



February 10, 2011

The Honorable John D. Burke  
Commissioner  
Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, Vermont 05620-2701

The Honorable Maureen F. Harris  
Commissioner  
New York State Public Service Commission  
Empire State Plaza  
Agency Build 3  
Albany, NY 12223-1350

The Honorable Steve Kolbeck  
Commissioner  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> floor  
500 E. Capitol Ave.  
Pierre, SD 57501-5070

Dear Commissioners Burke, Harris and Kolbeck:

The American Cable Association<sup>1</sup> (“ACA”) and The Independent Telephone and Telecommunications Alliance<sup>2</sup> (“ITTA”) support the *TC-1 Resolution Addressing Content Neutrality* and urges its adoption by the Committee on Telecommunications at NARUC’s upcoming meeting. The issues raised in the draft resolution are concerns shared by smaller cable operators and other new multichannel video programming distributors (“MVPDs”) in all parts of the nation. Passage of the resolution would send a timely and important message to policymakers and the industry that fair treatment for smaller operators, many of whom serve in rural markets, is a critical public policy objective.

As the draft resolution states, it is time for the Federal Communications Commission (“FCC”) to carefully examine the damage that discriminatory programming practices inflict on small and rural cable operators and telephone carriers providing MVPD services, and to take action to rebalance the competitive playing field to ensure residents in small and rural markets are able to obtain access to programming at fair rates. The draft resolution correctly recognizes that video content is “the leading, if not ‘killer,’ application” in the provision of “triple play” voice, video and broadband data services, particularly for traditional telephone companies. Without reasonable and economic access to video programming content, smaller providers may lose the means to continue to serve, and new entrants into the MVPD market will lack the

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<sup>1</sup> ACA represents nearly 900 small and medium-sized cable operators, providing cable television, broadband data, and voice services to 7.6 million customers in markets in all 50 states.

<sup>2</sup> ITTA represents mid-size local exchange companies that provide a broad range of high quality wireline and wireless voice, broadband, Internet, and video services to more than 24 million customers in 43 states.

ability to enter rural markets, compete effectively against larger providers, and extend their reach to unserved areas.

ACA has long advocated for reform of the FCC's retransmission consent rules. In comments filed last year with the FCC urging that it initiate a rule making to re-examine the regulatory framework within which retransmission consent is negotiated, ACA documented the gross disparities in retransmission fees paid by smaller MVPDs.<sup>3</sup> Publicly available information, together with the experience of ACA members, indicates that smaller MVPDs pay nearly *twice* as much per subscriber as larger MVPDs simply because they serve fewer subscribers. ACA's economic expert, Professor William Rogerson, explained in an accompanying report that the level of these pricing disparities greatly dwarfs any conceivable cost basis, as individual MVPDs generally make their own arrangements at their own cost to receive and download the signal of broadcast networks at their headends and broadcasters essentially incur no additional (marginal) costs for providing their consent to MVPDs to retransmit the signals.<sup>4</sup> Thus, there is no cost difference in serving smaller versus larger MVPDs. Nor could the transaction costs of negotiating with smaller providers possibly account for these vastly higher rate levels. Rather, the rate discrimination arises solely because smaller providers lack the bargaining leverage necessary to counterbalance the market power of powerful "Big 4" (*i.e.*, ABC, NBC, CBS, and FOX) broadcast network affiliates and station affiliate groups. The result is that broadcasters are able to extract substantially higher fees from smaller cable operators and other new MVPDs simply because they lack the ability to withstand such increases, and different groups of viewers are being charged different prices to view the same programming.

As the draft resolution notes, a graphic illustration of the price inequities faced by smaller and other new MVPDs are the 35-to-40 percent price increases demanded by programmers of a new MVPD who recently purchased systems in Indiana, Oregon, and Washington previously owned by Verizon, the 7<sup>th</sup> largest MVPD. The increases are for the identical programming purchased by Verizon for sale to the same households in the same markets, with the sole difference being that the new entrant serves fewer total video subscribers than Verizon. It is incumbent upon the FCC, as the draft resolution recognizes, to examine what socially beneficial ends, if any, such pricing discrimination could possibly serve.

