



May 12, 2015

VIA ECFS

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

Re: *MB Docket No. 15-53, Amendment to the Commission's Rules Concerning Effective Competition and Implementation of Section 111 of the STELA Reauthorization Act*

Dear Ms. Dortch:

The National Hispanic Media Coalition (NHMC) writes to urge the Federal Communications Commission (FCC or Commission) to avoid taking steps during the Commission's implementation of Section 111 of the STELA Reauthorization of 2014 that would negatively impact the rates paid by cable customers and the availability of certain programming.

Namely, the Commission should not "adopt a presumption that cable systems are subject to competing provider effective competition, absent a franchising authority's demonstration to the contrary."¹ This represents a reversal of a long-standing presumption and would result in harm to Latino consumers and programmers, and require assumptions that are contrary to available data.

By reversing the presumption and issuing a blanket determination that every community enjoys effective competitive in the pay TV marketplace – and diminishing the role of all local franchise authorities in the country – the Commission will curtail the ability of states and local municipalities to ensure that their communities receive basic cable service at reasonable prices. This would effectively allow cable companies to raise prices on basic cable service and equipment without any local checks and balances.

Access to video programming provided by cable companies has proven to be an important means by which Latino Consumers sate critical information needs – especially because Latinos have not yet adopted home broadband connections at the same rate as the general population.² At a time when many Latino consumers are struggling, potentially

¹ In the Matter of Amendment to the Commission's Rules Concerning Effective Competition, Implementation of Section 111 of the STELA Reauthorization Act, MB Docket 15-53, *Notice of Proposed Rulemaking* at ¶ 8 (rel. Mar. 16, 2015), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0316/FCC-15-30A1.pdf.

² See Charles Dreas and Claudia Pardo, "Three Things You Thought You Knew About U.S. Hispanic's Engagement With Media...And Why You May Have Been Wrong," Nielsen (2011), available at:

increasing the rate floor for access to cable programming in 20,000 communities across the country could have a disastrous effect.

Also of particular concern to NHMC is the potential for Latinos to lose access to Latino programming currently available on the basic tier. Longer term, we fear that a potential unintended consequence could be an overall reduction in the availability of Latino programming on cable television. If cable operators are allowed to move Latino programming to more expensive cable tiers, it is very likely that viewership and revenues of Latino networks would drop, making it more difficult to finance and produce programming that serves Latino audiences.

In its NPRM, the Commission also asks “whether we should presume that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH Network, satisfies the requirement that the franchise area be served by two unaffiliated MVPDs each of which offers comparable programming to at least 50 percent of the households in the franchise area.” NHMC believes that the answer is “no.” According to the FCC’s own data, the presence of a DBS provider has not necessarily disciplined ever-escalating cable rates. For instance, according to the Commission’s most recent *Report on Cable Industry Prices*, the cost of basic service in local areas deemed effectively competitive due to the presence of a DBS provider is actually higher than the costs borne by customers in non-competitive areas.³ This is true across all service tiers measured.⁴ Further, some consumers in a market, particularly renters, may have trouble accessing DBS service due to an inability to install a satellite dish.

Finally, the Commission must consider the impact that a sweeping proclamation that the cable industry faces effective competition nationwide would have on the Commission’s broadband policy goals. As Chairman Wheeler noted at a recent cable industry event, “You are no longer the ‘cable’ industry. You are the leading association of leading broadband providers.” And, to the same providers that are at issue in this NPRM, the Chairman said, “You don’t have a lot of competition ... More competition would be better.”⁵

Although Chairman Wheeler was speaking about broadband, not video, in that portion of his remarks, his note about the increasing convergence of the various components of the cable industry’s businesses rings true. Of course, for consumers, video and broadband services are often obtained from the same company, on the same bill. As a practical matter, it would not be possible for a consumer to witness the benefits of video competition and the harms of a lack of broadband competition concurrently on his bill. All the consumer cares about is whether his bill is affordable and his service is sufficient. A sweeping presumption of

<http://www.nielsen.com/content/dam/corporate/us/en/newswire/uploads/2011/04/Nielsen-Hispanic-Media-US.pdf>; see U.S. Department of Commerce National Telecommunications and Information Administration, “Exploring the Digital Nation: Embracing the Mobile Internet,” at 16 (Oct. 2014) available at: http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_embracing_the_mobile_internet_10162014.pdf.

³ In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, MM Docket No. 92-266, *Report on Cable Industry Prices* (rel. Dec.15, 2014), available at:

https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1829A1.pdf.

⁴ *Id.*

⁵ Prepared Remarks of Chairman Tom Wheeler, NCTA-INTX 2015, Chicago, IL (May 6, 2015), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0506/DOC-333357A1.pdf.

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effective competition for cable providers seems to run counter to your well-documented remarks and the goals of the Commission with regard to a desire for greater competition overall.

For the above referenced reasons, NHMC respectfully urges the Commission not to reverse decades of policy and establish a presumption that cable systems, nationwide, face effective competition. As noted, such a presumption could inflict disproportionate harm on the Latino community. Not only could such a presumption result in higher bills for many low-income consumers, but also it could lead to a reduction of diverse programming. Further, it would run counter to policy goals stated by the Chairman and the rest of the Commission.

Respectfully submitted,

\s\ Michael J. Scurato

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cc: Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel
Commissioner Michael O’Rielly