

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

In the Matter of	)	
	)	
	)	
Carriage of Digital Television Broadcast	)	CS Docket No. 98-120
Signals: Amendment to Part 76 of the	)	
Commission's Rules	)	
	)	

**Comments of  
WTA – Advocates for Rural Broadband**

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## Executive Summary

The exemption for small cable systems and systems with capacity of 552 MHz or less from the HD carriage requirement under the Commission's material degradation rules currently allows small cable operators to continue providing video services to their customers without fear of regulatory action or the need to impose significant rate increases on their customers as a result of the substantial investment necessary to upgrade their systems with the capability to carry HD broadcast signals in HD. If the exemption is not extended beyond June 12, 2015, until at least June 2018, consumers—particularly those in rural areas—could experience service disruptions and discontinuations resulting in reduced competition in the multi-channel video programming distribution market and/or significant price increases in order to provide the financial resources to complete the necessary upgrades.

Although cable systems of 2,000 or 2,500 subscribers might be larger than the “average” small system, such systems still lack the economies of scale and subscriber base necessary to reasonably support the additional investment that would be required to comply absent the exemption. Particularly if an exemption for capacity constrained and all-analog cable systems due to technical infeasibility is not extended or formally recognized by the Commission, requiring small cable operators with already constrained resources due to greater-than-inflation rises in programming costs to make the difficult decision of investing the substantial sums necessary to support retransmission of HD signals and passing those costs onto their customers or shutting down operations is contrary to the public interest and the Communications Act and Commission's goals of increasing competition and promoting broadband deployment and adoption. Accordingly, the Commission should retain the current definition for “small systems” as those with fewer than 2,500 subscribers rather than further narrow the definition at this time.

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**Comments of  
WTA – Advocates for Rural Broadband**

WTA – Advocates for Rural Broadband<sup>1</sup> respectfully submits these comments in response to the Fifth Further Notice of Proposed Rulemaking (“*Fifth FNPRM*”) in the captioned proceeding. The Commission seeks comment therein on whether it should extend for an additional three years the exemption that it previously granted to certain small cable systems from the requirement to carry high definition (“HD”) broadcast signals in HD under the “material degradation” provisions of the Communications Act of 1934, as amended (“the Act”).<sup>2</sup>

The current exemption covers small cable systems with 2,500 or fewer subscribers that are not affiliated with a cable operator serving more than 10 percent of all multichannel video programming distributor (“MVPD”) subscribers, and cable

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<sup>1</sup> WTA – Advocates for Rural Broadband is a national trade association representing more than 280 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.

<sup>2</sup> See 47 U.S.C. §§ 534 (b)(4)(A), 535(g)(2) (material degradation requirements relating to signals of local commercial and noncommercial television stations, respectively).

systems with an activated channel capacity of 552 MHz or less.<sup>3</sup> Expiration of this exemption as presently scheduled on June 12, 2015, would have a negative impact upon WTA members that provide video services in rural areas via traditional cable systems, as well as the customers they serve.

As a result, WTA supports the American Cable Association's ("ACA's") request<sup>4</sup> and urges the Commission to extend the exemption through at least June 12, 2018, to allow small cable systems to continue operations without risking regulatory enforcement actions. The Commission should also take the opportunity presented by ACA's Petition to confirm that analog cable systems are exempt from the requirement in perpetuity due to the technical infeasibility for analog systems to carry HD signals.

## **I. Introduction**

WTA's members provide voice, broadband, and video services to some of the most rural, remote and expensive-to-reach areas of the United States and are the carriers of last resort to those communities. Most of the areas served by WTA members lay beyond the broadcast range of receivable digital television signals. Whereas some larger communities in these areas are served by national or regional cable television ("CATV") companies, most terrestrial multichannel video service is provided by the WTA members and their affiliates (particularly in outlying areas) or by small independent CATV companies.

Although many WTA members are in the process of deploying higher capacity broadband facilities further and further into their networks, a substantial number have not

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<sup>3</sup> See *Carriage of Digital Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Fifth Report and Order, 27 FCC Rcd 6529, 6546-49, ¶¶ 19-23 (2012) ("*Fifth Report and Order*").

