Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	MB Docket No. 15-158
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Comments of WTA-Advocates for Rural Broadband

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EXECUTIVE SUMMARY

Despite their substantial broadband network upgrades and their capabilities to provide high-quality video signals, many WTA members have been operating at a loss in the video market. Their broadband investment efforts have been virtually entirely counteracted and overridden by the fact that they have been unable to obtain the video programming desired by their rural customers at affordable prices and on reasonable terms. WTA members—like many other small video programming distributors—are required to pay high, rapidly increasing and often discriminatory prices for retransmission consent and satellite programming distribution rights. Furthermore, they are subjected to tying and tiering conditions that require them and their rural customers to take and pay for additional programming of little interest to their customers. Some rural MVPDs are also often unable to offer in-state and regional televisions stations that their rural customers want because they have been assigned to distant Designated Market Areas ("DMAs") that do not provide relevant local programming. These dysfunctions in the marketplace for video programming continue to cause small MVPDs to exit the marketplace, leaving consumers—rural consumers, in particular—with fewer choices.

The Commission should take the opportunity in this proceeding and its upcoming review of the retransmission consent rules to facilitate the availability of content at reasonable prices and under reasonable terms and conditions for MVPDs regardless of size. Until the Commission and/or Congress acts to facilitate increased consumer choice by preventing programmers from demanding unreasonable increases in per-subscriber fees and channel placement conditions, small MVPDs and their customers will continue to be at the mercy of large programmers that control the vast majority of linear broadcast and satellite video programming.

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WTA-Advocates for Rural Broadband ("WTA")[1] hereby submits these comments in response to the Media Bureau's Public Notice seeking comment on the status of competition and conditions in the marketplace for the delivery of video programming.[2] The Public Notice seeks comment, data and information to assist in better understanding the implications that competitive conditions in the video programming[3] marketplace have on American consumers.[4]

In addition to providing voice and broadband Internet access services to their customers, many WTA members also currently offer linear video services[5] such as traditional cable television ("CATV") and contemporary Internet Protocol television ("IPTV") services, as well as

[1] WTA – Advocates for Rural Broadband (formerly known as "Western Telecommunications Alliance") 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.

[2] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 15-158, Public Notice (rel. July 2, 2015) ("*Public Notice*").

[3] Video programming is "[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and is exhibited for residential use." 47 U.S.C. § 522(40); 47 C.F.R. § 79.1(a)(1).

[4] *Public Notice* at 1.

[5] "'Linear programming' is generally understood to refer to video programming that is prescheduled by the programming provider." *Implementation of Section 304 of the Telecommunications Act of 1996*, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, ¶ 14 n.43 (2010).

emerging Over-the-Top ("OTT") video services. Like virtually all other video service providers, WTA members "compete" with the two national Direct Broadcast Satellite ("DBS") providers, DISH Network and the now-combined AT&T/DirecTV.[6] In addition, a small number of WTA members compete against terrestrial CATV systems – in some cases, large multiple CATV system operators ("MSOs"); in others, more limited local and regional CATV operators – in some of the larger rural towns and other population centers in their service areas.[7]

Many WTA members have been upgrading their networks to extend fiber-optic facilities closer and closer to their customers so that they have the technical capacity to offer video-related services such as digital CATV, IPTV and TV Everywhere. However, WTA members have been disappointed because their substantial broadband network upgrades and their capabilities to provide high-quality video signals have had virtually no positive effect on their efforts to compete profitably (or even at a break-even basis) in the video market. Rather, their broadband investment efforts have been virtually entirely counteracted and overridden by the fact that they have been unable to obtain the video programming desired by their rural customers at affordable prices and on reasonable terms. Rather, WTA members and other small rural video programming distributors are required to pay high, rapidly increasing and often discriminatory prices for retransmission consent and satellite programming distribution rights; are subjected to tying and tiering conditions that require them to pay for and their rural customers to take additional programming in which such customers have little or no interest; and are often unable to offer in-state and regional televisions stations that their rural customers want because their

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[6] On July 28, 2015 the Commission released an Order approving the merger of AT&T and DirecTV. *See In the Matter of Applications of AT&T Inc. and DirecTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, MB Docket No. 14-90, FCC 15-94 (rel. July 28, 2015) ("*AT&T/DirecTV Order*").

