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Congress of the United States
House of Representatives
Washington, DC 20515-3507

May 12, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler,

I have been contacted by local video distributors about a two-year pending issue with the FCC. These video distributors, through their major trade association, have a long-standing request that the Commission address a flaw in its implementation of program access rules. The implementation denies these distributors full legal rights and protections that Congress intended under the Cable Television Consumer Protection and Competition Act of 1992.

It is my understanding that local video providers are part of 900 small and medium-sized multichannel video programming distributors (MVPDs) across the country that rely upon a single buying group, the National Cable Television Cooperative (NCTC), to negotiate the bulk of their programming agreements. The Cable Television Consumer Protection and Competition Act of 1992 specified MVPDs and their buying groups are protected from discriminatory treatment by cable-affiliated programmers under the program access rules. The FCC's original program rules defined buying groups as entities that must accept full liability for all of their members. This definition is overly-restrictive and excludes the NCTC. As a result, many hundreds of MVPDs that currently rely exclusively on the NCTC to negotiate their programming agreements are not eligible for the program access protections intended by the law.

The Commission's Further Notice of Proposed Rulemaking tentatively determined the definition of what qualifies as a buying group under The Cable Television Consumer Protection and Competition Act should be updated. This Further Notice, which garnered the bipartisan support of three of the five sitting Commissioners, states:

[I]t appears that our existing definition of "buying group" set forth in Section 76.1000(c)(1) does not reflect accepted industry practices and thus may have the unintended effect of barring some buying groups from availing themselves of the protections of the nondiscrimination provision of the program access rules, in contravention of Congress's express intent in enacting Section 628(c)(2)(B) of the Act. We tentatively conclude that we should revise Section 76.1000(c)(1) to require, as an alternative to the current liability options, that the buying group agree to assume liability to

forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.

Since the Commission reached this tentative conclusion in 2012, no final decision has been made, leaving smaller pay TV providers and, by extension, their customers at risk of being treated in an unfair manner by cable-affiliated programmers. I respectfully request the Commission take action as soon as possible to update the definition of a buying group to ensure the law's original intention is in place.

I look forward to hearing back from you on this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Gibbs".

Bob Gibbs
Member of Congress