www.cnet.com/news/nbc-pushes-live-streaming-to-pcs-as-tv-everywhere-heats-up/ (last accessed Jan. 16, 2015).

[4] *See* Jack Erb (2011) *Local Information Programming and the Structure of Television Markets, Federal Communications Commission Media Ownership Study #4*.

[5] Steven Waldman and the Working Group on Information Needs of Communities (2011). *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Federal Communications Commission, p. 302.

stations.[6] The market has also seen an increase in consolidation of local news resulting from broadcast acquisitions and broadcasters sharing resource for coverage of local news. In one WTA member's market, for example, Sinclair Broadcasting acquired two network affiliate stations and immediately eliminated the entire news team from one affiliate. In a blow to the goals of localism and diversity of voices, those separate stations now air the same local news programming created by the same news team.

Another adverse impact of the network non-duplication rules is their obstruction of the ability of small rural MVPDs in particular to negotiate retransmission consent with adjacent market broadcast stations that provide in-state news, public affairs and sports programming of interest to their customers. Often rural MVPDs are located within a DMA that does not correspond with an MVPD's customers' true community of interest. For example, some rural cable communities are located in one state but are designated as being located in the DMA of a city in an adjacent state. This leaves rural MVPDs with the difficult choice of incurring the higher cost of offering their customers two affiliates of the same network while blacking out the national network programming of the distant station (and leaving the potential for customer confusion and frustration) or offering only out-of-state broadcast stations and out-of-state local programs to which their customers do not relate. Elimination of the network non-duplication rule would allow small MVPDs, especially those at the edge of DMAs with which they have minimal community of interest, to choose to carry an in-state adjacent DMA network affiliate without the threat that the DMA network affiliate will force black-outs of all network programs, or to carry both the in-state and DMA network affiliates in their entirety without black-outs that aggravate their subscribers.

2. **Cable services are governed largely by the 1992 Cable Act, a law passed when cable represented a near monopoly in subscription video.**

   a. **How have market conditions changed the assumptions that form the foundation of the Cable Act? What changes to the Cable Act should be made in recognition of the market?**

Since enactment of the 1992 Cable Act, the overall, nationwide subscription video marketplace has changed significantly. Traditional cable now faces competition from national satellite providers, regional satellite re-sellers, large telecommunications companies (e.g., Verizon FIOS and AT&T U-verse), and live and on-demand streaming from online video providers. Most

[6] Jack Erb, *Local Information Programming and the Structure of Television Markets, Federal Communications Commission Media Ownership* Study #4, (2011) at 20.

notably, the Internet as a video content distribution platform was entirely beyond the anticipation of most people when Congress passed the 1992 Cable Act. However, now online video platforms include live streaming (e.g., Aereo, SkyAngel, FilmOn, Playstation Vue, Dish Network's over-the-top Sling TV, CBS All Access and NBC's authenticated streaming product), subscription on-demand services (e.g., Amazon Prime, Netflix, Hulu), streaming media players (e.g., Amazon Fire TV, Apple TV, Roku, Google Chromecast), and streaming content directly from a content provider's website. Because the Internet video market is in a nascent stage, it is impossible to know what new and innovative business models for distributing video content online will develop and attain commercial viability in the future.

At the same time, the video marketplace has also seen immense consolidation and concentration among MVPDs and programmers that have created even more difficulty for small video distributors to operate and survive. Despite talk of 500-channel cable systems, most of the "must have" content demanded by consumers originates from six dominant programmers. Five of the six most dominant video programmers are also vertically integrated with an MVPD, a broadcast network, and/or a major motion picture studio.[7] The Walt Disney Company owns ABC broadcast network, the Walt Disney Studios, and the ESPN, A&E, and Disney suites of programming. NBCUniversal is owned by Comcast and owns the NBC and Telemundo broadcast networks, Universal Studios, and more than two dozen cable networks. The News Corporation is owner of the Fox broadcast network, 20th Century Fox, and various cable networks. Time Warner Inc. owns Warner Bros. and the HBO and Turner suites of programming and as well as a portion of the CW broadcast network. Viacom is the owner of Paramount Pictures, and the MTV, Nickelodeon and BET suites of cable networks. Finally, Discovery Communications Inc. owns more than 200 worldwide television networks including the Discovery Channel, Animal Planet, TLC, Investigation Discovery and Science, the Oprah Winfrey Network, and the Hub Network. Further, the FCC's most recent Video Competition Report found that the top five cable MVPDs and DBS MVPDs have ownership interests in at least 161 national programming networks.[8] As the Committee is well aware, the FCC is currently reviewing two mergers of four of the largest national MVPDs (i.e., Comcast Corporation and Time Warner Cable; AT&T and DirecTV) that, if approved, would result in two large MVPDs accounting for nearly half of pay-TV subscribers in the United States.

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[7] *See In re Petition for Rulemaking to Amend Commission's Rules Governing Practices of Video Programming Vendors*, at 2, RM-11728 (filed Jul. 21, 2014).

