

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

In the Matter of )  
 )  
Annual Assessment on the Status of ) MB Docket No. 17-214  
Competition in the Market for Delivery of )  
Video Programming )

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

**WTA – Advocates for Rural Broadband**

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## Executive Summary

When WTA last filed Comments in this annual proceeding in 2015, we raised several issues, but there was one overriding concern. That was the inability for small MVPDs to acquire programming at reasonable rates. In both retransmission consent negotiations as well as negotiations with cable networks, WTA members had seen tremendous increases in programming costs over just a short period, which was forcing members to raise prices on cost-sensitive customers, or worse, exit the video market entirely. Unfortunately, in the two years that have passed, skyrocketing programming costs are still an issue for small MVPDs. WTA members are further subjected to forced tiering and tying agreements that bloat the size and cost of their basic packages when their customers seek an a la carte option. All of this has made offering video service a losing proposition where members either break even or lose money. As a result, many WTA members are still on the precipice of leaving the video marketplace and becoming a broadband only service.

The Commission should take the opportunity in this proceeding to consider the difficulties that small, rural MVPDs encounter in the video marketplace. The Commission should adopt policies that protect small MVPDs in retransmission consent agreements, especially as broadcasters are introducing the “Next Generation” broadcasting standard. Further, the Commission should adopt policies that make it easier for small MVPDs to attain programming at reasonable prices. Unless substantial measures are taken, rural consumers will continue to be under threat of losing critical, local video service.

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WTA – Advocates for Rural Broadband (“WTA”)<sup>1</sup> 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 delivery of video programming. The Public Notice seeks comment, data, and information to enhance its “analysis of competitive conditions, better understand the implications for the American consumer, and provide a solid foundation for Commission policy making with respect to the delivery of video programming to consumers.”<sup>2</sup>

In addition to providing telephony service and broadband Internet access services, some WTA members also offer video services to their customers. In most of these service areas, WTA members are the only local wired video option, though like all Multichannel Video Programming Distributors (“MVPDs”), they have to compete against the two national Direct Broadcast Satellite (“DBS”) providers.

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<sup>1</sup> *WTA -- Advocates for Rural Broadband* is a national trade association represents more than 340 rural telecommunications providers offering voice, broadband, and video-related services in rural America. Its 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> Public Notice, *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 15-158, released August 24, 2017.

WTA members are small, rural video service providers that are encountering substantial difficulties, which are making it more and more difficult for them to continue offering video services to their customers. In fact, the WTA members still offering video services at best break even, and frequently lose money on their video services. During the past decade, a growing stream of WTA members have discontinued their video service offerings, and increasing numbers are considering following them. The main difficulties are predominately financial, and largely caused by the skyrocketing and discriminatory programming rates demanded by “in market” commercial network affiliates for retransmission consent and by cable programming networks for satellite channels. These content costs are not only growing at rates significantly higher than estimated inflation measures, but also appear to be much higher than the rates paid for the same programming by large MVPDs. WTA members have also been forced to accept contractual tying and tiering arrangements that mandate carriage of content that their customers have little interest in, and that hamper or prevent them from offering local content that their customers actually want and need.

**I. Current Industry Practices Have Made It Difficult for Small, Rural MVPDs to Offer Video at Competitive Prices**

Today, WTA members find themselves unable to offer their customers stable, affordable and competitive video pricing because of high and growing retransmission consent and satellite programming costs. However, steps can be taken by the Commission to ensure that small MVPDs are protected from discriminatory treatment due to their lack of bargaining power.

**A. Unreasonable Increases in Retransmission Consent Fees Are Inhibiting Small, Rural MVPDs from Offering Affordable Video Services**

WTA members offering video services have a common complaint that programming costs, especially retransmission consent fees, have made offering video unprofitable and unsustainable. Retransmission fees have increased by a factor of 30 over the last decade, even though network primetime audiences have fallen by more than half.<sup>3</sup> It is estimated that by 2022, retransmission fees will cost distributors and customers \$11.6 billion, which is a 51% increase from \$7.7 billion in 2016.<sup>4</sup> NBC-Universal, which is owned by Comcast, has stated that it expects retransmission consent fees to bring in \$1.4 billion in revenue in 2017 -- a 65% increase from its \$850 million in retransmission consent revenue in 2016.<sup>5</sup> CBS expects a 25% year-to-year increase in retransmission consent to make up for lost profits in other areas,<sup>6</sup> and hopes that these yearly increases will lead to \$2 billion in retransmission consent revenue by 2020.<sup>7</sup>

For WTA members, retransmission consent negotiations are negotiations in name only. In reality, they are “take it or leave it” demands from the in-market commercial television network affiliates that must be met if rural customers are to receive the basic ABC-CBS-FOX-NBC network channels. One WTA member has noted that its company’s retransmission consent fees for the Big Four networks have increased from \$1.87 per month in 2011 to \$9.45 per month per subscriber in 2016, which is approximately a 500% increase over five years. Another

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<sup>3</sup> Bob Fernandez, Why is your pay-TV bill rising? 'Free' TV now socks consumers with billions in fees, The Philadelphia Inquirer, Dec. 25, 2016, <http://www.philly.com/philly/business/Free-TV-now-socks-consumers-with-billions-of-.html>.

