



September 14, 2015

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: *Implementation of Section 103 of the STELA Reauthorization Act of 2015, MB Docket No. 15-216; Amendment of the Commission’s Rules Related to Retransmission Consent, MB Docket No. 10-71***

Dear Ms. Dortch:

As the Federal Communications Commission (the “Commission”) considers potential updates to and revisions of the “totality of the circumstances” test that applies to determination of good faith conduct in the context of retransmission consent negotiations, NTCA—The Rural Broadband Association (“NTCA”) hereby submits into the above-referenced record the attached summary of a survey recently conducted by Vantage Point Solutions, Inc. (“VPS”).

By way of background, NTCA and VPS represent and work with hundreds of small businesses that operate as multichannel video platform distributors (“MVPDs”). As NTCA has explained in various filings over the past several years, and as many others have corroborated in their filings, the video marketplace has become increasingly difficult for smaller MVPDs in the face of escalating program costs, unreasonable demands with respect to bundling and tiering of content, and “take-it-or-leave-it” negotiating tactics by content owners. *Ex parte* notice of NTCA, MB Docket No. 10-71 (Sept. 2, 2015); *Ex parte* notices of the American Television Alliance (in which NTCA is a member), MB Docket No 10-71, (July 17 and 22, 2015, Aug. 27 2015 and Sept. 2, 2015). *See also* Comments of NTCA, the Independent Telephone and Telecommunications Alliance, the Western Telecommunications Alliance *et al.*, MD Docket No. 10-71 (May 27, 2011).

NTCA plans to file more data with respect to these issues in coming weeks and months. But in the interest of sharing information as it becomes available, the VPS survey described in the attached materials provides an interesting and rather troubling window into the challenges facing MVPDs under today’s antiquated and broken retransmission consent framework. For example, the VPS survey finds that 54 percent of small MVPD respondents had seen programming costs *more than double* in the wake of their most recent retransmission consent negotiations, while only 2 (out of 68) respondents saw costs increase by less than 10 percent. More than two-thirds of these small MVPD respondents indicated that their video service is already unprofitable, while only 5 percent reported annual margins on video products in excess of 6 percent.

Marlene H. Dortch  
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Particularly given that NTCA members serve areas that, in some cases, may have no access at all to over-the-air signals, such trends and reports are troubling – and should prompt changes in public policy that better reflect marketplace changes in the decades since the current retransmission consent regime was first developed. NTCA and VPS are grateful for the increasing focus of policymakers on these issues, and look forward to solutions reflective of the unique challenges faced by MVPDs serving rural consumers.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano  
Michael R. Romano  
Senior Vice President – Policy

Enclosure

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014	)	MB Docket No. 15-216
	)	
Totality of the Circumstances Test	)	
	)	

**COMMENTS  
OF  
VANTAGE POINT SOLUTIONS, INC.**

September 2015

Vantage Point Solutions, Inc.  
2211 North Minnesota Street  
Mitchell, SD 57301  
(605)995-1750  
[www.vantagepnt.com](http://www.vantagepnt.com)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014	)	MB Docket No. 15-216
	)	
Totality of the Circumstances Test	)	
	)	

**COMMENTS  
OF  
VANTAGE POINT SOLUTIONS, INC.**

Vantage Point Solutions, Inc. (VPS)<sup>1</sup>, submits these comments in the above proceeding, addressing the status of the Commission’s “Totality of Circumstances” Test.

In its comments, VPS will provide information recently acquired through a survey of rural LEC clients that provide video services in an eight-state region of the US Midwest.<sup>2</sup>

The Notice of Proposed Rule Making (NPRM) asks whether there is a need to update the totality of circumstances test.<sup>3</sup> How is the retransmission consent market currently functioning? Is there market failure, and if so what is its source? Are there issues with the current totality of circumstances test that warrant change? The NPRM asks for comments and elaboration of the totality of the circumstances tests. Within that framework, VPS will focus on the recently completed round of retransmission consent negotiations which was the target of its survey.

VPS invited 180 clients in Iowa, Minnesota, Wisconsin, North Dakota, South Dakota, Illinois, Indiana, and Wisconsin to participate in an eight question survey requesting feedback on retransmission consent negotiations that were completed in December 2014.

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<sup>1</sup> Vantage Point Solutions, Inc. is a telecommunications consulting company based in Mitchell, SD.

