



AMERICAN CABLE
ASSOCIATION

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July 26, 2016

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Communication of the American Cable Association; *Expanding Consumers' Video Navigation Device Choices*, MB Docket No. 16-42; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143

Dear Ms. Dortch:

On July 24, 2016, Matthew M. Polka, President & CEO, Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and the undersigned, along with ACA members Robert Gessner, President of MCTV, Patricia Jo Boyers, President and CEO of BOYCOM, Brian Singleton, President and CEO of Truvista, Leslie Brown, Senior Vice President and General Counsel of Atlantic Broadband, and William C. Beaty, Executive Vice President of Cable TV (retired) of Comporium, met with Commissioner Mignon Clyburn of the Federal Communications Commission (“Commission”), and Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn to discuss the above-mentioned proceedings.

The ACA members first discussed the Commission’s Navigation Device rulemaking and the two proposals under consideration: the Commission’s proposal to require that multichannel video programming distributors (“MVPDs”) make their services available to third-party set-top box manufacturers, and the “Apps” proposal proffered by the National Cable & Telecommunications Association and others. They started by explaining that smaller MVPDs are not wedded to the traditional business models of the MVPD industry. Because the provision of broadband Internet service is a key business of smaller providers and their provision of MVPD service suffers from high and increasing programming costs and small and decreasing margins, small and mid-sized cable operators are willing to provide their customers with new offerings and devices, including those that enable subscribers to access their traditional pay-TV alongside over-the-top video services and provide an integrated search. Ms. Brown of Atlantic Broadband and Mr. Beaty of Comporium noted that, like many ACA members, their companies offer subscribers innovative devices such as TiVo and Arris Moxi that are not offered by the

largest MVPDs and they expect more ACA members to continue to develop and deploy similarly innovative video solutions in the future.¹

In regard to the Commission's proposal, ACA emphasized that the determinable compliance cost for smaller MVPDs would be no less than \$1 million per system – an amount far in excess of normal capital expenditures. ACA estimates that because of this unprecedented burden, more than 200 small MVPDs would go out of business or stop offering video services, and the rest of the small MVPD industry would need to charge much higher video prices to their customers and scale back investments to upgrade broadband infrastructure. For this reason, ACA has urged the Commission not to apply its proposal to providers with one million or fewer subscribers. ACA's call for relief for smaller providers is shared widely. The Small Business Administration's Office of Advocacy recently raised concerns about the proposal's impact on smaller operators,² and numerous parties, including TiVo,³ have called for an exemption for smaller MVPDs. Moreover, dozens of lawmakers from both sides of the aisle have urged the Commission not to harm smaller MVPDs and the communities they serve. ACA representatives explained that even if the proposal does not apply to MVPDs with one million or fewer subscribers, small and mid-sized MVPDs that are offering innovative services and devices will continue to do so, and more will join them in the future. Moreover, nearly all MVPD customers would still have the option of purchasing service from at least two MVPDs that meet the proposed requirements.

ACA and its members also urged the Commission to consider carefully the alternative "Apps" approach, which would require that all MVPDs with more than one million subscribers to build video "Apps" using open HTML5 web standards.⁴ While ACA believes the "Apps" approach is a good solution for larger MVPDs, it too would require significant capital and other investments on the part of MVPDs. Based on discussions with its members, ACA estimates that upgrading networks, developing and deploying the proposed apps, and freeing up capacity as necessary to implement the "Apps" approach, would require an investment of at least \$2 million per systems, with no possibility of offsetting revenues. Industry trends suggest some small operators may upgrade their systems to allow delivery of some or all existing video services in IP and to allow their customers to receive these services via a retail device as consumer demand increases and the means become more affordable, but for most providers an IP upgrade and boxless solution is not a realistic option today. Moreover, it is impossible to forecast how long it will be before a viable technological solution emerges that smaller operators will be able to adopt and implement. As with cable operators' transition from analog to digital, – an industry-wide transition that has been ongoing for about twenty years, with most smaller operators still in the middle of this transition and others still offering analog only – these transitions take time for smaller MVPDs, and some of them never get there. Thus, ACA views the "Apps" proposal, which as proposed covers only large MVPDs, as a good complement to the voluntary, market-based innovative solutions that ACA members are already providing to their customers. In sum, should the Commission pursue and adopt either approach, it should ensure the new requirements do not apply to MVPDs with one million or fewer subscribers. Because of the cost and the uncertainty of how the proposals would be implemented, delayed

¹ Letter from Paul Glist, Davis Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket 16-42, CS Docket No. 97-80 (June 16, 2016).

² Letter from Darryl L. DePriest, Chief Counsel for Advocacy, and Jamie Belcore Saloom, Assistant Chief Counsel, Small Business Administration, to Marlene H. Dortch, Secretary, FCC, MB Docket 16-42, CS Docket No. 97-80 (June 6, 2016).

³ Expanding Consumers' Video Navigation Device Choices, MB Docket No. 16-42; Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143, Comments of TiVo Inc. at 33 (filed Apr. 22, 2016).

⁴ Letter from Paul Glist, Davis Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket 16-42, CS Docket No. 97-80 (June 16, 2016).

compliance would not address the potential harm to smaller MVPDs and should not be seen as reasonable or sufficient relief.

With respect to the Commission's proposed rulemaking on Broadband Data Services ("BDS"), ACA representatives explained that the combination of significant demand for higher performance dedicated (Ethernet) services among commercial customers and the Commission's light-touch regulatory policy has encouraged small and mid-sized operators such as Atlantic Broadband to enter the market and compete aggressively against incumbent providers. ACA estimates that its non-incumbent members are investing upwards of \$300 million annually to deploy facilities to support the provision of BDS, and these operators are providing better services at lower rates than incumbent providers. Over the past five years, smaller competitive providers in all areas have decreased prices for their Ethernet services by approximately 50 percent on average across all geographic areas and all customer segments. ACA members continue to expand all of their services, deploying broadband to previously unserved areas.

ACA therefore urged Commissioner Clyburn to continue the FCC's traditional light touch approach to regulating competitive providers. Any effort to regulate BDS rates of cable providers would create significant disincentives for them to invest and expand their market presence. Smaller providers in particular would find it unreasonably costly to comply with rate regulation, which may prevent them from seeing an adequate return on the investments they have already made.

In conclusion, ACA expressed its view that smaller providers are in fact acting consistent with the objectives the Commission has set forth in both the set-top box and the business data services proceedings. They are investing in innovative solutions that give consumers choice at lower prices. As a result, the Commission should proceed carefully in crafting any rules in these proceedings that would undermine its goals. The market in both of these areas is advancing towards increased competition and innovation, and burdensome regulation would reverse decades of progress and investment in advanced communications services.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Mary Lovejoy

cc: Commissioner Mignon Clyburn
Claude Aiken