<sup>4</sup> See American Cable Association, Petition for Rulemaking, GS Docket No. 98-120 (filed Jan. 27, 2015).

yet been able to make the substantial investments necessary for the fiber upgrades necessary to eliminate the need for size- or capacity-related exemptions to the material degradation requirement throughout all of the areas (particularly outlying areas) where they offer video services. Several WTA members have indicated that, if the HD carriage exemption is not extended, they will notify the Commission and local authorities of their intent to cease their CATV operations because the substantial upgrade and other compliance costs are not economically feasible at this time when their CATV operations are already stretched to the breaking point by snowballing video content costs. Particularly because small cable operators provide the only local terrestrial video services available in many rural areas where broadcast signals are not viewable off-the-air, consumers and the public interest would be better served by continuing to exempt them from the HD material degradation provisions rather than risking CATV system shut-downs in rural communities.

## **II. Financial Realities, the Public Interest and Impacts on Competition and Broadband Deployment Continue to Support Extending the HD Broadcast Carriage Exemption**

The Commission is correct in its tentative conclusion that “the exemption is still necessary to protect the subscribers of small cable systems from the costs and service disruptions that may result from requiring those systems to deliver HD signals in HD beginning in June 2015.”<sup>5</sup> As the Commission recognized in its *16<sup>th</sup> Annual Video Competition Report*, over 1,000 rural and small cable systems have ceased operations since 2008,<sup>6</sup> many of which shuttered their cable systems because their customers could

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<sup>5</sup> See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket No. 98-120, FCC 15-29, ¶ 10 (rel. March 12, 2015) (“*Fifth FNPRM*”).

<sup>6</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, ¶ 70 (rel. April 2, 2015) (“*16<sup>th</sup> Annual Video Competition Report*”).

not afford the rates necessary to recover the skyrocketing broadcast and satellite programming costs imposed upon small MVPDs that lack negotiating power. One WTA member that operates a cable system currently eligible for the HD carriage exemption has already decided to cease its CATV operations in May 2015 due to the financial difficulty of running a small cable operation, and several have already shuttered their CATV operations in 2015. These decisions highlight the precarious financial status of small cable systems at the present time and further demonstrate that such situations would only be exacerbated by requirements to make substantial new investments in technology upgrades that would enable the retransmission of HD broadcast signals in HD.

Whereas most WTA members that offer video service provide digital video, some serving very sparsely populated and high cost areas still provide analog video. If the Commission does not confirm that all-analog cable systems are entirely exempt from the HD requirement due to technical infeasibility as ACA requests,<sup>7</sup> small operators may be forced to make the difficult choice between: (a) implementing full system upgrades and having their customers pay more for service; or (b) shutting down operations leaving their customers without terrestrial MVPD services altogether.

The expense and length of time necessary to upgrade existing cable systems to enable retransmission of HD broadcast signals in HD varies between systems for a variety of reasons, including the geographic size of the system, the technology currently in place, the replacement technology, and the number of customers that can bear the cost of a complete network upgrade. For example, one WTA member serving fewer than 250 video customers indicated that it would take approximately 12 months and an investment

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<sup>7</sup> *Fifth FNPRM* at ¶15.

of \$250,000 to upgrade his analog cable system with the capability to retransmit HD channels. He indicated that if the exemption were not extended, he would cease operations rather than undergoing the expense and passing the more than \$1,000-per-customer cost of upgrading the system onto his small customer base. Another WTA member serving approximately 200 customers using an analog cable system would need to invest in providing set-top boxes to all customers in addition to \$75,000 for upgraded head-end equipment.<sup>8</sup> Yet a third WTA member estimates the necessary time and economic investment at 2-to-3 months and \$40,000. Finally, one WTA member projects that his company would need to invest approximately \$500,000 for a two-year project to entirely upgrade his cable system serving approximately 450 subscribers. Spreading such a substantial investment among so few subscribers, however, simply is not realistic in these and most similar cases. Were the Commission to decide not to extend the exemption, affected WTA members would “strongly consider” shuttering their cable operations, leaving their customers with no terrestrial video service provider or access to off-air digital broadcast signals, and no viewing option but to subscribe to a national Direct Broadcast Satellite (“DBS”) provider.