<sup>4</sup> Id.

<sup>5</sup> Shirley Pelts, Why Comcast Expects Retransmission Consent Fees to Rise in 2017, Market Realist, June 20, 2017, <http://marketrealist.com/2017/06/why-comcast-expects-retransmission-consent-fees-to-rise-in-2017/>.

<sup>6</sup> Id.

<sup>7</sup> Fernandez, supra note 3.

member stated that its retransmission consent fees are \$12.70 per month per subscriber in 2017 and that that number will increase to \$15.40 by 2019.

In many instances, WTA members transmit network affiliate signals to customers that are not able receive the broadcast signal over the air. Since the Digital Television transition reduced the off-air coverage areas of many television signals, it is increasingly common for WTA members and other rural MVPDs to have to pick up network affiliate signals somewhere between the city of license and their rural video service areas, and carry the signals the rest of the way to customers living miles beyond the broadcast coverage areas. Yet, despite the facts that the network affiliates are unable to serve many rural customers over the air and that they would not otherwise be able to include such rural households in their viewing audience for advertising purposes, WTA members and other rural MVPDs are forced to pay for their subscribers to have the out-of-range signals. This means that not only is the broadcast station receiving a retransmission consent fee for a customer that cannot receive a signal but it is also able to claim an extra viewer for advertising purposes. Rural video providers should not be penalized for helping achieve the public interest by making sure rural customers can receive those signals. The Commission should prohibit broadcasters from requesting retransmission consent fees for customers who do not receive their signal over the air.

In other situations, WTA members also have issues with “orphan counties.” In these instances, small MVPDs are required to deliver broadcast signals to DMAs that do not correspond with the interests of their subscribers. It is common for service areas to be assigned to a DMA that is either out of state or geographically distant when another DMA may offer more relevant in-state news or other content. This leaves WTA members to pay for the broadcast stations in their DMA and also for a “distant signal” that provides them with information they

actually want and need. This ultimately imposes increased and unnecessary costs upon customers.

**B. The Commission Should Reconsider Its Decision to Not Provide Additional Guidance Regarding Evidence of Bad Faith Under the Totality of the Circumstances in Retransmission Consent Negotiations**

In July 2016, then Commission Chairman Tom Wheeler wrote in a blog post that the Commission was choosing not to revise the totality of the circumstances test after the STELA Reauthorization Act of 2014 requested the Commission to consider revision.<sup>8</sup> The Commission's failure to reconsider the totality of the circumstances test was a major blow to small MVPDs and was a detriment to rural customers. This Commission should decide to reopen the proceeding and adopt specific examples of conduct as per se violations of the duty to negotiate in good faith pursuant to Section 325.

For example, one conduct that is common in these retransmission negotiations is broadcasters choosing to delay negotiations right until a marquee event is about to occur such as the National Football League playoffs, the NCAA Bowl Games or the Golden Globes Awards. In the weeks leading up to the event, a broadcaster may only negotiate on the surface and with no intent to truly discuss terms of the contract. To remedy this, the Commission should require a broadcaster to submit an initial contract proposal at least 75 days prior to the expiration of an existing contract or along with the notice of election required by Section 76.64(f) of the Commission's rules.

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<sup>8</sup> Chairman Tom Wheeler, An Update on Our Review of the Good Faith Retransmission Consent Negotiation Rules, FCC.com, July 14, 2016, <https://www.fcc.gov/news-events/blog/2016/07/14/update-our-review-good-faith-retransmission-consent-negotiation-rules>.

The Commission should also require broadcasters to provide information that substantiates the rates they are seeking, including the amount they charge other MVPDs in the local market. Having more data accessible to an MVPD as well as the Commission would go a long way in assuring that the negotiations are truly occurring in good faith.

