

April 16, 2015

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Revisions to Cable Television Rate Regulations, MB Docket No. 02-144; Amendment to the Commission's Rules Concerning Effective Competition and Implementation of Section 111 of the STELA Reauthorization Act, MB Docket No. 15-53

Dear Ms. Dortch:

The undersigned parties (the "Parties") urge the Commission to take practical procedural steps to streamline the effective competition petition filing process for small cable operators as required by Section 111 of the STELA Reauthorization Act of 2014 (STELAR)¹ rather than the sweeping changes proposed in the Commission's March 16, 2015, Notice of Proposed Rulemaking. Specifically, the Parties urge the Commission to meet Congress's STELAR dictate by taking expedited action on some of the narrow procedural proposals filed in response to its Notice of Proposed Rulemaking in MB Docket No. 02-144, and the related proposals outlined below.²

Section 111 of STELAR contains a narrow, specific directive that the Commission "establish a streamlined process for filing of an effective competition petition ... for small cable operators, particularly those that serve rural areas."³ Congress further stated that: "[n]othing in this subsection shall be construed to have an effect on the duty of a small cable operator to prove the existence of effective competition...."⁴ Congress specifically defined what it meant by "small" cable operator.⁵ Congress's narrow directive that the Commission adopt "administrative reforms" to the effective competition filing process for

¹ Pub. L. No. 113-200, §111, 128 Stat. 2059 (2014), codified at 47 U.S.C. § 543(o).

² *Revisions to Cable Television Rate Regulations*, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 11550 (2002)(*2002 Rate Regulation Notice*). The Parties also note that some commenters in MB Docket No. 15-53 proposed additional administrative changes to streamline the Commission's processing of effective competition filings.

³ 47 U.S.C. § 543(o)(1). By giving the Commission merely 180 days to complete this objective, Congress made clear its intention that these process improvements should be more ministerial than substantive and generally uncontroversial.

⁴ 47 U.S.C. § 543(o)(2).

⁵ 47 U.S.C. § 543(o)(3) (defining a small cable operator, by cross reference to Section 623(m)(2), as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000").

small operators can and should be implemented through the adoption of improved and modernized filing requirements. The Commission should consider any process improvements that may ease burdens for small cable operators and ensure timely resolution of their petitions.

The Commission can fulfill its Section 111 of STELAR mandate by acting upon one or more of the pending narrow administrative proposals offered in response to its *2002 Rate Regulation Notice*. When initiating that proceeding, the Commission observed that there may be ways to improve its “procedures used to demonstrate the presence of effective competition.”⁶ The Commission sought comment on “whether there are techniques consistent with the Communications Act to improve and expedite effective competition showings and review.”⁷ Commenters offered several proposals to streamline the effective competition petition filing process, including the following:

- Urging the Commission to eliminate elements of an effective competition showing that are no longer in dispute. This could include, for example, not having to demonstrate that consumers are aware of the availability of a competitive DBS offering in light of “significant, sustained marketing [by DBS providers] to convince cable customers to switch multichannel providers.”⁸
- Citing difficulties in obtaining accurate subscriber data from competing providers, commenters urged the FCC to reiterate that competitors must timely respond to requests for information and to use its enforcement authority to ensure compliance with this requirement.⁹
- Suggesting that the FCC automatically grant unopposed petitions for effective competition once the time for filing oppositions has elapsed.¹⁰
- Recommending that the FCC adopt a time limit for its review of petitions for effective competition, even where the petitions are opposed.¹¹

Although these streamlining proposals for the effective competition petition filing process were advanced in response to the *2002 Rate Regulation Notice*, the Commission has not yet acted upon those proposals. Indeed, just last year, NCTA urged the Commission to adopt them within the context of the 2002 proceeding.¹² The Commission clearly could

⁶ *2002 Rate Regulation Notice*, 17 FCC Rcd at 15569 ¶52.