Despite the precarious financial situation facing many small cable operators resulting from greater-than-inflation rises in programming costs and system maintenance and upgrades, some WTA members offering cable services have been extending fiber optic facilities capable of providing increased channel capacity and HD programming services further and further into their networks. Some of these WTA members are

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<sup>8</sup> As with programming costs, small MVPDs lack the economies of scale enjoyed by larger MVPDs that enable negotiation of reasonable rates for acquisition of set-top boxes. See *16<sup>th</sup> Annual Video Competition Report* at ¶ 60 (noting that economies of scale impact the ability for MVPDs to acquire programming and consumer premises equipment on favorable terms).



deploying new IPTV technologies, while others are increasing the capacity of their analog and hybrid analog/digital cable systems. For example, one company in early 2014 began a system-wide conversion from analog to all digital. The upgrade is expected to be complete by October 2015, and the company expects to make a total investment of nearly \$1 million for the upgrade and associated labor.

In light of these good faith efforts, if the Commission were for any reason to decide not to extend the exemption beyond June 12, 2015, it should at a minimum refrain from taking any regulatory enforcement action relating to the material degradation requirement for those small cable operators that have already made or are making the necessary investment for system upgrades or for whom such upgrades are economically infeasible.

While WTA members would like to upgrade their MVPD facilities to support HD programming, not every company is or will be in the financial position to undertake such substantial investments before expiration of the HD carriage exemption in June 2015. One WTA member indicated that his company is actively evaluating upgrading his current system to provide IP video services—an upgrade that would require bringing fiber to the home. He has indicated the desire to seek a low-interest loan from the Department of Agriculture’s Rural Utilities Service in order to pursue such a build out. However, given ongoing uncertainty relating to high-cost Universal Service support, if the exemption is not extended he will be forced to cease providing video services entirely to focus on his Internet access business. Another member serving approximately 1,500 subscribers indicated that shutting down video operations would be extremely detrimental to subscribers that have little to no options for TV related programming services and

could also negatively impact the provision of Internet access services currently delivered via the cable system.

Furthermore, the Commission has recognized the competitive importance of being able to offer a “triple-play bundle” of voice, video, and broadband services.<sup>9</sup> If forced to cease providing cable video services as a result of the expiration of the exemption, small operators would be at an even greater competitive disadvantage in the provision of broadband Internet access services, ultimately reducing competition as well as broadband deployment and adoption in the areas that the Commission recognizes have the greatest need.<sup>10</sup>

Accordingly, in light of the financial constraints impeding more rapid upgrades to small cable systems and in order to avoid the negative impacts that not extending the HD carriage exemption would have on MVPD competition and the state of broadband in rural areas, the Commission should extend the HD carriage exemption through at least June 12, 2018, and confirm that all analog cable systems are permanently exempt from the “material degradation” requirements relating to HD broadcast signal carriage due to the technical infeasibility of retransmitting HD signals over an analog cable system.<sup>11</sup>

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<sup>9</sup> See *16<sup>th</sup> Annual Video Competition Report* at ¶ 81 (stating that “[c]able and telephone MVPDs differentiate their services from DBS MVPDs, in part, by highlighting bundles of video, Internet access, and voice services and emphasizing that bundles offer better prices for consumers, relative to individual service offerings.”).

<sup>10</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry, FCC 15-10, at ¶ 79, table 4 (rel. Feb. 4, 2015) (noting that 53% of consumers in rural areas lack access to broadband at the Commission’s 25 Mbps/3 Mbps definition for broadband as compared to just 8% of urban consumers that lack access at such speeds).

<sup>11</sup> See 47 U.S.C. § 534(b)(4)(A) (providing that “The Commission shall adopt carriage standards to ensure that, *to the extent technically feasible*, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.”) (emphasis added). Moreover, all-analog cable systems

### **III. The Commission Should Retain the Current 2,500 Subscriber Definition for Small Systems to Remain Eligible for the HD Broadcast Carriage Exemption**

In the *Fifth FNPRM*, the Commission expressed concern that its current definition of “small system” is overly broad based on the fact that small operators that continue to rely on the exemption serve on average 348 subscribers per system.<sup>12</sup> In order to evaluate this concern, the Commission seeks comment on the appropriate small system standard and what harms would accrue if the categories of systems eligible for the exemption were to be further narrowed.<sup>13</sup>

WTA believes that there would be no consumer or public benefit from lowering the exemption threshold because the vast majority of cable systems with 2,500 or fewer customers lack the economies of scale necessary to absorb the cost of system upgrades without substantial customer rate increases. Given that the MVPD industry served a total of 100.9 million subscribers at the end of 2013,<sup>14</sup> a threshold of 2,500 subscribers constitutes a minuscule 0.00248 percent portion of the industry. As the Commission has previously recognized, small MVPDs—even when acting collectively through larger buying groups—lack the size necessary to negotiate content agreements and per-subscriber prices reasonably comparable to those enjoyed by the national and regional multiple cable system operators and DBS providers.<sup>15</sup> Likewise, the limited customer

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cannot provide a lesser quality of signal processing and carriage for local commercial television stations because they are unable to transmit *any* signals in HD.

