

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)
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Revision of the Commission's Program Access Rules) MB Docket No. 12-68
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News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control) MB Docket No. 07-18
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Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Warner Cable, Inc. (subsidiaries), Assignees, et al.) MB Docket No. 05-192
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To: The Commission

**COMMENTS OF
BLOOSTON RURAL VIDEO SERVICE PROVIDERS**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural cable television ("CATV") and Internet Protocol television ("IPTV") service provider clients listed in Attachment A (the "Blooston Rural Video Service Providers"), submits the following initial comments with respect to the Commission's *Notice of Proposed Rulemaking*, FCC 12-30, released March 20, 2012, in the captioned proceedings ("*NPRM*").

The Blooston Rural Video Service Providers are subsidiaries or affiliates of rural telephone companies ("RLECs"), and provide video services over a variety of facilities, including traditional coaxial CATV systems; digital subscriber line ("DSL") facilities; fiber-to-the node ("FTTN"), fiber-to-the-curb ("FTTC") or fiber-to-the-home ("FTTH") networks; open video systems; and wireless cable systems. The Blooston Rural Video Service Providers generally serve from 2,000 to 10,000 video customers, and are very much smaller than the major

CATV multiple system operators (“MSOs”) such as Comcast Corporation (22.3 million customers as of December 2011), Time Warner Cable, Inc. (12.1 million customers as of December 2011), Cox Communications, Inc. (4.7 million customers as of December 2011) and Charter Communications, Inc. (4.3 million customers as of December 2011).¹

One of the principal purposes of the Telecommunications Act of 1996 was to increase facilities-based competition in telecommunications-related industries by encouraging local exchange telephone companies and cable television companies to participate in converging voice, video and data markets. The new Sections 251 and 252 that were added to the Communications Act in 1996 enabled CATV MSOs to add competitive local exchange carrier (“CLEC”) operations to their CATV networks, and to obtain interconnection and reciprocal compensation arrangements with incumbent local exchange carriers (“ILECs”). During the past year or so, the CATV industry has convinced the Commission to adopt a new policy that will eliminate high-cost universal service support to ILECs in study areas that are served entirely by a CATV operator or other “unsubsidized competitor.”² Recognizing that virtually all CATV operators limit their service to small cities and towns in rural areas, the CATV industry is currently trying to convince the Commission to expand its “unsubsidized competitor” limitation to study areas where a CATV operator serves a substantial portion of the population (i.e., the larger towns) but only a fraction of the land area.³

However, whereas Congress and the Commission have taken substantial steps to facilitate CATV operator entry into the telecommunications industry and to enhance the ability of CATV operators to compete with RLECs and other ILECs, they have not taken comparable steps to

¹ <http://www.ncta.com/Stats/TopMSOs.aspx> (viewed June 21, 2012).

² *In the Matter of Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., FCC 11-161, released November 18, 2011, at par. 281-83.

³ *Id.*, at par. 1073.

create a level competitive playing field for RLECs entering the video program distribution business. Specifically, Congress and the Commission have not yet addressed the critical fact that RLEC affiliates and other small video service providers are forced to pay much higher prices for video programming channels than the CATV multiple system operators (“MSOs”) against which they must increasingly compete. As recognized by the State Members of the Federal-State Joint Board on Universal Service, video programming content costs can be high, particularly for RLECs and other smaller video service providers who also suffer from related problems arising from the discriminatory pricing of certain content and the unavailability of certain desired programming channels at any price.⁴ The substantial, increasing and discriminatory per-customer video content prices paid by RLEC affiliates make it very difficult for them to generate net profits and positive cash flows on their video service operations. In fact, as the State Members of the Joint Board noted, there is significant risk of video operating losses by RLEC affiliates attributable to unregulated programming costs.⁵ RLEC affiliates also face increasingly inflexible “take-it-or-leave-it” retransmission consent negotiations and remain vulnerable to exclusive program contracts.

A. Program Content Pricing

The Blooston Rural Video Service Providers do not have access to the programming contracts between the major entertainment, sports and news content providers and the larger CATV MSOs. However, they are virtually certain that RLECs and other small providers (even when they are able to acquire their program content through the National Cable Television Cooperative and other aggregators) pay substantially higher prices for such content than the larger CATV MSOs. The Blooston Rural Video Service Providers understand the concept of

⁴ Comments by State Members of the Federal State Joint Board on Universal Service, *In the Matter of Connect America Fund et al.*, WC Docket No. 10-90 et al., filed May 2, 2011, at p. 34.

⁵ *Id.*, at p. 35.

economies of scale. However, where a video service provider is financially sound and has a record of paying its bills in timely fashion, it should make no difference to a satellite video content distributor whether the video service provider is an RLEC affiliate with a few thousand customers or a CATV MSO with several million customers. That is, in light of the nature of satellite distribution technology, it should cost a content distributor no more to contract with, supply reception codes to, and bill and collect from a small video service provider than a large video service provider. Put another way, once a satellite video channel distribution arrangement is negotiated and implemented, it costs the satellite content distributor about the same amount to beam its programming to headends that serve large numbers of customers vis-à-vis headends that serve small numbers of customers. The primary difference is the size of the bill, which is merely a calculation of the price charged to each video service provider and the number of its subscribers that receive the channel.