⁷ *Id.* at 15569 ¶53.

⁸ Comments of the National Cable & Telecommunications Association (NCTA) in MB Docket No. 02-144 (Nov. 4, 2002) at 29-30 (NCTA 2002 Streamlining Comments).

⁹ NCTA 2002 Streamlining Comments at 30.

¹⁰ NCTA 2002 Streamlining Comments at 31.

¹¹ NCTA 2002 Streamlining Comments at 32.

¹² Letter to Marlene H. Dortch, Secretary, FCC, from Diane Burstein of NCTA in MB Docket No. 02-144 (Jun. 16, 2014)(urging FCC to resolve issues pending in the proceeding).

act upon those proposals or the ones offered below to effectuate Congress's intent in enacting Section 111 of STELAR.¹³

Additionally, to the extent that small cable operators are concerned with the costs of requesting and enforcing third-party discovery and participating in the adjudicatory process associated with petitions for effective competition, a streamlined discovery and adjudication process may assist such operators. Under such a streamlined process, a qualifying operator seeking a determination of "competing provider" effective competition could:

- (i) provide proof that it qualifies as a non-exempt "small cable operator";¹⁴
- (ii) provide the number of its subscribers in each of its franchise areas;
- (iii) request a determination of effective competition by the Commission in each area;
- (iv) give notice to the relevant franchising authorities.

The Media Bureau could then order the required third-party discovery¹⁵ and make the factual determinations required by statute, subject to the right of the franchising authority to contest the issue.

The Commission also could use the types of streamlining tools it has applied in other contexts to the filing of effective competition petitions for small cable operators. For example, the Commission could establish an electronic filing system that does not require formal "pleadings" but instead involves an electronic form that would allow small operators to more efficiently seek effective competition determinations. Such a process or form would likely ease burdens on both petitioners and Commission staff. The Commission may also consider instituting a "shot-clock" to provide small cable operators some guidance regarding the timing of FCC review and adjudication of their petitions,¹⁶ particularly where the petitions are uncontested. The Commission should also explore warehousing, and making available to small cable operators and franchising authorities, any data it obtains through other proceedings that may be useful to effective-competition determinations.¹⁷

¹³ Section 111 requires the Commission to "*complete*" a rulemaking proceeding within 180 days of STELAR's enactment. 47 U.S.C. §543(o)(emphasis added). This does not necessarily require the Commission to commence an entirely new proceeding, particularly where, as here, the Commission already has built a record regarding ways to streamline the effective competition filing process.

¹⁴ 47 U.S.C. § 543(m)(2).

¹⁵ The Commission's rules state that "[i]f the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers," and specify deadlines for competitors to respond. 47 C.F.R. § 76.907(c). The rule also specifies that "the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition." *Id.*

¹⁶ See, e.g., FCC, *Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers*, <http://www.fcc.gov/encyclopedia/informal-timeline-consideration-applications-transfers-or-assignments-licenses-or-autho> (viewed Apr. 8, 2015).

¹⁷ See, e.g., *Report on Process Reform*, 29 FCC Rcd 1341, 1369 (2014)(Recommendation 2.23 suggests that the Commission "Make Data More Accessible and Transparent to the Public").

If small cable operators face burdens in their efforts to file and litigate effective competition petitions before the Commission – as Congress’s charge in Section 111 suggests – then modification and updates to the filing process, like those pending before the Commission and outlined above, should reduce their burdens and ensure the Commission complies with Congress’s intent.

Respectfully submitted,

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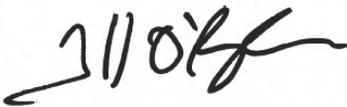
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A handwritten signature in black ink, appearing to read 'M. Wassenaar', with a long horizontal flourish extending to the right.

Michael S. Wassenaar
President

cc: Bill Lake, Michelle Carey, Holly Saurer, Mary Beth Murphy, Steven Broeckaert, Diana Sokolow