[7] Although there might be a MSO serving more densely populated towns and population centers in some rural communities, MSOs rarely offer service outside towns in the sparsely populated farming, ranching, mining, forest and mountain areas that comprise most of the land area of Rural America.

cable communities have been assigned to a distant, out-of-state Designated Market Area ("DMA"). The primary challenge in offering video services via cable or IPTV technologies continues to be access to reasonably priced programming on reasonable terms and conditions.

I. CURRENT PRACTICES IN THE MARKET FOR VIDEO PROGRAMMING IMPEDE THE ABILITY FOR SMALL RURAL MVPDS TO PROVIDE VIDEO SERVICES AT COMPETITIVE PRICES

Although the Commission earlier this year adopted a presumption that effective competition among MVPDs exists nationwide due to the presence of two national DBS providers,[8] current practices in the market for video programming impede the ability of small rural MVPDs to provide their customers with video service options at reasonable and competitive prices.

a. Exponential and Unreasonable Increases in Retransmission Consent Costs Are Inhibiting the Ability of Small, Rural MVPDs to Offer Video Services at Competitive Prices

For an average WTA member, programming procurement costs account for approximately two-thirds of the cost of providing video services. For WTA members over the last five years, broadcast retransmission consent fees alone have grown at an average rate of nearly 40-50 percent that far exceeds both general economic price indexes and the costs of the broadcasters charging them. For one WTA member, aggregated retransmission consent payments for the Big Four networks increased from $1.87 per month in 2011 to $9.45 per month per subscriber in 2016, an increase of approximately 500 percent over five years. Such a

[8] *See In the Matter of Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, MB 15-53, FCC 15-62, ¶ 1 (rel. June 3, 2015) (adopting a rebuttable presumption of Competing Provider Effective Competition in order "to reflect the current MVPD marketplace").

dramatic increase is the norm, rather than the exception, for small rural MVPDs.[9] Retransmission consent fees alone are expected to earn broadcasters $10.3 billion by 2021.[10]

Broadcast programming costs are even higher for WTA members located in areas often referred to as "orphan counties" that are assigned to DMAs that do not correspond with the interests of their subscribers. Often the assigned DMA is out of state or so geographically distant that another DMA provides more relevant local content. For example, parts of western Nebraska have been assigned to the Denver, Colorado DMA rather than the Lincoln, Nebraska DMA whose stations carry in-state news, public affairs and sports programming that is of much greater interest to most western Nebraska residents. As a result, and because broadcast signals do not reliably reach many communities throughout rural America, rural MVPDs and their customers are often required to pay for programming from broadcast stations that do not provide relevant local programming. In order to get relevant programming for these consumers rural MVPDs often must pay for and retransmit broadcast stations their customers do not want in addition to the desired programming (if they can obtain retransmission consent from the desired "distant" station and pay the extra costs associated with importing a distant market signal), ultimately causing frustration and increased costs that providers must pass along to their subscribers. This, in addition to the network non-duplication and syndicated exclusivity rules, creates an artificial demand for broadcast stations resulting in increased costs to both providers and consumers.

WTA members and other small rural MVPDs find themselves increasingly in positions where they are forced to accept the retransmission consent prices and conditions of the four

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[9] Another WTA member reported an increase in retransmission consent costs from $2.75 per month in 2011 to $8.85 in 2016. Yet another member experienced increases from $1.15 in 2011 to $7.40 in 2015.