<sup>12</sup> *Fifth FNPRM* at ¶ 10.

<sup>13</sup> *Id.*

<sup>14</sup> See *16<sup>th</sup> Annual Video Competition Report* at ¶ 133, Table 7.

<sup>15</sup> See *Id.* at ¶¶ 60-61 (noting that a lack of economies of scale in comparison to large incumbent MVPDs places new entrants at a competitive disadvantage with respect to negotiating favorable programming terms (including cost) and constitutes a barrier to entry into the MVPD market).

bases of small cable operators also restrict their ability to recover costs associated with system upgrades without substantial customer rate increases.

A comparison with the subscriber bases of large multiple CATV system operators (“MSOs”) helps put the 2,500 subscriber threshold into perspective. By the end of 2013, Comcast as the largest MSO served approximately 21.7 million subscribers.<sup>16</sup> DirecTV, the largest DBS provider, served approximately 20.3 million subscribers at the end of 2013.<sup>17</sup> The largest telephone MVPD, AT&T, served 5.5 million subscribers by the end of 2013.<sup>18</sup> By contrast, smaller telephone MVPDs had substantially fewer subscribers than their large MVPD counterparts with CenturyLink having 175,000 subscribers, Consolidated Communications having 100,613 subscribers, and Cincinnati Bell having 74,200 subscribers.<sup>19</sup>

Despite having many times the number of subscribers than any WTA member or other small cable operators, Mediacom—with approximately 890,000 video customers as of December 2013<sup>20</sup>—and other non-dominant MVPDs have been vocal about the difficulties for smaller operators lacking economies of scale.<sup>21</sup> This further demonstrates the fact that cable systems with 2,500 or fewer subscribers continue to struggle with minimal economies of scale and other financial difficulties that preclude the investments necessary to comply with HD carriage requirements without crippling CATV rate

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<sup>16</sup> *Id.* at ¶ 133, Table 7. A merger between Comcast and Time Warner Cable, the fourth largest MVPD is currently pending before the Commission.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* A merger between AT&T and DirecTV is currently pending before the Commission.

<sup>19</sup> *Id.* at ¶ 27.

<sup>20</sup> See Mediacom Communications Corp., *SEC Form 10-K for the Year Ended December 31, 2014*, at 4.

<sup>21</sup> See Mediacom Communications Corp., Petition for Expedited Rulemaking, RM-11728 (requesting that the Commission initiate a rulemaking to address challenges faced by small MVPDs in acquiring video programming content on reasonable terms in comparison with the largest MVPDs that enjoy economies of scale).

increases or service reductions. Accordingly, the Commission should refrain at this time from reducing its definition of “small systems” for purposes of the HD carriage exemption below the current 2,500 subscriber level in order to avoid negative impacts on consumers of small cable systems without true public interest benefits.

#### **IV. Conclusion**

The Commission is correct in tentatively concluding that the HD broadcast signal carriage exemption to the material degradation requirements of the Communications Act and Commission rules should be extended at least until June 2018 to allow the business case for small cable operators to make the necessary investments in upgrades that would enable HD signal carriage. The Commission should also retain the current definition for “small systems” as those with fewer than 2,500 subscribers because although systems of 2,000 or 2,500 might be larger than the “average” small system, such systems still lack the economies of scale and subscriber base to support the additional investment that would be required to comply absent the exemption. Particularly if an exemption for capacity constrained and all-analog cable systems due to technical infeasibility were not extended or formally recognized by the Commission, requiring small cable operators at this point to make the difficult decision of investing the substantial sums necessary to support retransmission of HD signals and passing those costs onto their customers or shutting down operations is contrary to the public interest and the Communications Act and Commission’s goals of increasing competition and promoting broadband deployment and adoption.

Respectfully Submitted,

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