The Blooston Rural Video Service Providers urge the Commission to take an active role in collecting information regarding video content prices and to monitor variations in the prices charged by video content providers to different types and sizes of video service providers. As voice, data and video services continue to converge into competing broadband networks, both the Commission and the Congress will have a growing role and responsibility to ensure that satellite video content providers do not impair or unreasonably influence broadband deployment and competition by engaging in discriminatory pricing.

B. Retransmission Consent Negotiations

RLEC video affiliates are also finding that major network commercial television stations have less and less interest in negotiating retransmission consent agreements with them during each succeeding three-year period. Simply put, RLEC video service providers do not serve

sufficiently large portions of the households in most television markets to have a perceptible impact upon a major commercial network affiliate's audience ratings or advertising rates. Therefore, RLEC video service affiliates are increasingly being offered retransmission consent agreements with higher and higher fees that are for all intents and purposes non-negotiable. The RLEC affiliate either agrees to the network affiliate's price and conditions, or has to drop a network channel that is desired by its rural customers. The network affiliates generally are not hostile or offensive during the retransmission consent process; rather, they are simply indifferent whether an RLEC affiliate or other outlying small video service provider carries their station or drops it, and consequently have little interest in discussing and modifying their standard retransmission consent terms and pricing with outlying small rural video service providers.

The Section 325(b) retransmission consent provision was added to the Communications Act in 1992 in a very different economic and technological environment. As with other forms of video content, the Blooston Rural Video Service Providers urge the Commission to take an active role in collecting information regarding retransmission consent prices and to monitor variations in the prices charged by commercial major network affiliates to different types and sizes of video service providers. As voice, data and video services continue to converge into consolidated, competing broadband networks, both the Commission and the Congress will have a growing role and responsibility to ensure that commercial network affiliates do not impair or unreasonably influence broadband adoption and competition by engaging in unreasonable or discriminatory pricing. Possible statutory solutions include placing limits on retransmission consent prices or price increases, or requiring major network affiliates to offer all in-market video service providers pricing on a most favored nation basis (i.e., allow all video service

providers in a television market to obtain the lowest per-unit retransmission consent compensation charged by the network affiliate).

C. Exclusive Contracts

The Blooston Rural Video Service Providers urge the Commission to retain the existing exclusive contract prohibition for at least another five years. RLEC affiliates and other small video service providers that compete with larger CATV MSOs, or that are trying to enter a new market to compete with a larger CATV MSO, remain vulnerable to exclusive contract tactics. Larger CATV MSOs have all too frequently in the past used their market power to pressure content providers to give them exclusive program contracts in markets where they are facing competition from small, local video service providers. Whereas many post-1992 exclusive contracts have often been with regional sports networks and children's networks that were not cable-affiliated at the time, the better solution is to convince Congress to expand the exclusive contract prohibition to encompass all video content providers rather than to terminate the prohibition with respect to the cable-affiliated content providers that were the major offenders during the pre-1992 period.

As with the foregoing pricing and retransmission consent issues, the critical factor here is a fair and level competitive playing field for the evolving broadband world. In a converging voice, data and video market place, the Commission and Congress should encourage facilities-based wireline networks to compete on the basis of service, service quality and price, and should do everything possible (including seeking new legislation, when necessary) to ensure that such competition remains fair and that it is not disrupted or distorted by tactics such as the use by large CATV MSOs of their national market power to obtain unwarranted competitive advantages

via exclusive contracts that deprive competitors in certain local markets of desirable entertainment and sports channels.

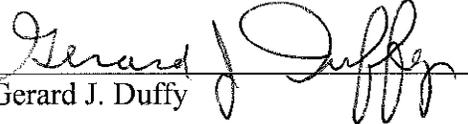
Conclusion

As voice, data and video networks and services converge and evolve into the emerging broadband network, it is critical for the Commission and the Congress to maintain competitive conditions in the video segments of this market as well as the telecommunications and information services portions thereof. Of immediate importance, the Commission should retain the existing exclusive contract prohibition for at least another five years. In the longer term, the Commission should work with Congress to expand the exclusive contract prohibition to encompass all content providers rather than just cable-affiliated content providers, and to require the provision of video program content (including retransmission consent arrangements) to large and small, urban and rural video service providers at reasonable and non-discriminatory prices.

Respectfully submitted,

BLOOSTON RURAL VIDEO SERVICE PROVIDERS

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ATTACHMENT A

Blooston Rural Carriers

Butler-Bremer Communications
Delcambre Telephone Company, Inc.
Delhi Telephone Co.
Nortex Communications
Paul Bunyan Communications
Pineland Telephone Cooperative, Inc.
Strata Network
Wabash Independent Networks, Inc.
Walnut Telephone Company, Inc.