[10] *See* SNL Kagan, *U.S. TV Station Owners' Retransmission Fees Expected to Reach $10.3 Billion by 2021, Versus the Projected Level of $6.3 Billion this Year*, Press Release, July 7, 2015, available at http://www.prweb.com/releases/2015/07/prweb12829757.htm.

major network affiliates in their designated markets, or go without the programming of one or more of such affiliates. Their triennial retransmission consent negotiations are increasingly becoming "take it or leave it" affairs because many of the urban network affiliates do not care whether or not they reach agreement with individual rural MVPDs serving a few hundred or thousand customers located out beyond their service contours, and are convinced that the rural MVPDs need their network programs more than they need the additional rural viewers. This position is unacceptable, unreasonable and inequitable because the rural MVPDs are providing a valuable service to both broadcasters and the public by extending broadcast television signals to viewers that would otherwise be unable to receive them, thereby increasing audiences and advertising revenues.[11] Whereas retransmission consent fees may make economic sense in areas where the broadcast station and the MVPD are competing for the viewer, they make little or no sense in distant areas where the MVPD is permitting the broadcaster to reach viewers that it could not otherwise serve.

b. Exponential and Unreasonable Increases in Satellite Programming Costs Are Also Inhibiting the Ability of Small, Rural MVPDs to Offer Video Services at Competitive Prices

In addition, carriage fees for the most popular cable networks have increased approximately 10 percent per year, dramatically exceeding the increases in the consumer price index with no similar or corresponding increase in the value of programming for consumers.[12] For many of WTA's members and their customers, this trajectory of increases in programming

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[11] *See* Conf. Rept. 102-862, 102nd Cong., 2d Sess. at 57 (1992) (stating that "[a] cable television system carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues").

[12] Bureau of Labor Statistics, Consumer Price Index, (last accessed Aug. 13, 2015) available at http://www.bls.gov/cpi/.

costs is unsustainable and threatens the future of these video businesses that already struggle to break even and often operate at a loss.

Moreover, small rural MVPDs appear to pay the highest per-customer satellite programming costs in the nation. A study previously found that "small and medium-sized MVPDs pay per-subscriber fees for national cable network programming that are approximately 30% higher than the fees paid by the major MSOs."[13] Whether labeled "volume-based discounts" or something else, these pricing differences are unjustified and unreasonable, and should be investigated. For example, the costs to the programming vendor to transmit video signals to MVPDs via satellite are the same for all MVPDs regardless of their size and are not affected by any discernible economies of scale. Likewise, there does not appear to be any evidence that price differences are justified by reduced transaction costs and associated billing/collection activities. As a practical matter, WTA members and other rural MVPDs participate in buying groups that eliminate the need for programming vendors to deal with hundreds of small MVPDs.

However, even when negotiating through buying groups such as the National Cable and Television Cooperative ("NCTC") and the National Telco Television Consortium ("NTTC"), small MVPDs still cannot obtain access to content at prices and carriage terms that would allow them to better compete with national video providers. To make matters worse, the Commission's rules currently exclude NCTC, the largest buying cooperative, from the definition of a "buying group,"[14] ultimately withholding from members of NCTC the protections of the

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[13] *See* Comments of the American Cable Association, MB Docket No. 07-269 (June 8, 2015) at 9.

[14] The Commission's rules require the buying group to assume all liability for fees due under a programming contract singed on behalf of its members. *See* 47 C.F.R. § 76.1000(c)(1). However, NCTC acts as an intermediary or billing/collections interface between programmers and NCTC's 900 member companies whose obligation is limited to forwarding payments from its members to programmers and notifying programmers of default by one of its members. *See also In the Matter of Revision of the Commission's Program Access Rules*, MB Docket Nos. 12-

program access rules. Amending the definition of "buying group" so that NCTC could bring program access complaints against cable-affiliated programmers to the Commission on behalf of its members would be a meaningful first step to leveling the playing field for small MVPDs.

