NTCA Positions on Access to Video Content

Background: Small video programming providers face many obstacles when trying to obtain video programming from content providers and attempting to enter new markets. Unreasonable programming rates, exclusive dealing arrangements, abuse of market power through non-disclosure agreements, tying practices, predatory pricing, unfair and costly restrictions/prohibitions on the use of shared head-ends, and prohibitions on Internet protocol (IP) and analog transport are some of the barriers faced by small video providers.

- **Shared head-ends must be allowed.** Some wholesale video content providers have imposed unfair and costly restrictions/prohibitions on small retail cable television (CATV) and Internet protocol television (IPTV) providers that share a head-end. Many small CATV and IPTV providers have created an opportunity to provide retail video services to their communities by pooling their resources and jointly purchasing a head-end or leasing a head-end from another head-end owner. Sharing a head-end with several small companies substantially reduces initial investment and allows small video providers the opportunity to give consumers an affordable video services offering. Without the shared head-end option, many rural consumers would not have video service or would be limited to direct broadcast satellite service (DBS) without any other competitive offering.

- **Commercial television broadcast station DMA restrictions should be eliminated.** Today there are seven over-the-air commercial broadcast television networks (Broadcasters) in the United States: ABC, NBC, CBS, Fox, CW and ***i*** Independent Television. The seven broadcast networks currently provide commercial television broadcast signals to designated market areas (DMAs) throughout the United States. Section 76.56(b) of the Federal Communications Commission (FCC) rules, however, require CATV and IPTV providers located in a DMA to carry only the local commercial broadcast television stations located in that DMA. Under today's rules, a rural video provider cannot take a lower programming rate from an alternative broadcast station in a neighboring DMA. Because rural CATV and IPTV providers cannot shop in neighboring DMAs for lower rates, rural video providers are at the mercy of all Broadcasters operating in their DMA. Moreover, given that rural video provider markets are so sparsely populated, refusal to carry a Broadcaster's station would not negatively impact the Broadcaster's advertising revenues, and thus, rural video providers have no leverage in negotiations with Broadcasters. The American Cable Association estimates that absent relief, consumers served by rural CATV companies and IPTV providers will face more than $860 million in rate increases this year.

- **Non-disclosure agreements should be prohibited**. Virtually all of the contracts negotiated between content providers and large multiple systems operators (MSOs) include non-disclosure agreements. By restricting the flow of information, the video content providers make it virtually impossible to establish any semblance of "market rates." Consequently, smaller retail CATV and IPTV providers must enter into their negotiations at a significant disadvantage, as they possess far less information than the party with whom they are negotiating.

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- **Mandatory multicasting must be prohibited.** As a result of the digital transition, broadcasters are seeking carriage of all of their digital signals versus the just the primary signal as required by law. Forcing small video providers to carry all of these additional channels will have negative consequences on the video provider's ability to tailor their product to meet the needs of their consumers. Carriage of signals beyond the primary signal should have to be negotiated versus being forced upon a video provider via the election of must-carry.

- **Tying arrangements should be prohibited.** Many over-the-air commercial broadcast networks and cable programming networks require a small CATV and IPTV providers to take additional networks, as many as 12, in order to have access to a flagship network. The end result is that the small CATV and IPTV providers must pay a higher price in order to ensure access to the desired flagship network. This problem is much more dramatic for a small carrier with limited capital resources than for a large MSO that can afford to pay for the extra networks.

- **Predatory pricing by large incumbent cable operators must be prohibited**. Under the current rules, as new IPTV providers enter the market, the large incumbent CATV provider can drop its price for service significantly below the cost in the areas where it faces competition, making it impossible for the new entrant to gain a foothold. The incumbent cable operator is able to afford this practice by increasing the price for service in areas where there are no competitors.

- **Exclusive programming arrangements must be prohibited**. Some incumbent cable operators use their market power to make it difficult for competitors to obtain programming. The incumbent CATV providers know that without access to certain programming, competitors cannot make their service attractive to subscribers. Certain CATV providers are known to have entered into exclusive programming arrangements. Contracts are written in such a way as to bar new IPTV providers from access to local or regional sports or news programming. Local subscribers expect programming and are unlikely to switch to a new provider that is unable to provide it.

- **IP-Transport must be allowed.** New small IPTV providers are facing discriminatory practices concerning their ability to get into the video services marketplace and gain access to video content because some content providers prohibit their video content from being distributed through DSL or the Internet. They claim that IP-transport prohibition is required to prevent the piracy of their content on the Internet. This concern however, is easily addressed through today's encoding and encryption capabilities that enable IP-transport to be more secure than traditional cable transport.

- **Encryption should not be mandatory for traditional CATV providers.** Some content providers are insisting that small analog CATV providers upgrade their systems to support encryption. Many small rural video providers do not have the economies of scale and scope to incur the cost of providing encryption on their networks. Mandatory encryption would result in such a substantial increase in rates to consumers that it would effectively put the small company out of the video business and leave the residents in the community with possibly only one option for video services – DBS.