[8] *See In re Annual Assessment of the Status of Competition in the Market for Delivery of Video Programing*, FCC 13-99, MB Docket No. 13-203 (rel. Jul. 22, 2013) at ¶ 39.

Whatever the competitive situation in urban areas, rural video providers like WTA's RLEC members are often the only wireline video distributor in their rural service areas. Even in the infrequent instances where a CATV system serves a town or small city in a WTA member's service area, such CATV systems virtually never build or serve beyond the town or city limits into the surrounding rural area. Rather, rural video providers like WTA's RLEC members most often compete solely with national wireless satellite providers like DirecTV and Dish Network—both of which appear to pay considerably lower prices for content at "volume-based" discounts not offered to smaller video providers.

The video marketplace has also seen dramatic transformation in the business practices related to negotiations for the rights to distribute video programming that have caused dramatically higher prices to be paid by MVPDs for access to video content and produced much less choice for consumers. Programmers often require tying—that is, requiring a distributor to carry less popular networks in order to obtain rights to carry the most popular networks. Programmers also often require a distributor to place its networks on the "most subscribed tier." This practice ultimately leads to the bloated bundles about which consumers complain. Finally, programmers often give "volume-based" discounts to the largest national distributors while charging small MVPDs higher per-subscriber rates. Forced tying, tiering and volume-based discounts are issues seen across the video marketplace with respect to acquiring retransmission consent as well as satellite video programming.

As a result of these practices, rural MVPDs in particular are experiencing an economic squeeze in the business of distributing video content. As costs of content are increasing exponentially beyond any reasonable adjustment for inflation, MVPDs are only able to pass along so much of the increase to consumers, particularly consumers in rural areas that on average have lower incomes than consumers in other parts of the country.

WTA emphasizes that it does **not** advocate direct governmental regulation of the calculation of program content prices. Rather, it supports the continued freedom of programmers to set prices for their content as long as they treat all distributors equitably without undue preferences or unreasonable discrimination. Specifically, volume discounts and similar multiple-level pricing structures may ultimately be permissible, but should be required to be supported by auditable data and fully justified by specific and measurable cost savings. Given that the cost of

transmitting a satellite signal to the head-end is not likely to differ significantly with the number of subscribers served by the head-end, presumably volume discounts and other per-subscriber pricing differences stem from decreased transaction costs in negotiating carriage and billing and collections efforts. In order to facilitate transparency and equity in the pricing of content, Congress should require content providers to disclose—publicly or to the FCC—the per-subscriber rates charged to MVPDs large and small. In addition, content providers should be required to demonstrate that any volume-based discounts and similar multiple-level pricing structures resulting in different per-subscriber prices for different MVPDs should be based on actual, audited cost differences. To the extent that content providers claim that they have significantly lower costs in negotiating agreements, and billing and collecting their charges from larger MVPDs as compared to smaller MVPDs and buying groups, Congress should require the FCC to conduct a study to determine whether such savings truly exist and are sufficient to warrant the volume discounts currently provided to the larger MVPDs.

b. Cable systems are required to provide access to their distribution platform in a variety of ways, including program access, leased access channels, and PEG channels. Are these provisions warranted in the era of the Internet?

Although the requirements to provide access to cable distribution platforms to small and government content providers served a meaningful purpose in the pre-broadband age, governments and small content providers can utilize the Internet to distribute their programming in a much more inexpensive and efficient manner.

3. Satellite television providers are currently regulated under law and regulation specific to their technology, despite the fact that they compete directly with cable. What changes can be made in the Communications Act (and other statutes) to reduce disparate treatment of competing technologies?

Although certain regulations specific to a video provider's technology might in some cases be appropriate, WTA believes that to the extent feasible, regulation of video distribution should be technologically neutral, and competing technologies should be treated similarly by regulators and content providers alike.

4. The relationship between content and distributors consumes much of the debate on video services.

a. What changes to the existing rules that govern these relationships should be considered to reflect the modern market for content?

Due to the concentration and market power of the video content industry, the prices demanded by programmers for the most popular satellite programming networks have been growing at an increasingly rapid pace. Not only are the prices of "must have" channels increasing much faster that the general inflation rate, not to mention the pace at which CATV and IPTV subscriber rates can be increased, but also WTA members and other small rural MVPDs are too often presented with "take it or leave it" carriage agreements that include 25 percent and greater per-subscriber rate increases. In addition to increased prices, content providers also often make carriage of a new or less popular network a non-negotiable part of the agreement. Other terms related to carriage have also been thrust on small MVPDs. There is also an utter lack of transparency in the price for programming paid by the larger distributors as compared to the small and mid-sized distributors resulting from aggressive nondisclosure clauses contained in retransmission consent and carriage agreements.