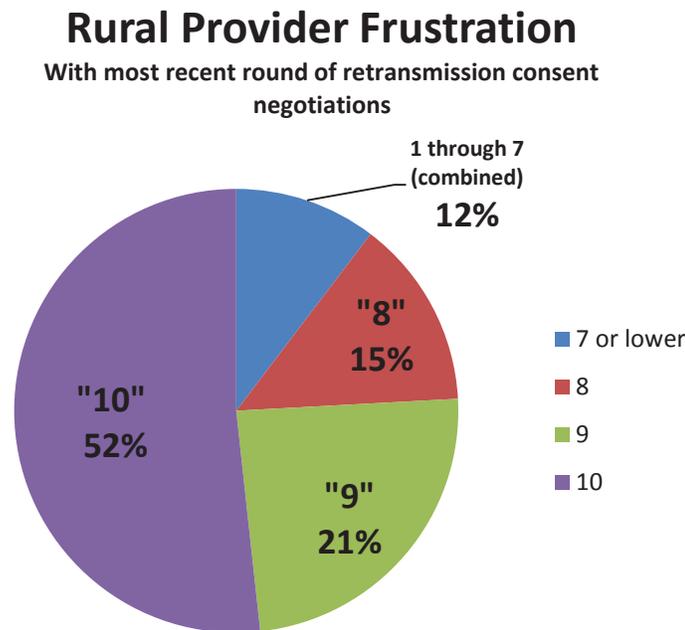
<sup>2</sup> Appendix A.

<sup>3</sup> Implementation of Section 103 of the STELA Reauthorization Act of 2014 Totality of the Circumstances Test, MB Doc. No. 15-216, September 2, 2015.

In reviewing the data provided by the 68 participants to the survey, VPS notes a distinct urgency to restructure and overhaul the outdated retransmission consent rules.<sup>4</sup>

The small rural telecommunications companies that valiantly try to compete in the video distribution space are frustrated with the ever-increasing cost of retransmission consent and with the behaviors of both broadcasters and the network program owners. The Big Four networks are on record in all corners of the news media boasting and cajoling the broadcasters concerning “their right to” increase demands for higher and higher percentages of the retransmission consent fees.<sup>5</sup>

**When asked to rate their frustration (1-10) with the most recent round of retransmission negotiations, 88 percent of VPS respondents selected an “8” or higher.** More than half of respondents rated their frustration a “10.”



During the past cycle VPS became aware of a disturbing new practice in which broadcasters consolidate network affiliations under one company to force duplicate fees for Big Four network station

<sup>4</sup> 47 C.F.R. 76.64.

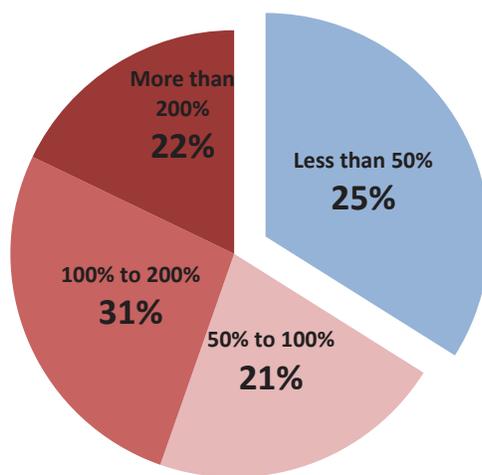
<sup>5</sup> Examples include <http://nypost.com/2014/09/11/leslie-moonves-takes-aim-at-retransmission-fees>, <http://www.thewrap.com/cbs-quadruple-retransmission-fees-1b-2016-report-says-56136>, <http://www.forbes.com/sites/dorothy pomerantz/2013/11/06/cbs-is-kicking-cables-butt/>, and <http://marketrealist.com/2015/05/21st-century-fox-comes-third-largest-media-company-3q15/>.

retransmission consent fees. While this is not an illegal practice, it certainly places a heavy thumb on the scale, allowing for little or no negotiation for each affiliate station's signal carriage because all the affiliates are a single broadcaster providing one multicast broadcast transmission.

Tactics like these have dramatically shifted dollars away from rural providers and toward broadcasters. Fifty-four percent of VPS respondents indicated their programming costs more than doubled, and only two respondents saw costs increase by less than 10 percent.

### Increase in Programming Costs

After most recent round of retransmission consent negotiations



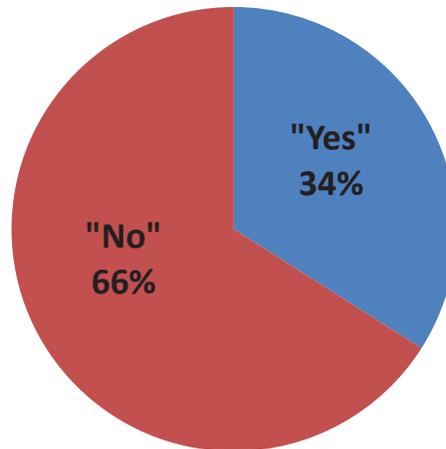
The retransmission rules are outdated, the playing field has become extremely uneven, and the business model for all distributors is no longer viable. Of course the worst impact is that American consumers have been forced to pay these higher fees to watch what used to be free programming over the air. Without change, as indicated in the survey, rural systems will be forced out of the video business or will be unable to afford the exorbitant requirements and consumers will be impacted.<sup>6</sup>

**Indeed, two-thirds of VPS respondents indicated that, absent a change, their company was unlikely to offer video service five years from now.** Even today, more than 66 percent of VPS survey participants

<sup>6</sup><http://www.ntca.org/images/stories/Documents/Advocacy/FederalFilings/08.21.15%20ntca%20comments%20on%20video%20competition,%20mb%2015-158.pdf>, Sec. III § A.

indicated their video service is not profitable. Only 5 percent of respondents indicated their margins on video products exceed 6 percent annually.

