



NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

*The Voice of Rural Telecommunications*

www.ntca.org

Ex Parte Handout

## Access to Video Programming

- **Shared head-ends must be allowed.** Some wholesale video content providers have attempted to impose unfair and costly restrictions on small retail cable television (CATV) and Internet protocol television (IPTV) providers that share or seek to 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 terrestrial video service or would be limited to direct broadcast satellite service (DBS) without any other competitive offering.
- **Encryption should not be mandatory for traditional CATV providers.** Some content providers are insisting that small radio frequency 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 or would put some small rural CATV providers out of business.
- **Tying arrangements should be prohibited.** Many over-the-air commercial broadcast networks and cable programming networks require CATV and IPTV providers to take unwanted programming in their basic tier in order to have access to their wanted flagship programming. The end result is that consumers are paying higher cable rates for unwanted programming in order to have access to wanted programming. Tying arrangements have been increasing consumer cable rates for years.
- **Exclusive programming contracts should be prohibited.** The current ban on exclusive contracts contained in Section 628(c)(2)(D) should be extended to non-cable affiliated programming affiliated with DBS providers, such as DirecTV and EchoStar, and terrestrially delivered programming. The FCC's has ancillary jurisdiction under Sections 2(a) 4(i), 628 and other provisions of the Communications Act of 1934, as amended, to implement an exclusive contracts ban on non-cable affiliated programming and terrestrially delivered programming.
- **Arbitration.** The Commission's rules permit voluntary arbitration. The Commission should modify its program access complaint rules through the implementation of an early "final offer" step in complaints that relate to the price of video programming. The "final offer" step would allow the FCC to adopt one of the parties' final offers on price as interim compensation pending final resolution of the complaint or as the rate in the program access complaint final decision. The "final offer" step is consistent with the Administrative Dispute Resolution Act of 1990, 5 USC § 571-584 and within the Commission's authority.
- **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, small retail CATV and IPTV providers are significantly disadvantaged in negotiations with video programming providers.