When programmers use their increased bargaining leverage to extract above-market rates from smaller MVPDs for their content, those additional costs are passed along to consumers in the form of rate increases. To the extent the MVPD cannot pass the costs through to consumers in the form of higher subscription fees, either because of competition or local economic circumstances, the higher costs are borne by the MVPD, depriving it of revenues for capital expenditures that could be used to fund more and higher-quality video channels, other programming acquisitions or broadband network expansion.

The result, as the draft resolution recognizes, is that in the markets served by smaller MVPDs, the current retransmission consent regime not only harms MVPDs and their subscribers, but also threatens a top domestic policy priority – bringing broadband deployment to unserved areas and underserved populations.<sup>5</sup>

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<sup>3</sup> In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71, Comments of the American Cable Association (filed May 18, 2010) ("ACA Comments").

<sup>4</sup> "The Economic Effects of Price Discrimination in Retransmission Consent Agreements," by William P. Rogerson, Professor of Economics, Northwestern University, FCC Chief Economist, 1998-99, prepared for the American Cable Association, attached to ACA Comments as Appendix A, at 13.

<sup>5</sup> See generally American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 123 Stat. 115; Omnibus Broadband Initiative (OBI), Federal Communications Commission, Connecting America: The National Broadband Plan, GN Docket No. 09-51 (2010); Acting Chairman Michael J. Copps, Federal Communications Commission, Bringing Broadband To Rural America: Report On A Rural Broadband Strategy (2009), attached to Rural broadband Report Published in the FCC Record, GN Docket No. 09-29, Public Notice, 24 FCC Rcd 12791 (2009).

In conclusion, ACA commends the NARUC staff's draft resolution on content neutrality, and submits its strongest possible support in favor of adoption of the resolution by the Telecommunications Committee.

Sincerely,



Matthew M. Polka  
President and CEO  
American Cable Association



Paul Raak  
Vice President, Legislative Affairs  
Independent Telephone & Telecommunications Alliance

Cc: Commissioner Sara Kyle, *Tennessee Regulatory Authority*  
Commissioner Randy Mitchell, *South Carolina Public Service Commission*  
Commissioner Jaymes B. Lester, *Delaware Public Service Commission*  
Commissioner Larry S. Landis, *Indiana Utility Regulatory Commission*  
Commissioner Robert M. Clayton, III, *Missouri Public Service Commission*  
Commissioner Thomas W. Pugh, *Minnesota Public Utilities Commission*  
Commissioner Mark C. Christie, *Virginia State Corporation Commission*  
Commissioner Philip B. Jones, *Washington Utilities and Transportation Commission*  
Commissioner Nixyvette Santini Hernandez, *Puerto Rico Telecommunications Regulatory Board*  
Commissioner Monica Martinez, *Michigan Public Service Commission*  
Commissioner James H. Cawley, *Pennsylvania Public Utility Commission*  
Commissioner Carlito P. Caliboso, *Hawaii Public Utilities Commission*  
Commissioner Lorinzo L. Joyner, *North Carolina Utilities Commission*  
Commissioner Betty Ann Kane, *District of Columbia Public Service Commission*  
Commissioner Anthony Palermino, *Connecticut Department of Public Utility Control*  
Commissioner Krista Tanner, *Iowa Utilities Board*  
Commissioner Anne C. Boyle, *Nebraska Public Service Commission*  
Commissioner John Vincent, *Montana Public Service Commission*  
Commissioner Geoffrey G. Why, *Massachusetts Department of Telecommunications and Cable*  
Commissioner Amy L. Ignatius, *New Hampshire Public Utilities Commission*  
Commissioner Tim Schram, *Nebraska Public Service Commission*  
Commissioner Linda Roberts, *Connecticut Siting Council*  
Commissioner Ward Loyd, *Kansas Corporation Commission*  
Commissioner Ronald A. Brise, *Florida Public Service Commission*  
Commissioner Ryan B. Palmer, *Public Service Commission of West Virginia*