Additionally, a complete lack of transparency in pricing and other terms leaves small rural MVPDs at an even greater disadvantage in negotiations for broadcast and satellite video programming. Programmers consistently insert into their carriage agreements restrictive non-disclosure and confidentiality provisions that prevent small rural MVPDs from learning the per-customer programming prices paid by others, and from providing information regarding programmer negotiating tactics, prices and carriage conditions to the Commission, their customers and policymakers.

In order to get a more complete understanding of the dynamics in the marketplace for satellite video programming, the Commission should initiate a review of satellite program pricing practices, including the use of "volume-based" discounts, to determine whether such practices are economically justifiable and whether or not they should be permitted to continue as "direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor."[15] WTA and other representatives of small MVPDs believe they do not.

c. Burdensome Tying and Tiering Requirements Are Also Inhibiting the Ability of Small, Rural MVPDs to Offer Video Services at Competitive Prices

Cost, however, is but one factor in the equation of providing video services. In addition to their content pricing, broadcasters and satellite programmers continue to issue take-it-or-leave-

68, Further Notice of Proposed Rulemaking, ¶ 88 (Oct. 5, 2012) (seeking comment on amending the definition of "buying group" to more accurately reflect buying group practices in today's marketplace and concluding that the Commission "do[es] not believe that revising the definition of buying group . . . would subject programmers to greater financial risk when contracting with a buying group than they would be when contracting with an individual MVPD.").

[15] 47 U.S.C. § 548(c)(2)(B)(ii).

it carriage demands, including oppressive tying and tiering requirements that restrict the ability for small MVPDs to design service packages desired by their customers at affordable price points. For example, major broadcast network affiliates increasingly require as a condition of granting retransmission consent that MVPDs rebroadcast multi-cast channels that require conversion before being retransmitted.[16] Often broadcasters also demand that MVPDs pay for these multi-cast channels in addition to demanding their carriage in the MVPD's basic or expanded basic programming tier. Likewise, vertically integrated and non-vertically integrated cable programmers engage in similar tying and tiering requirements demanding that MVPDs pay for many less popular channels in order to obtain reasonable prices for popular channels.

Many of these programming agreements are structured in a manner that makes it cost prohibitive for MVPDs to refuse to carry the additional channels, with the result that MVPDs (and their customers) are forced to pay for and subscribe to unwanted video programming. For example, during one WTA member's recent retransmission consent negotiation with a Big Four network affiliate, the affiliate demanded that the MVPD carry a cable network in addition to its broadcast affiliate. When the WTA member requested a price for just the broadcast station, the network affiliate's corporate management demanded an increase of more than 50% of its original compensation demand for the stand-alone broadcast station. To make matters worse for the MVPD in this instance, the existing retransmission consent agreement's expiration coincided with National Football League playoffs—"must have" programming for all video service providers and their customers. Accordingly, the MVPD was without any economically viable option to reject carriage of the additional channel and succumbed to the broadcast affiliate's demands.

[16] *See Public Notice* at 11 (seeking comment on "the ability of broadcast stations to secure MVPD carriage of their multicast signals").

Satellite content programmers often demand that MVPDs distribute less popular programming on the same tier as their more popular programming. These demands typically force MVPDs to carry the less popular channels on their most widely distributed (or "penetrative") tier or require that a certain minimum percentage (often 85% or more) of an MVPD's customers subscribe to the tier on which the less popular channel is carried. Such practices increase substantially the size and cost of the affected tiers, thereby harming consumers by increasing their video service rates or reducing the margins available to their MVPDs to invest in more desirable features and services. Tiering demands are particularly harmful for operators using older, capacity-constrained systems because their systems are unable to accommodate the increased demand for channel capacity. The Commission has previously recognized the competitive harm and adverse impact these practices have on consumers and that small MVPDs are "particularly vulnerable" to tying and tiering arrangements because "they do not have leverage in negotiations for programming due to their smaller subscriber basis."[17]

