Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Fostering Independent and Diverse Sources of Video Programming	)	MB Docket No. 24-115
	)	

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Notice of Proposed Rulemaking ("NPRM")[2] released April 19, 2024 by the Federal Communications Commission ("Commission") in the above-captioned proceeding. The NPRM seeks comment on "the state of the marketplace for diverse and independent programming" and "marketplace obstacles that may hinder independent programmers from reaching consumers."[3] As discussed further below, the Commission should adopt the NPRM proposal to prohibit the use of most favored nation ("MFN") and unreasonable alternative distribution method ("ADM") provisions in program carriage agreements between independent programmers and multichannel video programming distributors ("MVPDs"). The Commission should also take steps to address equally pernicious programmer practices – specifically forced bundling and tying of content and

[1] NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers and broadband providers, and many provide fixed and mobile wireless, video and other competitive services in rural America as well.

[2] *Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115, Notice of Proposed Rulemaking, FCC 24-44 (rel. Apr. 19, 2024).

[3] *Id.*, ¶ 3.

tiering of programming – that drive up small MVPDs' end-user rates and hinder their ability to offer diverse and independent programming.

For rural subscribers, independent programming is particularly important. NTCA members report that their rural communities have a need for foreign language programming to fulfill the needs of immigrants and migrant workers and refugees. Rural MVPDs are also more likely than their urban counterparts to desire programming of interest to Native American communities or that is focused on the challenges of farming, ranching or other activities that are more prevalent in rural areas, such as hunting, fishing, camping and hiking. Religious programming serves a need in areas where a preferred place of worship may be inaccessible due to the distances found in rural areas. Many rural communities also have an aging population that relies heavily on video for entertainment that may differ from younger, more urban populations.

Against this backdrop, small, rural MVPDs have strong incentives to offer this programming in their communities (and thereby promote the diversity offered by independent programming as the NPRM seeks to do) where the opportunity permits. Yet, any MVPD's ability to offer its community access to a wide array of programming requires access to desired content under reasonable terms and conditions. Unfortunately, NTCA's members are hampered in their efforts to tailor programming to the needs and interests of their rural communities due to the activities of a select few, but large and powerful, content providers and MVPDs. As the NPRM recognizes,[4] and as the record in response to the 2016 NOI[5] and NPRM[6] issued in this proceeding demonstrates, unconditional MFN provisions are among the tools these larger parties employ, as they unduly limit programmers' flexibility to develop creative ways to grow their business.[7] These provisions limit the ability of small MVPDs to negotiate better prices or packages that meet the unique needs of their subscribers. ADM provisions that prohibit independent video programming vendors from distributing programming to consumers over the Internet for a limited period after the programming's initial airing on a linear MVPD service are problematic as well. As the record in response to the 2016 NPRM in this proceeding demonstrated, ADMs can preclude online distribution of independent programming that consumers desire.[8]

While critical to improving consumer access to independent programming, addressing MFNs and AMDs would be a half measure, at best. The Commission must also address forced "bundling/tying" and "tiering" arrangements that even more directly than MFNs/AMDs hinder rural providers' ability to offer independent programming. As NTCA has repeatedly stated, these practices drive up the retail rates of small, rural MVPDs and hinder their ability to offer their

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4 *See Id.*, ¶ 11.

5 *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Inquiry, FCC 16-19 (rel. Feb. 18, 2016) ("2016 NOI").

6 *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41, Notice of Proposed Rulemaking, FCC 16-129 (rel. Sep. 29, 2016) ("2016 NPRM").

7 NPRM, fn. 46. *See also*, Comments of RFD-TV, MB Docket No. 16-41. (fil. Jan. 26, 2017), p. 9; Comments of FUSE Media, Inc. MB Docket No. 16-41. (fil. Jan. 26, 2017), p. 6.

8 NPRM, ¶ 14.

communities the programming they desire at affordable rates.[9] As a result of "*forced bundling/tying*" – a practice under which programmers require MVPDs to purchase content they do not want and that consumers do not demand in order to obtain the "must have" content that their subscribers actually desire – the channel lineups in rural MVPDs' service tiers grow ever larger and more expensive. Closely related is the practice of content "*tiering*" – a practice under which programmers require MVPDs to place channels (including forcibly bundled channels) on the highly penetrated service tiers. NTCA members consistently report that each of these practices raise retail price points so high that the market cannot bear the price increases that would come with adding independent programming to widely subscribed tiers. As a result, rather than consumers having access to the independent and diverse programming that is the subject of the NPRM, MVPDs across the board are forced to carry the same homogenized programming.

Finally, this NPRM comes at a time when many MVPDs are exiting or considering exiting the market due to the increasingly dismal economics of offering such services in the face of content pricing hikes; certainly, the Commission's goal of fostering consumers' access to independent programming would be undermined if fewer MVPDs were in the business of program delivery. A recent NTCA survey found that 18 percent of its members providing video to their communities and that responded to the survey are not very likely to continue to offer service, *while another 11 percent reported current plans to discontinue service*.[10] Over 86 percent of those cited rising

[9] Comments of NTCA–The Rural Broadband Association, MB Docket No. 16-41 (fil. Jan. 26, 2017), pp. 3-7; Comments of NTCA–The Rural Broadband Association, MB Docket No. 15-158 (fil. Aug. 21, 2015), pp. 11-13.

[10] NTCA–The Rural Broadband Association, Broadband/Internet Availability Survey Report, p. 27 (Dec. 2023) available at: https://www.ntca.org/sites/default/files/documents/2023-12/2023%20Broadband%20Survey%20Report%20FINAL.pdf

program costs as the reason for considering or initiating steps to discontinue service.[11] Each of the practices discussed above raises program content costs and thus threatens to further undermine the NPRM's program diversity goals.

Fortunately, the Commission has the legal authority to prohibit the practices discussed above, thereby fostering the availability of independent programming. First, section 601 of the Cable Act[12] directs the Commission to ensure the accessibility to and dissemination of the "widest possible" diversity of information sources and services to the public. A significant portion of content today is effectively controlled by a handful of very large content providers who, in conjunction with large MVPDs, adopt contracts that, as described above, make it virtually impossible for independent programming to gain a greater audience. Section 616(a) is relevant here as well, directing the Commission to adopt rules "governing program carriage agreements and related practices between [MVPDs] and video programming vendors"[13] and conferring broad authority to "stem and reduce the potential for abusive or anticompetitive actions."[14] Finally, the purpose of section 628 is to increase competition and diversity in the MVPD marketplace, and it prohibits "a cable operator . . . or a satellite broadcast programming vendor [from engaging] in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any [MVPD] from providing . . . programming to subscribers or consumers."[15] Adopting rules that remove contractual marketplace obstacles that

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11 *Id.*, p. 29.

12 47 U.S.C. § 521.

13 47 U.S.C. § 536(b).

14 H.R. Rep. No. 102-628, 102d Cong. 2d Sess. at 27.

15 47 U.S.C. §548.

hinder independent programmers from reaching consumers served by small providers directly advances Congress' intent and stated goals, as well as the goals espoused by the NPRM.

Respectfully submitted,

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