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March 19, 2015

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

Dear Chairman Wheeler,

I have been contacted by some of my local video distributors about an issue that has been pending before the FCC for far too long. These video distributors, through their major trade association, have a long standing request that the Commission address a flaw in its implementation of the program access rules that effectively denies them the full legal rights and protections that Congress intended.

As I understand it, my local video providers are some of the more than 900 small and medium-sized multichannel video programming distributors (MVPDs) across the country that rely upon a single buying group, the National Cable Television Cooperative (NCTC), to negotiate the bulk of their programming agreements. In 1992, Democrats and Republicans of Congress united in passing legislation specifying that MVPDs and their buying groups, without qualification, were to be protected from discriminatory treatment by cable-affiliated programmers under the program access rules. However, the FCC has defined the term "buying group" in an overly-restrictive manner so that today it excludes NCTC. As a result, the many hundreds of MVPDs that currently rely exclusively on the NCTC to negotiate their programming agreements are effectively without the program access protections intended by statute.

The Commission has had pending for well over two years a Further Notice of Proposed Rulemaking in which it tentatively concluded the definition of a buying group should be updated, as my local video distributors have requested and expect based upon the law enacted by Congress. This Further Notice, which garnered the bipartisan support of three of the five sitting Commissioners, states:

> [It] appears that our existing definition of "buying group" set forth in Section 76.1000(c)(1) does not reflect accepted industry practices and thus may have the unintended effect of barring some buying groups from availing themselves of the protections of the nondiscrimination provision of the program access rules, in contravention of Congress's express intent in enacting Section 628(c)(2)(B) of the Act. We tentatively conclude that we should revise Section 76.1000(c)(1) to require, as an alternative to the current liability options, that the buying group agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.

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Since the Commission reached that tentative conclusion in 2012, no final decision has been rendered on this and related issues teed up in the rulemaking, leaving smaller pay TV providers and, by extension, their customers at risk of being treated in an unfair manner by cable-affiliated programmers. Based upon what I have heard and read, I believe the Commission should take action before the end of the Summer to update its definition of a buying group and consider the other issues raised to ensure that a buying group as it operates in the marketplace today, like the NCTC, can use the rules to protect its members from discriminatory practices, as Congress intended.

I look forward to hearing back from you on this important matter.

Sincerely,

Kevin Cramer
Member of Congress

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 11, 2015

The Honorable Kevin Cramer
U.S. House of Representatives
1032 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Cramer:

Thank you for your letter urging the Commission to take action by the end of the summer on its pending Further Notice of Proposed Rulemaking regarding our program access rules. I appreciate hearing your views.

As you note, the Commission sought comment in 2012 on a variety of issues related to our program access rules, including whether to modify the current definition of "buying group." The National Cable Television Cooperative (NCTC) sought the change because its existing practice excludes it from the definition, and thus, NCTC claims it is unable to avail itself of the complaint process under our rules.

Although the Commission made a tentative conclusion to potentially modify the "buying group" definition in the Further Notice, the record in the proceeding indicates that a rule change is not necessary for NCTC to qualify as a buying group, suggesting that this is more of a dispute over ultimate liability than a regulatory issue. NCTC previously complied with the requirements of the existing definition; past and recent filings have not demonstrated that it is burdensome to satisfy these requirements, should NCTC chose to do so.

If NCTC has information that might shed new light on this conclusion, I invite them to add that analysis to the record and to share their findings with Bureau staff.

I hope this information is helpful. Your letter will be made part of the record of the proceeding.

Sincerely,

Tom Wheeler