In response to frustration expressed by consumers that they pay for large numbers of channels they do not want and the phenomenon of "cord cutting," some MVPDs, such as Verizon and Charter Communications, have expressed the desire to offer their customers smaller, less expensive "Skinny Bundles" of programming at lower price points.[18] Indeed, WTA's members would greatly welcome the ability to carry only those channels that their customers want and the ability to offer programming to consumers on a genre-based or single channel a la

[17] *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992– Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, MB Docket Nos. 07-29, 07-198, 22 FCC Rcd 17791, 17862-63, ¶ 120 (2007) *aff'd sub nom. Cablevision Sys. Corp. et al. v. FCC*, 597 F.3d 1306 (D.C. Cir. 2010).

[18] *See Public Notice* at 5 (asking whether there is "a trend to unbundle or offer smaller, less expensive video packages"). *See also* Verizon, "*A New Way to Get TV: Verizon Gives Customers an Unrivaled Level of Choice With the New FiOS Custom TV,"* Press Release, Apr. 21, 2015, available at http://fortune.com/2015/04/21/verizon-espn-tv-bundle/; Mike Farrell, *Charter Working on Getting "Skinny*," MULTICHANNEL NEWS, Aug. 4, 2015, available at http://www.multichannel.com/news/cable-operators/charter-working-getting-skinny/392719.

carte basis.[19] However, at this time, small MVPDs like WTA members lack the bargaining power and resources to renegotiate or litigate tiering and tying arrangements.[20] Until the Commission and/or Congress acts to facilitate increased consumer choice by preventing programmers from being able to demand unreasonable increases in per-subscriber fees and channel placement, small MVPDs and their customers' choices will continue to be at the mercy of large programmers that control the vast majority of retransmission consent and satellite video programming.[21]

d. Some MVPDs Have Added Broadcast and Regional Sports Network Fees In an Effort to Provide Transparency for Their Customers About The Root of Rate Increases

Programming cost increases have forced cable subscription rate increases across the board. Small MVPDs have adopted varying responses to increases in the cost to acquire rights to carry broadcast and regional sports programming, the main drivers of programming procurement cost increases in today's video market. Some increased their video package rates on an annual basis to keep pace with cost increases. Some kept rates flat until they could no longer afford to do so. A small number of others, recognizing that they'd likely take the blame for rate increases, decided that adding broadcast and regional sports fees on customer bills would provide customers with additional transparency about the origin of rate increases. Particularly for small MVPDs, adding video-related fees to customer bills serves not to conceal price increases for

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[19] *See* 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, at 3, (Jan. 23, 2015) available at http://w-t-a.org/wp-content/uploads/2015/01/Final-WTA-Video-White-Paper-Comments-1.23.2015.pdf.

[20] For example, ESPN has filed a lawsuit against Verizon alleging that Verizon breached its contract with ESPN by offering a sports tier on an a la carte basis. *See* John Koblin, *ESPN Sues Verizon Over New Cable Packages*, THE NEW YORK TIMES, April 27, 2015, available at http://www.nytimes.com/2015/04/28/business/media/espn-sues-verizon-over-new-cable-packages.html?_r=0.

[21] *See* Erik Brannon, *Brannon: Skinny Bundles Offer Hope for Pay-TV, but Disney-Verizon Suit Remains Pivotal to the Strategy*, June 15, 2015, available at http://www.fiercecable.com/story/brannon-skinny-bundles-offer-hope-pay-tv-disney-verizon-suit-remains-pivota/2015-06-15.

monthly subscription or provide another competitive advantage but rather to provide much needed transparency regarding the increases in prices of the video programming an MVPD's customers are required by programming agreements to subscribe to and pay for.[22]