WTA recognizes that developing rules to regulate the pricing of content is very difficult from an economic and administrative viewpoint, and also raises constitutional issues. However, a few meaningful reforms of the regulations governing the video marketplace would go a long way towards restoring balance between content providers, distributors, and consumers. First, requiring disclosure by satellite content providers of the prices for the programming they distribute over public airwaves in interstate commerce would increase transparency and discourage anti-competitive price discrimination that currently plagues small MVPDs. Second, expressly requiring that any volume-based discounts given by satellite content providers be based on legitimate business reasons and that specific economic justifications (including provable and auditable cost savings) be demonstrated would ensure that small and rural MVPDs are not unfairly disadvantaged. Lastly, prohibiting contractual provisions that impose forced tying and/or tiering conditions would better enable small MVPDs to provide the programming its customers truly desire without forcing upon them bloated bundles filled with unwanted content.

As indicated in the introductory paragraphs, *a la carte* pricing appears to be the most efficient, effective and consumer friendly way to address the pricing and other problems afflicting both satellite programming and retransmission consent. Consumers on average watch 17 video programming networks while they are forced to buy much larger bundles of programming[9]

[9] According to The Nielsen Co., the average subscriber receives a video package of approximately 189 networks. *See* Changing Channels: Americans View Just 17 Despite Record Number to Choose From, (May 6, 2014), available at http://www.nielsen.com/us/en/insights/news/2014/changing-channels-americans-view-just-17-channels-despite-record-number-to-choose-from.html (last accessed Jan. 16, 2015).

which MVPDs are often required by content providers to offer in order to obtain carriage rights. By requiring content providers to compete for an audience in the marketplace rather than being able to dictate pricing and carriage terms to MVPDs, Congress would force programmers to improve their product and price it more reasonably in line with what the free market would dictate. Such an approach would allow the market—rather than regulators and dominant content providers—to determine what content gets produced, paid for, and ultimately watched by consumers.

b. How should the Communications Act balance consumer welfare with the rights of content creators?

To the extent that the goal is to provide consumers with more choice in the market for video services, balancing consumer welfare with the rights of content creators could be achieved through requiring an *a la carte* pricing approach. Content providers would be able to price their programming without government regulation, while consumers would be able to decide how much and what types of content they are willing to pay for. Whereas some critics warn that consumers might pay more for the content they desire, most consumers will be better off paying a little more for each of the 20 or so channels they actually watch, than they are currently as they are forced to pay for large and expensive program tiers containing tens or hundreds of channels in which they have no interest. In fact, many consumers are likely would pay less overall and would be more satisfied with an *a la carte* service that they can design and modify to get and pay for the programming they want. Further, by allowing MVPDs to voluntarily offer programming on an *a la carte* basis, MVPDs could still offer bundled packages to consumers who desire bundled programming packages.

Moreover, *a la carte* service should not disadvantage smaller program content providers, or new channels and providers. As they seek to gain audience and popularity, they can offer their channels for free or at a nominal price, and/or attempt to finance their operations via advertising or audience contributions in a manner similar to free websites.

5. Over-the-top video services are not addressed in the current Communications Act. How should the Act treat these services? What are the consequences for competition and innovation if they are subjected to the legacy rules for MVPDs?

The over-the-top video market is nascent and is in the early stages of proliferation on a wide-scale. Congress has traditionally allowed such markets to develop before imposing regulation upon them. Similar to the broadband marketplace that has remained primarily unregulated for nearly two decades, it is too early for Congress to fully grasp the impact and trajectory of the

market for video over-the-top. It would be impossible to accurately predict the trajectory of the development of innovative over-the-top video services and business models and their impact on competition in a heavily regulated market.

While WTA does not advocate the expansion of current video regulation to over-the-top video providers, if Congress were to decide to expand video regulation in this manner, however, it must keep in mind that without addressing current dysfunctions in the video marketplace discussed in these comments, new over-the-top providers with small subscribership seeking to rely on the current retransmission consent and program access regimes for affordable access to content will likely face the same challenges with which WTA members and other new entrants and small MVPDs presently contend, including but not limited to forced tying, forced tiering, discriminatory discounting practices, and a severe imbalance of power in carriage negotiations.

Finally, over-the-top video providers rely on broadband connections supplied to consumers by a third party. As more and more consumers and innovators shift towards the over-the-top model for video distribution and consumption, more and more robust networks will be required to fulfill that demand. In order to provide the robust networks necessary to deliver high-quality video services, broadband service providers will need to invest substantially in upgrading and maintaining their networks to meet this demand. This only further demonstrates the fundamental need for sound, comprehensive broadband policies, including reasonable rates for network interconnection and middle mile arrangements as well as a continued commitment to the principles of Universal Service, especially in rural America.

Conclusion

WTA thanks the Committee for the opportunity to participate in its White Paper process. It looks forward to continuing discussions with the Committee on telecommunications matters, particularly with regard to the legislative and oversight activities that are needed to provide WTA's RLEC members offering video services the ability to offer "must-have" content to their customers at reasonably affordable rates.