



**House Energy and Commerce Subcommittee on Communications and Technology Hearing On**  
**"Closing the Digital Divide: Broadband Infrastructure Solutions"**  
**January 30, 2018**

**Responses of Shirley Bloomfield to Questions Submitted for the Record**

**The Honorable Steve Scalise:** I have long fought to eliminate unnecessary rules and regulations that hinder innovation, stifle job creating in our economy, and limit access and/or choices for consumers. One area where I have a particular interest is in the video marketplace, where the '92 Cable Act was based on a dramatically different set of industry competition than exists today. The result of these outdated rules and regulations is less competition, less innovation, and less freedom for consumers and job creators alike. As a result, small and rural MVPDs are increasingly forced to choose between offering video services at a loss or dropping the service offer altogether. We should eliminate outdated laws for the sake of consumers and other stakeholders so that there is finally a more level playing field.

**Please explain what, if any, tradeoffs you have seen your member companies make as it relates to investment and the buildout of broadband as business operation costs increase, and the freedom to innovate and meet consumer demand remain stuck in the 20<sup>th</sup> century.**

Small, hometown-based rural telecom providers like those in NTCA's membership connect rural Americans with the world – making every effort to deploy advanced networks that provide first-class broadband and video services to consumers and businesses across rural America.

Even with our member companies averaging 25 employees or less, these small businesses offer advanced communications services that have helped rural communities thrive in the 21<sup>st</sup> century.

However, providing innovative communications services such as video, mobile and fixed broadband, and voice in rural America does not come without extreme challenges. These cooperatives and small, hometown companies serve the most rural parts of the United States, reaching areas that contain less than five percent of the U.S. population but which are spread across more than 35 percent of the U.S. landmass – where the average density is about seven customers per square mile, or roughly the average population density for the entire state of Montana.

For many rural providers, offering video services in addition to voice and broadband services is an essential part of making the business case to invest in the first instance and then stay in operation. Bundled packages that include video make our members' services more convenient and attractive to the customers they serve, and surveys reveal that offering video helps to drive broadband adoption as well.

Moreover, as the sole provider of video in many rural areas, these rural communities rely on the video services provided by our small, rural broadband and video providers. Nearly one-fourth of NTCA's members report that 90 percent or more of the customers in their service areas cannot receive any over-the-air broadcast signals, and therefore rely upon multichannel video programming distributor (MVPD) services to receive local news, weather reports, and similar benefits of local broadcasts.



Because many rural areas do not receive broadcast television signals, simply removing video from the services provided by our member companies could result in consumers having no access to that content.

The economics of providing rural broadband and video are difficult enough on their own in rural markets, even before one gets to the effects of escalating content costs. The rates that rural consumers pay are rarely sufficient to cover even the costs of operating in rural areas, much less justify the enormous capital expenditures required to deploy reliable, advanced networks in rural America. Unfortunately, the ever-increasing retransmission consent costs associated with providing video services only make matters worse by forcing operators to look to consumers for recovery of such increased costs, undermining the business case for further network investment, or even prompting operators to consider exiting the video service business altogether.

As you rightly noted, the 1992 Cable Act was created in an entirely different video marketplace than what exists today, and it is particularly punitive to rural video providers and the consumers they serve. For example, MVPDs in rural areas are paying more for the odd and striking “privilege” of ensuring broadcast content reaches those many rural consumers who, as noted above, cannot receive over-the-air broadcasts at all due to distance from the broadcaster’s transmission site. In fact, from 2013 to 2015, the compound average annual increase in retransmission consent fees paid by MVPDs was 42.8%.<sup>[1]</sup> Moreover, MVPDs have no choice when negotiating for broadcast signals, as they can only obtain content from one seller due to the Cable Act. Forcing buyers by law toward a single seller is not a “market.”

Therefore, for small and rural MVPDs to continue providing high-quality video for their customers, Congress must consider injecting market forces into an outdated retransmission consent regulatory regime.

And while NTCA believes the 1992 law would benefit from a comprehensive rewrite and retransmission consent reform is much-needed, targeted market-based reforms could help address four key flaws in the interim:

- **Transparency:** Mandatory non-disclosure requirements keep the market value of programming under wraps and in the shadows. MVPDs and consumers should be permitted to see and compare pricing from broadcasters.
- **Buyer Choice:** Rules today artificially restrict the ability to buy similar content from different network affiliates. If content from one affiliate in a Designated Market Area (DMA) is too expensive, allow MVPDs to leverage market forces by purchasing comparable content from the same network’s affiliate in another DMA. Make broadcasters compete for buyers.
- **Consumer Choice:** Consumers should have access to a breakdown of each channel’s actual costs, and the option to lower their bill by opting out of buying any given broadcast channel.
- **Consumer Protection:** Consumers should be permitted to retain access to signals at existing rates pending dispute resolution between broadcasters and MVPDs.

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<sup>[1]</sup> In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment, *Report on Cable Industry Prices*, MM Docket No. 92-266, 41 (Rel. Feb. 8, 2018).



In addition, any reforms made by Congress or the FCC should ensure the transition to a new ATSC 3.0 broadcast standard is truly voluntary for MVPDs. Broadcasters should not be able to force MVPDs to accommodate new signal standards through the retransmission consent process, nor should consumers be subject to signal degradation or loss as a result of a broadcaster adopting the new standard.

In the end, the antiquated 1992 Cable Act provides broadcasters with a government-backed stranglehold on programming. It is the antithesis of a well-functioning “market,” even if the process is couched in claimed “negotiations.” If the law will not be fundamentally rewritten to reflect today’s video world, technical updates and corrections are needed at least to allow today’s market forces to operate more effectively.

**The Honorable Yvette Clarke: I have learned by representing the 9<sup>th</sup> Congressional District of New York and the Smart Cities Caucus that cities are eager to bring high-speed broadband and 5G technology to their constituents. I am concerned, however, by the recent adversarial tone between industry and cities. I think it is wrong to characterize cities and industry as adversaries and not partners.**

**Can you all commit to helping reach a good faith consensus on how to bring high-speed broadband and 5G technology to cities aiming to deploy smart technology for their constituents? What are your plans for this commitment and engagement? Will you commit to working with my office to resolve some of these disputes, and find a path forward that works for all consumers, cities, and the industry?**

NTCA is committed to working with your office as well as all other Congressional offices to ensure that we can find solutions to decreasing the digital divide and building out the next generation of broadband in America. While most of our members serve largely rural populations, we understand it takes a joint-effort on behalf of the entire communications industry to implement world-class internet services across America. To the extent that NTCA can be helpful in assisting with broadband buildout in areas both urban and rural, we’re more than happy to do so.