In most cases, broadcast and regional sports network fees are added to customer bills as a line item separate from the monthly subscription price and WTA members make their customers aware of the additional fees when the decisions to add the fees are made. Because programming agreements with regional sports networks and broadcasters most often require MVPDs to distribute programming on the most "penetrative" tier (often the basic or expanded basic tiers to which consumers must subscribe before purchasing premium packages), all subscribers pay the broadcast and sports network fees. MVPDs, however, are often restricted by their retransmission consent agreements from providing their customers with details about from where the additional fees derive beyond the generic labeling of "broadcast" or "retransmission" fee.[23] MVPDs could provide additional transparency to consumers about the origin and amount of the fees were the Commission and/or Congress to take steps to limit the use of restrictive non-disclosure provisions prevalent in retransmission consent contracts. The Commission should not allow broadcasters to use non-disclosure agreements to prevent MVPDs from providing transparency in pricing so that consumers can be fully informed about the cost of programming they purchase, often against their own wishes.

e. Small MVPDs Offer TV Everywhere Services When They Can Obtain Proper Licensing Agreements

Similar to larger regional and nationwide MVPDs, small cable and telephone MVPDs are increasingly evaluating TV Everywhere ("TVE") and the value it offers to cable subscribers by

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[22] *Public Notice* at 8 (seeking comment on the competitive strategy associated with addition video-related fees as opposed to raising monthly subscription prices).

[23] *See id*. (asking how such fees are disclosed to consumers).

allowing them to watch programming on multiple devices both inside and outside of the home.[24] WTA's members provide TVE for their customers when they are able to obtain the rights to do so. Many programmers make TVE rights available at no extra cost but others have begun charging additional per-subscriber fees for TVE. Some WTA members have expressed that the additional cost to provide TVE is what is necessary "to be perceived as a modern technology provider." In other words, the cost to provide TVE is simply a cost of doing business in today's video marketplace. A TVE trend that Congress and the Commission should monitor, however, is that a few WTA members have experienced programmers requiring additional per-subscriber fees for TVE rights whether or not an MVPD's subscribers use the TVE service, ultimately doubling the cost to provide that channel with the customers' basic service.

f. The Status Quo Increasingly Drives Small Rural MVPDs Out of the Video Distribution Market

Access to "must have" programming at reasonable rates and under reasonable terms is the key to having a viable video service. As previously discussed in these comments, small MVPDs are facing substantial and continuing challenges to their ability to offer compelling and competitive video services to their customers. Consolidation of video programmers is causing upward pressure on the cost of content, and now only a handful of media conglomerates control the majority of in-demand programming. Negotiating practices and unreasonable demands by broadcast and cable programmers have cause retransmission consent and cable carriage fees to skyrocket while simultaneously requiring MVPDs and consumers to purchase large quantities of unwanted programming.

The unnecessary demands on MVPD systems that result from the status quo increasingly make the provision of video services unprofitable for the vast majority of small MVPDs. Seeing

[24] *Id*. at 5.

the trend that consumers increasingly obtain video programming online and feeling defeated in the current system, small MVPDs—including several of WTA's members—are increasingly shutting down their video services in favor of focusing their limited resources on maximizing investment in their other broadband service offerings.

When a small cable operator or IPTV provider ceases to offer video services to its rural community, consumers in such communities lose the most. The WTA member or other small MVPD is generally the only local video service provider serving the area, and is consequently the only entity to which local residents can turn to seek improvements and other changes in their video service and to get their service restored quickly after storms and other emergencies. Because most online video distributors do not provide local broadcast stations, small MVPDs are a lifeline for consumers in rural communities during emergencies in a way that online video distributors do not provide and will not be able to provide in the near future.[25]

g. Reforms to the Retransmission Consent and Program Access Rules are Required to Address Marketplace Dysfunction Harming Competition and Consumers and Spur Broadband Investment in Rural Areas

The Commission should take the opportunity in its upcoming review of the retransmission consent rules to facilitate the availability of content at reasonable prices and under reasonable terms and conditions. Due to the link the Commission has previously found between video and broadband service,[26] eliminating dysfunction in the video marketplace will have a

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[25] *Public Notice* at 8 (asking what video services MVPDs offer that OVDs and broadcast stations do not). Although some broadcast networks make select programming available online, most do not make live linear programming and accompanying local public safety information and advertising available online.

