Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
Amendment to the Commission's Rules Concerning Effective Competition	)	MB Docket No. 15-53
Implementation of Section 111 of the STELA Reauthorization Act	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

The National Association of Telecommunications Officers and Advisors ("NATOA")[1] submits these comments in response to the Notice of Proposed Rulemaking ("NPRM"),[2] released March 16, 2015, in the above-entitled proceeding.

Procedural Concerns

Section 111 of the STELA Reauthorization Act of 2014[3] requires the Commission to "complete a rulemaking to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas" by June 2, 2015. The NPRM was published in the Federal Register on March 20,

[1] NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.
[2] *In the Matter of Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act,* MB Docket No. 15-53, Notice of Proposed Rulemaking, FCC 15-30 (March 16, 2015) ("NPRM").
[3] Pub. L. No. 113-200, § 111, 128 Stat. 2059 (2014).

2015, establishing a total comment period of 30 days. Such a short turnaround for comments *may* have been appropriate had the Commission followed the dictates of Section 111; namely, focusing its attention on devising a *streamlined* process for filing effective competition petitions by *small cable operators* and adhering to the congressional admonition that "[n]othing in [Section 111] shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition . . . ." Instead, the Commission opted to address the effective competition petition process on an industry-wide basis and rather than looking at alternative ways to "streamline" the filing process, the Commission seeks to wave its regulatory magic wand and remove any duty from any size cable operator to prove effective competition exists.[4]

While the Commission may be within its rights to expand the scope of the NPRM beyond the stated limitations of Section 111, it should not have subjected the entire NPRM to the constraints of such a short filing period and should not use Section 111 as justification for subjecting the entire litany of issues raised to such a short comment period. Indeed, when Congress established the 180-day period for the Commission to undertake a limited rulemaking pursuant to Section 111, it is unlikely Congress could have foreseen the Commission expanding the scope of the NPRM to the extent it did. Indeed, as the National Association of Broadcasters ("NAB") and Public Knowledge have pointed out, the NPRM raises a "myriad" of issues, including "the state of the video marketplace;" "whether local franchising authorities ["LFAs"]

[4] In the NPRM, the Commission makes much of the fact that from the start of 2013 to the present, it granted 224 effective competition petitions in their entirety and four others in part. Further, 210 of the petitions were uncontested. NPRM at ¶ 7. However, this does not reflect a lack of interest on behalf of the affected LFAs. Rather, it merely reflects the fact that such petitions were accompanied with supporting data to substantiate the providers' claims of effective competition and that the LFAs, like the Commission, were persuaded by the supporting data.

have adequate resources to meet the burden of proving effective competition;" the "effect on traditionally underserved communities should cable rates go unchecked;" and how the proposed process changes "may impact MVPDs subscribers, other television viewers, advertisers, distribution of broadcast signals, and distribution of public, educational and governmental access channels."[5]

What "Burden"?

The FCC's stated goal in issuing the NPRM was to determine how the Commission "should improve the effective competition process."[6] From this simple, straightforward statement of intent, the Commission then proceeds to put forth proposed rules that would eviscerate the process that has been in place for over 20 years. While we think it may be appropriate to address the current process and whether reasonable steps could be taken to "streamline" the process for small cable operators, we contend the Commission's wholesale presumption of effective competition on a nationwide basis goes too far.

Further, we are at a loss as to what "burden" the Commission hopes to "ease" by this proceeding since the NPRM is silent as to that issue.[7] Without more information, NATOA cannot appropriately comment on how industry's "burden" would compare with that which would be imposed on LFAs – and consumers – if the Commission's proposed rules are adopted. In addition, this lack of information prevents us from offering alternatives to the Commission's proposed rules or from suggesting how the current process can be streamlined.

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[5] *See*, National Association of Broadcasters and Public Knowledge, Motion to Narrow the Scope of the Proceeding or for an Extension of Time, MB Docket No. 15-53 (filed Mar. 26, 2015). ("Motion") at 3-4.
[6] NPRM at ¶ 1.
[7] NPRM at ¶ 2.

Unintended Consequences

NATOA shares the concerns expressed by the NAB that the Commission's proposal "may have far-reaching, unintended consequences, including implications that could cause an increase in rates for cable TV customers."[8] Indeed, a finding of effective competition affects more than just the rates charged for the provision of basic cable service. For example, the basic service tier must include, at a minimum, the local broadcast television stations and any public, educational or governmental ("PEG") access channels required pursuant to a franchise agreement. But it has been argued that since this basic tier carriage requirement is tied to rate regulation, the Commission's proposal could permit cable operators to move these stations to a higher priced tier of service.

It is NATOA's long-held, fundamental public policy position that PEG programming must be protected. PEG is, without doubt, the ultimate example of local media – it truly reflects the unique interests and values of the community it serves. From council meetings to local sports to community events, PEG programming is localism at its best. It is essential that PEG programming be protected and remain on a cable operator's basic service tier. The Commission must not permit the basic tier placement of PEG programming to become an "unintended consequence" of its efforts to address the effective competition process. We agree with NAB that "a finding of effective competition does not alleviate a cable operator's duty to provide a basic tier for consumers that includes all local commercial and noncommercial television stations."[9]

[8] Letter from Scott Goodwin, Associate General Counsel for NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-53 (filed Mar. 24, 2015).
[9] Letter from Scott Goodwin, Associate General Counsel for NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 15-53 (filed Apr. 7, 2015).

In addition, how would the Commission's proposal affect or be affected by the on-going AT&T/DirecTV merger? In the event the merger is approved, should AT&T have the benefit of a nationwide finding of effective competition based, in part, on the presence of DirecTV in communities where AT&T's U-verse service and DirecTV are *no longer* competitors?

Conclusion

It is uncontested that the scope of this NPRM goes well beyond the limited scope of inquiry posed in Section 111. The Commission's ill-considered decision to propose a wholesale revision of the effective competition process, coupled with a 30-day comment period, prevents interested stakeholders from "develop[ing] the most robust submissions on the myriad issues raised by the proposals in the NPRM."[10] At the very minimum, we urge the Commission to now exercise constraint and focus any order on establishing a streamlined process for filing effective competition petitions for small cable operators and reserve the remaining issues raised in the NPRM for another day.

Respectfully submitted,

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[10] Motion at 3.