**"If current trends continue, is your company likely to offer video service five years from now?"**



Without changes in program acquisition rules and most specifically to retransmission consent fees that have increased at percentages unmatched by other conventional linear content sources, video competition in rural areas of the country will disappear. Cable television companies like Charter, Comcast, Cox, Mediacom, and so forth will not invest in infrastructure needed to build out to serve consumers in rural areas of the country. Doing so would prove to be cost prohibitive.

Rural television consumers would be limited in choice to satellite providers like Dish and DirecTV, and perhaps some competition in a few areas for rural wireless video service from AT&T or Verizon.

These replacement services lack local community presence and established relationships in the rural communities they may serve. The involvement of the local LEC and its commitment to high quality service, local PEG channels, community information channels, and even local news and sports and community events cannot be adequately duplicated by satellite or out-of-state wireless video providers.

Without local engagement, the quality of the service suffers and the consumer realizes substantial losses in quality and affordability.

Although satellite and wireless providers might offer comparable linear video service to that of the rural LECs, consumers with little choice are generally forced to pay higher rates for the alternative services they can obtain.

Healthy competition requires a level playing field, in some cases necessitating concessions that support growth and development in rural America. Today that level playing field does not exist for retransmission consent negotiations, and rural providers and rural consumers are being adversely affected.

Respectfully Submitted,



By: /s/ Douglas Eidahl  
Douglas Eidahl  
Vice President of Legal & Regulatory

By: /s/ Dusty Johnson  
Dusty Johnson  
Vice President of Consulting

By: /s/ Steven Fravel  
Steven Fravel  
Senior Telecommunications Analyst

2211 North Minnesota Street  
Mitchell, SD 57301  
(605) 995-1750

# Appendix A

## Video Retransmission Consent Survey – August 2015

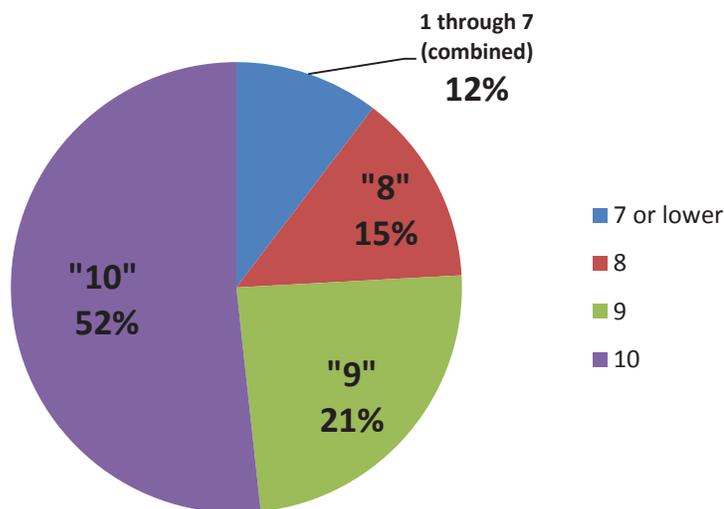
Vantage Point Solutions, Inc.

September 2015 Comments MD 15-216

- Question 1.** What is your name?
- Question 2.** What is your company name?
- Question 3.** What state is your company located in?
- Question 4.** On a scale from 1 to 10, please rate your level of frustration with the last round of retransmission consent agreements.

### Rural Provider Frustration

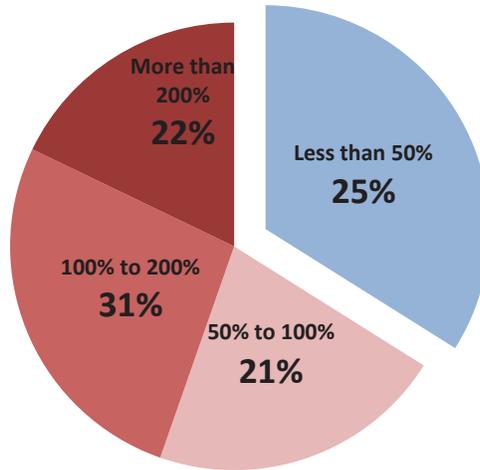
With most recent round of retransmission consent negotiations



**Question 5.**

Overall, how much do you estimate your company’s programming costs increased after the last round of negotiations?

**Increase in Programming Costs**  
After most recent round of retransmission consent negotiations



**Question 6.**

Over the last 6 years, what percent increase has your company seen in consumer complaints about the price of video service?

No record but note increased complaints and disconnects	3% - 10%	12% - 15%	20% - 30%	31% - 40%	41% - 50%	51% - 90%	100% - 500%
21	3	2	7	5	9	6	13

**Question 7.**

Estimate the profitability of your company’s video service.

Answer	Response %
Not Profitable	63.64%
0% - 5%	31.82%
Greater than 6%	4.55%

**Question 8.**

If current trends continue, is your company likely to offer video service five years from now?

Answer	Response %
YES	33.85%
NO	66.15%