Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 14-16
Competition in the Market for Delivery	)	
Of Video Programming	)	

COMMENTS

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COMMENTS OF
THE AMERICAN CABLE ASSOCIATION

The American Cable Association ("ACA") submits these comments in response to the Notice of Inquiry ("NOI") in the above-captioned proceeding regarding the Commission's Sixteenth Report on the state of competition in the delivery of video programming ("16th Report"), which seeks to collect information to enhance the Commission's analysis of competitive conditions in the video marketplace in 2013, enable the Commission to better understand the implications for the American consumer, and provide a solid foundation for Commission policy-making with respect to the delivery of video programming to consumers.[1] ACA urges the Commission to report on the critical role of buying groups for smaller and medium-sized operators, the increasing trend toward vertical integration between cable operators and video programming creators, and the continued shuttering of smaller cable systems.

I. VIDEO PROGRAMMING BUYING GROUPS PLAY A CRITICAL ROLE FOR SMALLER AND MEDIUM-SIZED OPERATORS

The NOI invites comment and the submission of data and information on the relationship between a multichannel video programming distributor's ("MVPD") size and the price it pays for video

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[1] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Notice of Inquiry, FCC 14-18 (rel. Jan. 31, 2014) ("NOI").

programming, as well as other issues that will assist the Commission's understanding of MVPD business models and competitive strategies.[2] ACA submits that a comprehensive assessment of the market for delivery of video programming must include recognition of the vital role played by buying groups in facilitating deals between video programming sellers and smaller and medium-sized MVPDs.

Nearly all smaller and medium-sized MVPDs generally license most of their national cable programming through a buying group called the National Cable Television Cooperative ("NCTC").[3] By aggregating its members' purchases, NCTC is able to obtain better prices, terms and conditions for its members than they could achieve by themselves.[4] Programmers also benefit from this arrangement. NCTC acts as an intermediary between programmers and its members, so that a programmer is able to deal with a single entity for purposes of negotiating contracts, determining technical standards, billing for payments, collecting payments, and other matters. This reduces the transaction costs of dealing with this group of smaller and medium-sized MVPDs, so they are more comparable to the transaction costs of dealing with a single large MVPD serving the same number of subscribers.[5]

Formed in 1984 by a dozen small and medium-sized MVPDs,[6] the NCTC has been successfully negotiating programming agreements on behalf of its members for 30 years. Today NCTC has master agreements with nearly all of the Kagan Top-50 networks; all of the Top-25

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[2] NOI, ¶ 24.

[3] Members of NCTC generally negotiate carriage of broadcast television stations and regional sports networks directly with these programming providers.

[4] Comments of American Cable Association (filed June 22, 2012 in MB Docket Nos. 12-68, 07-18, 05-192) ("ACA Comments"), App. B, Declaration of Frank Hughes, Senior Vice President of Member Services for National Cable Television Cooperative, Inc., ¶ 3 ("NCTC Declaration").

[5] ACA Comments, App. A, William P. Rogerson, "*Proposed Revisions To Program Access Rules to Better Address The Potential Competitive Harms Created By Cable-Affiliated Programmers*", at 9 ("Rogerson"). Professor Rogerson is a Professor of Economics at Northwestern University, and served as the Commission's Chief Economist from 1998-99.

[6] NCTC Declaration, ¶ 3.

networks; and with 46 of the Top-50 networks. NCTC members' subscribers have never collectively lost any networks.

NCTC has 890 member companies. Of these members, nearly 90 member companies serve more than 10,000 subscribers, with more than half of NCTC's members serving 1,000 or fewer subscribers. The median size of an NCTC member is about 1,500 subscribers. NCTC reports that its four largest members do not currently license substantial amounts of programming through the buying group.[7] However, the remaining members within the group of the largest 25 members do license substantial amounts of programming through the NCTC.[8] NCTC members outside its 25 largest members generally rely even more heavily on NCTC to secure their programming.[9]

In addition to negotiating the rates, terms and conditions of master agreements with programmers, the NCTC acts as an interface for all billing and collection activities between its own member companies and the programmer.[10] At the end of each month, each member reports to NCTC its total number of subscribers receiving each programming service.[11] NCTC collects the subscriber counts, calculates each individual member's monthly balance for each programmer, bills the members, collects payments from them and remits a single aggregate payment to the programmer.[12]

NCTC also plays a similar role with respect to its members and service and equipment vendors, like sellers of set top boxes and cable modems. Like programmers, these vendors deal with the NCTC for purposes of negotiating contracts, determining technical standards, billing for payments, and collecting payments on behalf of NCTC's members.

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[7] *Id.*, ¶ 5.

