

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

In the Matter of)	
)	
American Cable Association)	
Petition for Rulemaking to Amend)	RM-11203
47 C.F.R. §§ 76.64, 76.93 and 76.103)	
)	
Retransmission Consent, Network)	
Non-Duplication, and Syndicated)	
Exclusivity)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments in response to the Commission’s *Public Notice* in the above-referenced proceeding.² NTCA supports the American Cable Association (ACA) Petition for Rulemaking but recommends that the rulemaking consider small telco needs for rule changes as well.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of American Cable Association (ACA) Petition for Rulemaking to Amend 47 CFR §§ 76.64, 76.93 and 76.103 of the Commission’s Rules*, RM-11203, Report No. 2696, Public Notice (rel. Mar. 17, 2005).

NTCA is interested in this proceeding because more than half of its members are multi-channel video programming distributors (MVPDs). Some NTCA members operate small cable TV systems utilizing CATV coaxial or fiber cable to deliver video programming to rural subscribers. Some NTCA members, however, provide so called Telco-TV utilizing alternative broadband infrastructures and technologies, such as Digital Subscriber Line (DSL) over copper facilities to deliver video programming to rural subscribers. Small rural telephone companies' involvement in the MVPD business predates the 1996 Telecommunications Act. The Commission recognized as early as 1981 that it was necessary to waive the Telco-CATV cross-ownership prohibition rules in order to make CATV available to remote rural subscribers.³ As a result of the "rural area" policy, Congress later codified a "rural area" policy, which permitted telephone company ownership of cable systems in rural areas upon a showing that the area to be served was rural.⁴ Relying on the "rural area" policy small rural telephone companies established subsidiaries or entered directly into the CATV business. They pioneered the delivery of multi-channel programming via CATV and MVPD to remote rural areas that would otherwise have had no service. They are again pioneering the delivery of video content and other services to remote rural areas using new broadband technologies like DSL, fiber and other alternative delivery mediums.

Small rural telephone companies that are MVPDs share many of the attributes of the small cable companies seeking this rulemaking but many telcos face additional

³ *In the Matter of Elimination of the Telephone Company--Cable Television Cross-Ownership Rules, Sections 63.54-63.56, for Rural Areas, Report and Order*, CC Docket No. 80-767, 88 F.C.C.2d 564 (1981).

⁴ *In the Matter of Telephone Company-- Cable Television Cross-ownership Rules, Sections 63.54-63.58 Notice of Inquiry*, 2 FCC Rcd 5092, 5096, n.12 (1987).

hurdles due to the fact that they are pioneering new technologies and services. For the most part, the rural telephone companies doing business as MVPDs operate in small markets with low densities. Like the small CATV providers, they face higher costs for access to video content because of the retransmission consent practices of network owners and affiliate groups. These higher costs must ultimately be borne by rural consumers and exclusivity may even deny rural consumers' access to diverse programming. The companies have little leverage in negotiating with large content providers, regardless of whether they are affiliated with broadcasters or broadcast networks. Further, the practices of content providers are not competitively neutral. Many rural telephone companies in the MVPD business face additional demands from content providers because they are pioneering new video delivery technologies and services. Content provider contracts and practices are geared to a market dominated by the CATV distribution medium. Established content providers have not adjusted their practices to the needs of pioneering small telcos operating in rural markets and have little incentive to do so. They are protected by exclusivity and they can afford to ignore the unique characteristics of smaller players that are potential customers but also potential competitors in rural markets.

NTCA agrees that the Commission should conduct a rulemaking to address changed circumstances that must be considered in the upcoming retransmission consent round. The Commission should go one step further than ACA requests, however. It should consider the changed marketplace among providers and address the needs of the small telcos utilizing other delivery systems as well as CATV. The rulemaking is an

opportunity for the Commission to make changes that will promote the deployment of broadband consistent with Section 706 of the Telecommunications Act of 1996.⁵

Section 706 provides that the Commission shall “encourage” the deployment of “advanced telecommunications capability.” Advanced telecommunications include broadband capabilities that enable users to receive video telecommunications. Improved access to video content will have a positive impact on the deployment of “broadband capabilities.” Rural Carriers investing in broadband infrastructure need to be able to deliver the triple play, voice, video and data to remain viable and serve their customers needs. Fair access to content is critical to the success of the triple play.

The Commission should consider the unique circumstances of small telephone companies and others utilizing alternative broadband facilities and technologies to deliver video. The rulemaking should include a review of non-duplication and retransmission consent rules insofar as the rules impact small telcos serving limited numbers of subscribers in low-density markets.

A comprehensive look at the impact on small CATV providers as well as other MVPD delivery systems subject to retransmission consent, exclusivity, and non-duplication restraints will ensure consistency and serve the public interest. The ultimate concern for the Commission is rural consumer access to diverse programming regardless of the medium used by small providers serving low density markets. This concern can be addressed by looking at the diverse delivery systems employed in low-density markets and the common obstacles that these systems face as a result of the upcoming retransmission round.

⁵ 47 U.S.C. §157, nt.

CONCLUSION

For the above stated reasons, NTCA supports initiation of a rulemaking to consider changes related to application of the retransmission consent rules to small CATV providers and to small rural telephone companies utilizing alternative broadband facilities and technologies to deliver video programming to rural consumers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in RM-11203, Report No. 2696 was served on this 18th day of April 2005 by first-class, U.S. Mail, postage prepaid, or via electronic mail to the following persons.

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