June 22, 2016

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**RE: Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42
Commercial Availability of Navigation Devices, CS Docket No. 97-80**

Dear Ms. Dortch:

On Monday, June 20, 2016 the undersigned with NTCA–The Rural Broadband Association ("NTCA"),[1] met with Matthew Berry, Chief of Staff to Commissioner Ajit Pai. The parties discussed the Notice of Proposed Rulemaking released on February 18, 2016,[2] in which the Commission seeks comment on how to create a commercial market for devices manufactured by third parties that can access multichannel video programming and other services offered over multichannel video programming ("MVPD") networks.

NTCA first discussed the expected significant costs that MVPDs will incur to make the three proposed "Information Flows" as proposed in the NPRM available to providers of competitive navigation devices and services. It was noted initially that these costs are difficult to quantify in terms of both specific hardware, software, middleware and encryption technology that MVPDs will need to come into compliance with the NPRM's proposals precisely because: (1) there is no standard (or standards) as yet for complying with the proposals; and (2) no technology actually exists today as a tested and proven method for providing the Information Flows as defined by the NPRM.

NTCA further stated that one significant cost that proponents of the NPRM's proposals seem to have overlooked – and that the Commission must account for before moving forward – is the "pause" on innovation in the MVPD industry that the NPRM will produce. MVPDs – particularly small, rural MVPDs operating this particular line of business on a "break even" basis

1 NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers ("RLECs"). All of NTCA's members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

2 Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18 (rel. Feb. 18, 2016) ("NPRM").

at best – will likely need to hold back on investments in improving the quality and availability of their MVPD networks for fear of additional investments that will be required to also come into compliance with the NPRM once the standards body completes its work. Small, rural MVPDs cannot afford to invest in new technologies or new ways of doing business that may be undermined or mooted by the new unbundling rules adopted at some unknown time in the future pursuant to an unknown standard or set of standards yet to be created.

NTCA then stated that such costs and others arising out of the NPRM's proposals are unnecessary to achieve the Commission's professed goals for this proceeding. To the extent that the Commission is concerned about reducing set-top box rental fees, the Comcast announcement that its full video content lineup will be available on Samsung smart televisions and Roku devices represents a single but important example of steps toward the antiquity and irrelevance of the MVPD-leased set-top box. Indeed, the MVPD market is already responding to consumers' desire to move away from the set-top box, and additional MVPDs of all sizes are likely to follow Comcast's lead. Alternatively, to the extent that "competitive navigation" (in terms of greater integration of MVPD and over-the-top ("OTT") content available to consumers in a single and searchable interface) has been identified as a goal of this proceeding, that worthy goal might very well be on the horizon if only the Commission would let the market take its natural course rather than imposing mandates for yet-undeveloped technology pursuant to yet-undeveloped standards. Here too MVPD and OTT providers must respond to consumer demand for both an increase in the devices and applications through which they can access content as well as an improved experience in doing so. In short, consumer demand and the market may achieve the Commission's goals here absent regulatory intervention.

NTCA then noted that a recent alternative approach put forth by a group of larger MVPDs and content creators[3] must not under any circumstance be viewed by the Commission as a "silver bullet" for resolving small MVPDs' concerns expressed in response to the NPRM. In particular, while it holds promise in terms of potentially resolving certain copyright, advertising, privacy, and other issues raised by the numerous parties objecting to the NPRM's proposals,[4] implementation of the alternative proposal would also not come without substantial cost to small MVPDs already struggling to operate in an already difficult MVPD market. NTCA stated that the best approach would be a Commission recognition that the market and not regulatory intervention of any kind holds the greatest promise with respect to consumers' access to the content they want, on the device they want, and at the time and place of their choosing.

NTCA further noted that if action is nonetheless taken – in terms of either the NPRM's proposals or a version of the alternative proposal discussed above – a permanent exemption for small MVPDs serving fewer than 1 million subscribers would be welcome to ensure that a number of small providers are not forced out of the market by an immediate need to comply with the proposed mandate. However, NTCA expressed their concern that, as a practical matter, such an exemption would merely represent a *deferral* and would not eliminate the costs of the NPRM's proposals. Specifically, any mandate ostensibly made applicable only to large

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[3] Letter from Paul Glist, on behalf of Vme TV, Revolt TV, TV One, NCTA, AT&T/DIRECTV, and Comcast to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. MB 16-42, CS Docket No. 97-80 (Jun. 16, 2016).

[4] *See generally*, Reply Comments of NTCA-The Rural Broadband Association, MB Docket No. 16-42 and CS Docket No. 97-80 (fil. May 23, 2016).

and mid-size MVPDs would almost certainly ultimately “trickle down” to smaller providers as matter of manufacturers’ own response to any order. An exemption, while still valuable, would therefore not eliminate the substantial costs of the proposal – thus underscoring yet again the reason to avoid adoption of the proposal altogether in the first instance.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,
/s/ *Brian Ford*
Brian Ford
Senior Regulatory Counsel

cc: Matthew Berry