[26] *See In re Implementation of Section 621(A)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, FCC 06-180, 22 FCC Rcd. 5101, Report and Order and Further Notice of Proposed Rulemaking (rel. March 5, 2007) at ¶ 51 (*citing* G.S. Ford, T.M. Koutsky and L.J. Spiwak, *The Impact of Video Service Regulation on the Construction of Broadband Networks to Low-Income Households*, Phoenix Center Policy Paper No. 23 (Sept. 2005), available at http://www.phoenix-center.org/pcpp/PCPP23Final.pdf.

positive impact on broadband investment and adoption. Actions to address marketplace dysfunction the Commission should consider in its upcoming rulemaking include:

- Prohibiting "take-it-or-leave-it" negotiation tactics as *per se* violations of the requirement to negotiate for retransmission consent in good faith.
- Amending the definition of "buying group" to extend program access protections to small MVPDs using master agreements negotiated by buying groups that have long been widely recognized by programmers in today's marketplace.
- Prohibiting tying of broadcast and cable-affiliated programming without providing a viable economic alternative to carrying just the primary/desired signal.
- Permitting rural MVPDs to negotiate for retransmission consent with broadcast stations in a neighboring DMA when its customers do not find the assigned DMA's local programming to be relevant to the customers' community of interest.
- Prohibiting the use of mandatory non-disclosure and confidentiality provisions in retransmission consent agreements that prevent free market-based negotiations.
- Prohibiting (or severely limiting) national network involvement in retransmission consent negotiations and prohibiting reverse compensation payments that cause dramatic increases in retransmission consent fees.
- Prohibiting broadcasters and cable-affiliated programmers from charging per-subscriber fees for an MVPD's broadband customers that do not subscribe to the MVPD's video services.
- Prohibiting broadcasters from blocking access to content made available for free online during retransmission consent disputes.
- Prohibiting broadcasters from requiring per-subscriber payments by MVPDs for subscribers that are outside of where a broadcast signal can be received by a consumer (i.e., the Grade A/B service contours).

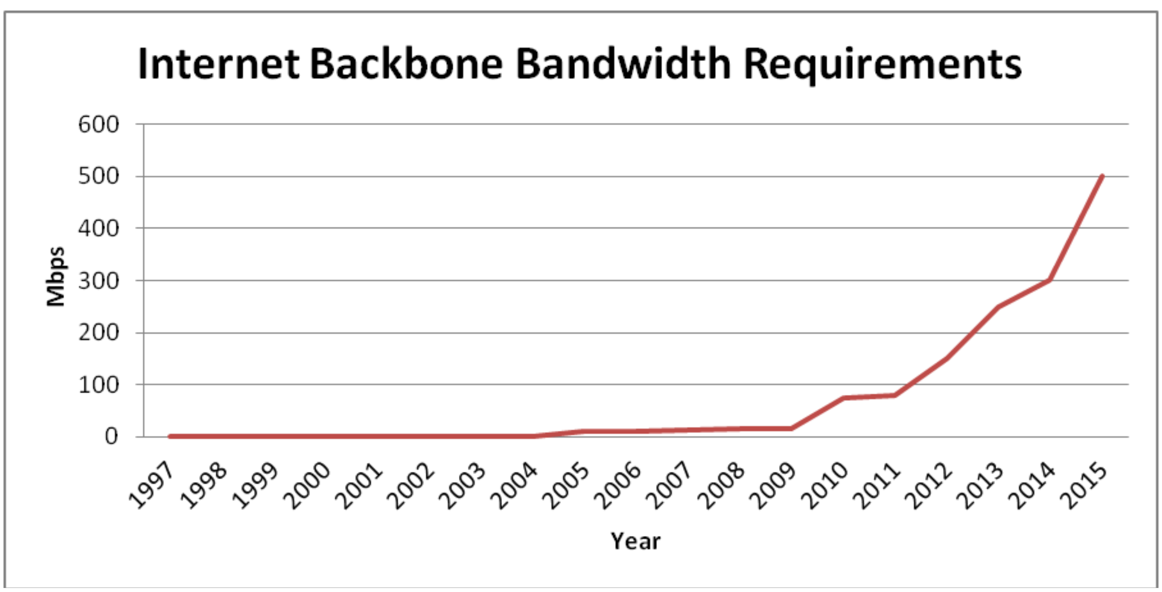
II. SMALL RLEC ISPs ARE ADAPTING TO ACCOMMODATE INCREASED CONSUMER INTEREST IN ONLINE VIDEO SERVICES THAT RELY ON BROADBAND NETWORKS AND INVESTMENT

