

Congress of the United States  
Washington, DC 20515

405

April 22, 2015

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

Dear Chairman Wheeler:

Many small video distributors have long requested that the Federal Communications Commission (FCC) rectify an oversight in the implementation of the program access rules that effectively denies them the full legal rights and protections that Congress intended.

These 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 that Congress intended.

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

[I]t 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.

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 we have heard and read, we urge the Commission to take action quickly and update its definition for a buying group and consider the other issues raised to ensure that buying groups as they operate in the marketplace today, like the NCTC, can use these rules to protect its members from discriminatory practices, as Congress intended. We also ask that you keep us apprised of your actions on this matter.

Thank you for your time and consideration of this request. Please do not hesitate to contact Rachel Schwegman with Rep. Latta's office at Rachel.Schwegman@mail.house.gov or (202) 225-6405, or Philip Murphy with Rep. Doyle's office at Philip.Murphy@mail.house.gov or at (202) 225-2135) with any questions or concerns.

Sincerely,



Robert E. Latta  
Member of Congress



Michael F. Doyle  
Member of Congress



Bill Johnson  
Member of Congress



Ben Ray Luján  
Member of Congress



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

June 16, 2015

The Honorable Mike Doyle  
U.S. House of Representatives  
239 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Doyle:

Thank you for your letter urging the Commission to take prompt action 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, and it appears 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 choose 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,

A handwritten signature in blue ink, appearing to read "Tom Wheeler".

Tom Wheeler



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

June 16, 2015

The Honorable Ben Ray Luján  
U.S. House of Representatives  
2446 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Luján:

Thank you for your letter urging the Commission to take prompt action 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, and it appears 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 choose 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,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a long horizontal line extending to the right.

Tom Wheeler



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

June 16, 2015

The Honorable Bob Latta  
U.S. House of Representatives  
2448 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Latta:

Thank you for your letter urging the Commission to take prompt action 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, and it appears 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 choose 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,

A handwritten signature in blue ink, appearing to read "Tom Wheeler".

Tom Wheeler



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

June 16, 2015

The Honorable Bill Johnson  
U.S. House of Representatives  
1710 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Johnson:

Thank you for your letter urging the Commission to take prompt action 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, and it appears 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 choose 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,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a long horizontal flourish extending to the right.

Tom Wheeler