[8] *Id.*

[9] *Id.*

[10] *Id.*, ¶ 6.

[11] *Id.*

[12] *Id.*

In summary, NCTC creates substantial efficiencies for both its member companies and programmers, and other vendors with whom they conduct business. Taking advantage of these efficiencies is particularly important for smaller MVPDs given the continuing video programming price increases industrywide. Without buying groups, these cable operators would pay higher programming fees, and this would mean higher costs for their customers. But for buying groups and the lower prices that they can secure, there would be less robust competition between smaller and medium-sized cable operators and their larger MVPD competitors, like DIRECTV and DISH Network, which benefit from significantly better pricing based on the total number of subscribers they serve. Furthermore, higher carriage fees as a result of there not being a buying group would mean less money available for them to invest in their networks to deploy higher speed broadband to consumers in their existing footprint, and to edge out to deploy broadband in unserved areas. By recognizing these important facts about the business practices of smaller and medium-sized MVPDs in its report, the Commission can present a more realistic assessment of market realities that account for the state of video competition in 2013. ACA strongly urges the Commission to report on the important role of MVPD buying groups in the market for the delivery of video programming in its 16th Report.

II. VERTICAL INTEGRATION IS ON THE RISE BETWEEN CABLE OPERATORS AND VIDEO PROGRAMMING VENDORS

The Commission must also acknowledge in its 16th Report a recent and increasing trend of companies that either directly own or have attributable interests in video programming.[13] Under unified control, a cable-affiliated programmer has the incentive and ability to engage in unfair practices, such as charging its cable systems' rivals much more for its networks than it charges its non-rivals. At the very least, the trend toward vertical re-integration should be noted by the Commission in its 16th Report.

[13] The NOI requests data, information, and comment on the vertical integration between MVPDs and video programming networks. NOI, ¶ 18.

The latest outbreak of vertical integration started in early 2011 when Comcast acquired NBC Universal ("NBCU"), a deal bringing together the nation's largest cable operator, Comcast, with one of the nation's largest programmers, NBCU. Nationally distributed networks owned or effectively controlled by Comcast-NBCU include USA Network, CNBC, Golf Channel, Syfy, Bravo, E!, MSNBC, and NBCSN, among others.

The trend continued in early 2013 when Liberty Media purchased a controlling interest in the nation's fourth largest cable operator, Charter Communications. Because John Malone holds a substantial interest in Charter through his stake in Liberty Media, as well as interests in Discovery Communications and Starz, all of the companies are now effectively operated under unified control. National cable programming networks that are vertically integrated through Malone include: Discovery Channel, TLC, Animal Planet, OWN: The Oprah Winfrey Network, and the premium service Starz.

Nor do the cable operators and programmers involved in these recent deals comprise the entire universe of programming that is cable-affiliated. For instance, the AMC Networks, which include AMC, home of the hit series "The Walking Dead," are also cable-affiliated through the Charles F. Dolan family that effectively controls Cablevision.

Congress has long been concerned about the perils of vertical integration in the cable industry. In 1992, Congress adopted the program access rules to foster and protect competition in the MVPD marketplace by preventing cable operators that are vertically integrated with programmers from attempting to disadvantage MVPDs, including their buying groups, by overcharging or otherwise discriminating against non-affiliated MVPDs for programming. Conditions imposed on Comcast's acquisition of NBCU by the Commission and the U.S. Department of Justice in 2011 demonstrate the remaining concern about the incentive and ability of a vertically integrated cable operator to disadvantage other MVPDs in the sale of cable programming.

The cable industry may become even more vertically integrated as a result of the proposed Comcast- Time Warner Cable ("TWC") merger. This transaction, if approved, will result in TWC's cable systems becoming vertically integrated with the Comcast-NBCU national programming networks, its regional sports networks, and its NBC owned and operated broadcast television stations, significantly expanding the footprint of subscribers served by a vertically integrated cable operator. Given that we have entered an era of renewed vertical integration, it is imperative that the 16th Report recognize this fact.

III. SMALLER CABLE OPERATORS ARE CONTINUING TO EXIT THE MARKET AND CLOSE THEIR SYSTEMS

ACA previously urged the Commission to take account of both regulatory and non-regulatory factors contributing to the large number of cable system closings and cable operator departures from the marketplace.[14] In its assessment of market entry and exit in the 15th Report, the Commission noted ACA's submission of data and information obtained from the NCTC showing that between 2008 and 2012, nearly 800 of its member cable systems serving over 35,000 subscribers mostly in small and rural communities had closed, leaving those communities without any wireline MVPD service.[15] The Report further noted ACA's assessment that although some of the reduction is due to eliminating headends and interconnecting with other cable systems, another portion of cable system closures (*i.e.*, some cable systems are not sold to new owners, they are simply shut down and video service to the area served by the cable system is terminated) are primarily due to increasing

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[14] Comments of the American Cable Association (filed Sept. 10, 2012 in MB Docket No. 12-203), at 10 ("ACA 15th Report NOI Comments). Specifically, ACA recommended that the Commission report: (i) the number of cable system closures and operators exiting from the market; (ii) the impact of such closures on competition; and (iii) the regulatory and non-regulatory conditions contributing to these system shutdowns. *Id*. at 2.

