



June 9, 2016

***Ex Parte Notice***

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

**RE: Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42  
Commercial Availability of Navigation Devices, CS Docket No. 97-80**

Dear Ms. Dortch:

On Tuesday, June 7, 2016 the undersigned and Jill Canfield with NTCA–The Rural Broadband Association (“NTCA”),<sup>1</sup> along with Denny Law with Golden West Telecommunications Cooperative in Wall, South Dakota and Chris Beatson of Neonova Network Services (collectively “the Rural Representatives”) met with the following Federal Communications Commission (“Commission”) staff: William T. Lake, Media Bureau Chief, Nancy Murphy, Media Bureau Associate Bureau Chief, Martha Heller, Media Bureau Policy Division Chief, Brendan Murray, Policy Division Assistant Chief, Maria Mullarkey, Policy Division Assistant Chief, Susan Singer, Media Bureau Chief Economist, Lyle Elder, Media Bureau Policy Division, Kathy Berthot, Media Bureau Policy Division, Arian Attar, Media Bureau Policy Division, Kelsie Rutherford, Media Bureau Policy Division, Andrew Manley, Media Bureau Policy Division, Anne Russell, Media Bureau, Antonio Sweet, Office of Strategic Planning and Policy Analysis, Susan Aaron, Office of General Counsel, Adam Kleven, Office of General Counsel, and Varsha Mangal, Office of General Counsel. The parties discussed the Notice of Proposed Rulemaking released on February 18, 2016,<sup>2</sup> in which the Commission seeks comment on how to create a commercial market for devices manufactured by third parties that can access multichannel video programming and other services offered over multichannel video programming (“MVPD”) networks.

The Rural Representatives first discussed the expected significant costs that MVPDs will incur to make the three proposed “Information Flows” available to providers of competitive navigation

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<sup>1</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

<sup>2</sup> Expanding Consumers’ Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18 (rel. Feb. 18, 2016) (“NPRM”).

devices and services. It was noted initially that these costs are difficult to quantify in terms of both specific hardware, software, middleware and encryption technology that MVPDs will need to come into compliance with the NPRM's proposals precisely because: (1) there is no standard (or standards) as yet for complying with the proposals; and (2) no technology actually exists today as a tested and proven method for providing the Information Flows as defined by the NPRM.

That said, the Rural Representatives noted that certain categories of costs can be identified as likely necessitated by the Information Flows proposal. As just one example, MVPDs (utilizing both coaxial cable and IPTV platforms) will likely be required to make modifications to their video headends to convert their video streams into different formats as part of enabling third parties to access the Information Flows. This is estimated to cost several thousands of dollars *per channel*. The Rural Representatives stressed that this estimate was provided only for illustrative purposes and likely only represents one category of costs implicated by the broader set of proposals.

The Rural Representatives also noted that one significant cost that the Commission seems to have overlooked is the "pause" on innovation in the MVPD industry that the NPRM will dictate. MVPDs – particularly small, rural MVPDs operating this particular line of business on a "break even" basis at best – will likely need to hold back on investments in improving the quality and availability of their MVPD networks for fear of additional investments that will be required to also come into compliance with the NPRM once the standards body completes its work. Small, rural MVPDs cannot afford to invest in new technologies or new ways of doing business that may be undermined or mooted by the new unbundling rules adopted at some unknown time in the future pursuant to an unknown standard or set of standards yet to be created.

The Rural Representatives then noted that such costs and others arising out of the NPRM's proposals are unnecessary to achieve the Commission's professed goals for this proceeding. To the extent that the Commission is concerned about reducing set-top box rental fees, the Comcast announcement that its full video content lineup will be available on Samsung smart televisions and Roku devices represents a single but important example of steps toward the antiquity and irrelevance of the MVPD-leased set-top box. Indeed, the MVPD market is already responding to consumers' desire to move away from the set-top box, and additional MVPDs of all sizes are likely to follow Comcast's lead. Alternatively, to the extent that "competitive navigation" (in terms of greater integration of MVPD and over-the-top ("OTT") content available to consumers in a single and searchable interface) has been identified as a goal of this proceeding, that worthy goal might very well be on the horizon if only the Commission would let the market take its natural course rather than imposing mandates for yet-undeveloped technology pursuant to yet-undeveloped standards. Here too MVPD and OTT providers must respond to consumer demand for both an increase in the devices and applications through which they can access content as well as an improved experience in doing so. In short, consumer demand and the market may achieve the Commission's goals here absent regulatory intervention.

Finally, the Rural Representatives stated that the Commission must take heed of the very real concerns expressed by content creators with respect to the copyright concerns implicated in the proceeding. While some have dismissed this issue as a "red herring" raised by MVPDs, such concerns are raised most vocally by the content creators themselves, entities that have no real "skin in the game" when it comes to what party (MVPD or a third-party) supplies the device

and/or application by which content is accessed. Content creators' sole concern is with the security of the content they create and whether their copyrights in such content are respected, and thus any costs imposed on MVPDs to comply with the NPRM's proposals would seem of little concern to such parties *if* the security elements of the proposal met their expectations. These entities' economic incentive to continue producing the rich and rapidly expanding library of content consumers enjoy today could be undermined if the Commission does not heed their copyright concerns and, in the end, it will be consumers that are harmed by the Commission's inattention to this important matter.

The Rural Representatives then noted that if action is nonetheless taken, a permanent exemption for small MVPDs serving fewer than 1 million subscribers would be welcome to ensure that a number of small providers are not forced out of the market by an immediate need to comply with the proposed mandate. However, the Rural Representatives expressed their concern that, as a practical matter, such an exemption would merely represent a *deferral* and would not eliminate the costs of the NPRM's proposals. Specifically, any mandate ostensibly made applicable *only* to large and mid-size MVPDs would almost certainly ultimately "trickle down" to smaller providers as matter of manufacturers' own response to any order. An exemption, while still valuable, would therefore not eliminate the substantial costs of the proposal – thus underscoring yet again the reason to avoid adoption of the proposal altogether in the first instance. The Rural Representatives also expressed support for the Commission's tentative conclusion to exempt analog-only MVPDs altogether, as there appears to be no method even under consideration for compliance on the part of such providers.<sup>3</sup>

Finally, to the extent the proposals move forward, the Rural Representatives stated that the Commission cannot move forward with the standards body process proposed in the NPRM without the presence of small MVPD representatives as equal members. The Downloadable Security Technology Advisory Committee did not include any small MVPDs in its deliberations, and its recommendations failed to discuss or even acknowledge the unique burdens faced by small operators. The Commission must not allow such an unbalanced process to carry through any standards body process envisioned by the NPRM. Only small MVPD representatives truly understand the current technological state of these providers and the numerous unique operational and economic burdens they face in providing video service.

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/ Brian Ford  
Brian Ford  
Senior Regulatory Counsel

cc: William T. Lake  
Nancy Murphy  
Martha Heller  
Brendan Murray  
Maria Mullarkey

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<sup>3</sup> See, Reply Comments of NTCA-The Rural Broadband Association, MB Docket No. 16-42 and CS Docket No. 97-80 (fil. May 23, 2016), p. 28.

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