The Commission should also consider how tying and tiering impacts retransmission consent negotiations and how those costs are passed on to customers. It is a common practice for broadcasters to demand the carriage of other, less desired channels (either cable or broadcast) in exchange for MVPD carriage of a popular channel. This has resulted in MVPDs having to offer bloated and over-priced tiers and packages to customers. WTA members have complained that when they request the price of carrying a specific channel that their customers want on a stand-alone basis, they are often given a single-channel price that is inflated to the point that it would be uneconomic to carry that one particular channel. One member reported that the standalone price for a desired channel was 50% higher than the bundled rate for the same channel and others. This means that the members are de facto forced to pay for undesired channels. These demands are particularly damaging to small MVPDs that have limited capacity to transmit multiple program channels. This will usually result in the elimination of niche programming or other content of real interest for rural MVPD customers or further network investment by the MVPD. As a result, it would be beneficial to small MVPDs and their customers if the effects of tying and tiering were re-examined by the Commission because today those practice result in rate increases for the affected video tiers. The Commission should make abundantly clear that broadcasters act in bad faith when demanding tying and tiering requirements without providing a meaningful financial alternative if the impact of the demand is to unreasonably increase the size and cost of the affected service tiers.

**C. Carriage Fees for the Most Desired Cable Programming Have Increased at a Rate that Prevents Small, Rural MVPDs from Offering Diverse, Affordable Video Services**

Similar to retransmission consent fees, the carriage costs for the most popular cable programming have also increased at unreasonable rates. In fact, carriage fees for cable programming have increased on average approximately 10% a year over the last 4 years.<sup>9</sup> Further, small MVPDs tend to pay an additional premium of roughly 30% more than what is paid by the major multiple-system operators (MSOs).<sup>10</sup> Price discrepancies such as these are unjustified. In fact, there is no added expense for a cable programmer to transmit their signal by satellite to a small MVPD. There is also no evidence that there are added administrative costs when dealing with smaller MVPDs .

More can be done by the Commission to help small MVPDs acquire affordable content. Specifically, the Commission should grant buying groups such as the National Cable and Television Cooperative (NCTC) protections under the cable access rules. Today, many WTA members use NCTC to negotiate carriage with cable programmers, but since NCTC is not considered a “buying group” under Section 76.1000, it is unable to lodge complaints when dealt with unfairly by a cable programmer. The Commission should resolve the pending Further Notice of Proposed Rulemaking in MB Docket No. 12-68 and conclude that a buying group,

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<sup>9</sup> James Wilcox, Your Cable Bill Is Going Up More Than You Think This Year, Consumer Reports, Feb. 4, 2017, <https://www.consumerreports.org/tv-services/your-cable-bill-is-going-up-more-than-you-think-this-year/>.

<sup>10</sup> Comments of the American Cable Association, MB Docket No. 07-269, filed on June 8, 2015, at 9.

such as NCTC, may “agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.”<sup>11</sup>

The Commission should also step in to bring transparency to negotiations. One issue that blocks reasonable rates is the fact that the programmers insert 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. As such, the Commission should initiate a review of the pricing practices for satellite video programming, including volume based discounts, to determine whether such discounts are economically justified. WTA firmly believes that an inquiry will find no merit to such price discrepancies.

## **II. Transitioning to ATSC 3.0 Without Protections for Small MVPDs Would be Disastrous**

In February, the Commission issued a Notice of Proposed Rulemaking (NPRM) in response to a proposal by the Advanced Television System Committee (ATSC) that would usher in the next generation of TV by allowing broadcasters to broadcast programming under a new standard (e.g., ATSC 3.0).<sup>12</sup> Despite its touted potential, ATSC 3.0 has a plethora of pitfalls that may force many more small, rural MVPDs out of the video marketplace altogether. WTA demonstrated its concerns earlier this year in Comments that identified the uncertainty surrounding the transition and concerns that retransmission consent agreement provisions could

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<sup>11</sup> Ex parte, American Cable Association, MB Docket No. 12-68, filed on August 24, 2017, <http://www.americancable.org/fcc-ex-parte-re-revision-of-the-commissions-program-access-rules/>.

<sup>12</sup> *Authorizing Permissive Use of the “Next Generations” Broadcast Television Standard, Notice of Proposed Rulemaking*, GN Docket No. 16-142, FCC 17-13, (rel. Feb. 23, 2017).

be used to force MVPDs to transition to ATSC 3.0.<sup>13</sup> WTA wishes to remind the Commission that adequate safeguards must be created to ensure that small MVPDs are not forced to undertake the large investment an ill-timed transition would require.

Much of WTA members' concerns stem from the uncertainty around the transition because "many aspects of the ATSC 3.0 standard have yet to be finalized and approved."<sup>14</sup> This leaves members only to guess about what the transition may cost them. Video operation staffs and vendors of WTA members have confirmed that much of the equipment needed to transition is not available yet and it is not known when it will become available or how much it will cost.