[15] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, ¶ 78 & n.244 (2013) ("15th Report"), *citing* ACA 15th Report NOI Comments at 5-7. ACA also urged the Commission to report on cable system closures using data available in its own databases, including its COALS database, demonstrating closures by one of the three main types of video distributors covered by its Report in order to give a complete picture of the state of video competition. *See* ACA 15th Report NOI Comments at 4-5.

programming costs and pole attachment fees.[16] In the NOI, the Commission seeks comment on both the impact of the Communications Act and Commission rules on MVPD entry and competition, and information on the exit of MVPDs and comment on the reasons why MVPDs leave the video marketplace.[17]

ACA has obtained data provided to it by the NCTC, showing the number of ACA member systems that have shut down and ceased distributing video programming. The data show that 133 systems shut down in 2013, and 129 shut down in 2012. These systems served approximately 4,050 and 8,060 subscribers, respectively, with an estimated total of 12,110 subscribers affected in 2012 and 2013.[18] Overall, since 2008, NCTC members closed a total of 1,078 small and rural cable systems, the vast majority of which reflect systems that have ceased providing video service in their communities.[19] At the time of their closing, these systems served a total of approximately 50,000 subscribers. For many of these customers, switching to another video programming or broadband provider is not a viable option given the affordability that local cable operators offer.[20] ACA believes, as it noted in its previous comments, and as the Commission acknowledged in the 15th Report, that

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[16] 15th Report, ¶ 78 & n.242, *citing* ACA 15th Report NOI Comments at 5 (quoting ACA's statement that "between 2005 and 2011, the total number of cable systems has decreased by more than 26%, shrinking from 7,208 to 5,312" and noting that based on the Commission's COALS database, there were 7,798 cable systems in 2005 compared to the 5,127 reported for 2012).

[17] NOI, ¶¶ 19, 21.

[18] ACA last reported system closure statistics as of June 30, 2012 in its comments to the 15th Video Competition Report. ACA 15th Report NOI Comments, at 5-6. Compiling NCTC's latest data with what was reported previously results in the following system closures by year: 133 closed in 2013 (8,061 subscribers); 129 closed in 2012 (4,050 subscribers); 179 closed in 2011 (7,684 subscribers); 148 closed in 2010 (6,389 subscribers); 282 closed in 2009 (9,309 subscribers); and 207 closed in 2008 (14,503 subscribers). *See id.*

[19] *See also The Cable Act at 20,* Testimony of Colleen Abdoulah, Chairwoman and Chief Executive Officer at WOW! Internet, Cable & Phone, *before the* Senate Committee on Commerce, Science, & Transportation, at 4 (July 24, 2012) (reporting that between 2008 and 2012, nearly 800 ACA member small systems have closed across the country), *available at* http://commerce.senate.gov/public/?a=Files.Serve&File_id=cc8a6776-7e54-48e0-921f-11daebefc155.

[20] For example, while direct broadcast satellite providers typically compete with local operators for video programming service, they also often require credit checks and equipment purchases which may not be feasible for some customers.

one of the primary causes of small and rural system closings continue to be increasing video programming costs.[21]

In order for the Commission to give Congress an accurate picture of the health of competition in video distribution markets, it is incumbent that it include in the 16th Report data revealing the overall decrease in the number of cable systems, and all available information concerning the number of these systems that closed where no other wireline MVPD took their place. ACA again urges that the Commission not only gather this data but also assess the causes of system closings and market exits, including an evaluation of the role of substantial increases in video programming costs.

IV. CONCLUSION

The video programming ecosystem continues to evolve and ACA encourages the Commission to recognize in its next Report the key factors and important trends regarding the provision of video services by smaller and medium-sized cable operators: importance of buying groups, increasing vertical integration, and smaller system closures. For Congress to understand the state of competition in the video marketplace, it is vital for the Commission to note the factors and trends that ACA has highlighted in these comments.

[21] *See* ACA 15th Report NOI Comments at 8; 15th Report, ¶ 78.

Respectfully submitted,

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