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Congress of the United States

House of Representatives

Washington, DC 20515-4601

March 16, 2016

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The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Received & Inspected

MAR 21 2016

FCC Mail Room

Dear Chairman Wheeler,

The Federal Communications Commission has initiated many proceedings of interest to the about 800 small and medium-sized broadband, video and voice providers in the market today. While the Commission should consider the unique position of these providers in all proceedings, several warrant particular attention: reform of the rules governing retransmission consent, the availability of navigation devices (set-top boxes) at retail, and the provision of a permanent exemption for such providers from the enhanced transparency rules adopted in the 2015 *Open Internet Order*.

Small and medium-sized providers, which cumulatively serve seven million subscribers, have invested more than \$10 billion to deploy high-performance communications networks to more than 20 percent of the nation. These operators serve residential, commercial and institutional consumers in small towns and rural areas where the economics of operating are challenging and in urban areas where they give consumers competitive alternatives to incumbent operators. They are important members of the communities they serve, employing residents, paying taxes and serving customers with a local touch.

Last year the FCC opened a rulemaking to review and update its "totality of the circumstances" test for reviewing complaints that a broadcast TV station or multichannel video programming distributor (MVPD) has violated its duty to negotiate for retransmission consent in good faith. As the rulemaking recognizes, since Congress' enactment of the retransmission consent regime, significant changes in the marketplace have altered the negotiation dynamics between broadcasters and MVPDs. As a result of these changes and the FCC's underdeveloped standards for evaluating bad faith proposals and conduct, negotiations have become increasingly acrimonious, evidenced by the growing incidence of blackouts that harm consumers. Smaller MVPDs and their customers are most vulnerable in this market. Therefore, I urge you to consider their concerns in this proceeding, and where you find these entities being treated improperly, to address it.

Recently, the FCC proposed rules regarding the development of a commercial market for set-top boxes that can access multichannel video programming over MVPD systems. Because smaller and less technologically advanced MVPDs may face especially onerous compliance burdens, I applaud the FCC's willingness to seriously consider providing an exemption for MVPDs with one million subscribers or fewer by seeking comment on this issue. As this proceeding develops, I encourage the FCC to consider the concerns raised by smaller MVPDs, and to take all necessary steps to avoid unduly burdening them.

I am also pleased the FCC considered the concerns of small and medium-sized broadband Internet service providers (ISPs) when it adopted and then extended a temporary exemption from its enhanced transparency rules for these providers in its 2015 *Open Internet Order*. Smaller ISPs have submitted a substantial quantity of data and information in support of adopting a permanent exemption, and the FCC should work with them to ensure that they are not unduly burdened by the new rules.

Small and medium-sized broadband, video and voice providers play an important role in the marketplace, and I encourage the FCC to make sure that their concerns are considered in all proceedings, including the three proceedings discussed above. Thank you for your timely consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Robert J. Wittman". The signature is written in a cursive style with a long horizontal flourish at the end.

Robert J. Wittman
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 27, 2016

The Honorable Rob Wittman
U.S. House of Representatives
2454 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Wittman:

Thank you for your letter asking that the Commission consider the potential impact on small and medium-sized broadband and video providers in its proceedings on retransmission consent, better fostering competition in the set-top box and navigation app marketplace, and the enhanced transparency rules. I take your input on this issue seriously and assure you that it will receive careful consideration.

First, you urge the Commission to consider the input of small and medium-sized video providers in our retransmission consent proceeding. Congress, in Section 325 of the Communications Act, requires broadcasters and multichannel video programming distributors (MVPDs) to negotiate for retransmission consent in good faith. As you indicated, last year the Commission adopted a Notice of Proposed Rulemaking, which invited all stakeholders to give us their views about negotiating practices that should factor into a good faith determination. Based on the staff's careful review of the record, it is clear that more rules in this area are not what we need at this point. There is nothing in the record that suggests that our current totality of the circumstances test, which is intentionally broad, is inadequate to address the negotiating practices of broadcast stations or MVPDs of all sizes. However, please be assured that the Commission can and will investigate a potential good faith violation and take enforcement action if a party fails to fulfill its statutory obligations.

Next, you share your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact small pay-TV providers. I share your goal of ensuring that pay-TV subscribers in all parts of our country can enjoy the benefits of consumer choice without unduly burdening small providers of pay-TV. Recognizing the important role that small pay-TV providers play in many rural communities, the Notice of Proposed Rulemaking (NPRM) adopted in February seeks comment on how this proceeding could affect these providers. Notably, the NPRM proposes to exempt all analog cable systems from new requirements while also seeking comment on the American Cable Association's proposal to exempt all pay-TV providers serving one million or fewer subscribers from any rules. The NPRM further asks how the Commission can ensure that any rules adopted are not overly burdensome to pay-TV providers. We are continuing to engage with all stakeholders on this issue, including small pay-TV providers. Customers of providers of all sizes

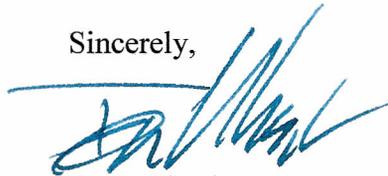
deserve choice and innovation, and I am confident that we will be able to find a balance that accurately reflects the technology and resources available to truly small providers.

Finally, you ask the Commission to work with small providers ensure that they are not unduly burdened by the enhanced transparency rules adopted by the Commission. I share your goal of providing broadband consumers with critical information regarding commercial terms, speeds and other performance characteristics, and network practices, without unduly burdening small providers of broadband internet access service. The 2015 Open Internet Order temporarily exempted small providers with 100,000 or fewer broadband connections from the enhanced transparency requirements while the Commission evaluated the impact.

As you know, the information collection requirements resulting from the transparency enhancements are subject to the Paperwork Reduction Act of 1995 (PRA). Accordingly, on May 20, 2015, the Commission published in the Federal Register and sought comment on its initial PRA burden estimates. We received a number of comments in response and have been evaluating their impact on our initial estimates. To avoid making a decision on the temporary exemption without a final burden estimate approved by the Office of Management and Budget (OMB), the Consumer and Governmental Affairs Bureau extended the temporary exemption to December 15, 2016. Once we have OMB approval for our burden estimates, the Commission will be able to consider whether and, if so, how best to extend the temporary exemption from the enhanced transparency requirements.

I appreciate your interest in these matters. Your views are very important and will be included in the record of the proceedings and considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Wheeler', with a horizontal line above it.

Tom Wheeler