However, WTA members have little doubt that such a transition will be very expensive. In fact, due to the fact that the new standard is not backward compatible with existing equipment, small MVPDs will likely be required to update their entire networks from the ground up and at great expense. These costs include but are not limited to engineering studies, new receivers, new transcoders, demultiplexers, demodulators, new set-top boxes, redundancies, and system integration and testing. To put these costs in perspective, the replacement of set-top boxes alone will cost between \$160-240 per box with an average of 3 boxes having to be replaced per household.<sup>15</sup>

Transmitting the ATSC 3.0 signal will also use much more bandwidth on an already taxed network. It is expected that the new signal will use approximately 20 Mbps as compared to the 9 Mbps currently used by a high definition television channel. Of note, customers will first

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<sup>13</sup> Comments of WTA – Advocates for Rural Broadband, MB Docket No. 15-216, filed on May 9, 2017, <https://ecfsapi.fcc.gov/file/1050952232033/Final%20-%20WTA%20Comments%20on%20ATSC%203.0%20-%205.9.2017.pdf>.

<sup>14</sup> Letter from Brendan F. Haggerty, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, filed Dec. 5, 2016, at 1.

<sup>15</sup> Ex parte, WTA – Advocates for Rural Broadband, GN Docket No. 16-142, filed June 23, 2017, at 3, <https://ecfsapi.fcc.gov/file/106232006124821/Final%20-%20WTA%20ATSC%203.0%20Ex%20Parte%20-%206.23.2017.pdf>.

need to acquire television sets that are enabled with a tuner that can receive the signal. As a result, while the transition slowly occurs, broadcasters will have to simulcast both the legacy and Next Gen signals, which means that there will be a shortage of bandwidth on the system. Unfortunately, this will more than likely result in niche programming of interest to rural customers being dropped. Further, the additional bandwidth needed for Next Gen signals will reduce the available bandwidth for broadband services. This reduction will result in less bandwidth available for customers to explore other video alternatives and will most likely force the MVPD to upgrade its networking, passing on the cost to customers.

It is critical that the Commission create safeguards to protect small MVPDs from the harmful effects of a forced transition. WTA is encouraged by the NPRM's proposal that the transition would be voluntary and that broadcasters would be required to simulcast their signals. However, the Commission should protect small MVPDs from the potentially negative effects of simulcasting. Namely, WTA is concerned that broadcasters will move the broadcasting signal of their ATSC 1.0 signal to an area where an MVPD will no longer be able to access the signal causing the MVPD to no longer be able to transmit the signal to its customers. WTA members are normally forced through one-sided retransmission consent agreements with the responsibility of placing their head-end in a position where it can reach the signal, and many WTA members recall the harrowing experience of having to reposition their head-ends due to reduced signal propagation during the digital transition several years ago. WTA members are aware that repositioning a head-end may result in large, disruptive and difficult-to-recover costs for a small MVPD. One WTA member has stated that it would cost \$1 million to build a direct and dedicated fiber line to all broadcast stations' facilities in a DMA. The Commission should take steps to guarantee that no MVPD loses a legacy signal during the transition.

The Commission should also take steps to protect small MVPDs from a forced transition via one-side retransmission consent agreements. As mentioned, WTA members are often given “take it or leave it” offers that are unreasonable, but agreed to because the alternative of losing the signal is economically unbearable. WTA members have reported that they have already seen demands for carriage of ATSC 3.0 signals through broad language that requires carriage of any “compliant ATSC standard.” WTA members lack bargaining power to change language of the agreements and will be forced to transition without protections from the Commission. As a result, WTA urges the Commission to require ATSC 3.0 and legacy signals to be negotiated separately in retransmission consent negotiations. WTA also requests that the Commission find it to be a “per se” violation of good faith for broadcasters to tie these carriage agreements together. Section 325 of the Communications Act grants the Commission with broad authority to ensure that retransmission consent does not result in unreasonable cable rates. A forced or ill-timed transition to ATSC 3.0 would be disastrous to small MVPDs. Undoubtedly, it would result in substantial rate increases for customers, or even worse, multiple MVPDs leaving the video marketplace.

## **Conclusion**

The video marketplace is optimal when customers have real options when deciding their video providers. WTA members are proud to be local companies that value their customers and their communities. It would be a loss for the marketplace to continue losing these local voices. As such, the Commission should take the needed steps to ensure that small, rural MVPDs can thrive in the video marketplace.