The provision of video services over the Internet was not contemplated by the current regulatory regime governing the marketplace for distribution of video programming.[27] In addition to MVPDs offering TV Everywhere and other video programming services enabled by broadband Internet access, new and innovative online services offer an additional option for

[27] *See In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, MB Docket No. 14-261, FCC 14-210 (rel. Dec. 19, 2014) (seeking to "modernize" the definition of MVPD to include online video distributors that provide linear streams of programming akin to that provided by cable and DBS MVPDs).

consumers to watch video programming. Although uncertainty surrounds the path of over-the-top ("OTT") video services, one thing is guaranteed with the increased consumption of OTT video services: increased demand on existing broadband networks.

In order to adapt to the increased demand and congestion on broadband networks resulting from the wide-spread availability of OTT video services, rural telephone and Internet service providers such as WTA members have invested in upgrading their facilities with the capability for high-speed, high-capacity broadband Internet access demanded by 21st Century consumers. In addition to deploying fiber-optic facilities further and further into their networks and closer to the customer premises, some WTA members have also substantially increased middle mile capacity to meet increased video streaming demands. The chart below illustrates one WTA member's experience showing an increase in bandwidth requirements of its network from fewer than 10 Mbps in 2009 to 500 Mbps in 2015, corresponding with the release and increase in popularity of Netflix and other video streaming services.



Additionally, in some states companies have joined together to invest in state-wide fiber-optic network partnerships which enable groups of small companies to save money and increase their speeds and network capacity. Small companies like WTA's members will continue to take steps to reduce costs while improving quality of service to meet their customers' broadband needs.

III. CONCLUSION

WTA members have made substantial broadband network upgrades and improved their capabilities to provide high-quality video signals, but have been unable to operate profitably (or even at a break-even basis) in the video market. Rather, their efforts have been virtually entirely counteracted and overridden by the fact that they have been unable to obtain the video programming desired by their rural customers at affordable prices and on reasonable terms.

WTA members—like many other small video programming distributors—are required to pay high, rapidly increasing and often discriminatory prices for retransmission consent and satellite programming distribution rights. Furthermore, they are subjected to tying and tiering conditions that require them and their rural customers to take and pay for additional programming of little interest to their customers. Rural MVPDs are often unable to offer in-state and regional televisions stations that their rural customers want because such stations are in a different DMA. These dysfunctions in the marketplace for video programming continue to cause small MVPDs to exit the marketplace, leaving consumers—particularly rural consumers—with fewer choices.

Until the Commission and/or Congress acts to facilitate increased consumer choice by preventing programmers from being able to demand unreasonable increases in per-subscriber fees and channel placement conditions, small MVPDs' and their customers' choices will continue to be at the mercy of large programmers that control the vast majority of linear broadcast and satellite video programming. The Commission should take the opportunity in this proceeding and its upcoming review of the retransmission consent rules to facilitate the availability of content at reasonable prices and under reasonable terms and conditions for MVPDs regardless of size.

Respectfully submitted,

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