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

In the Matter of	)	
	)	
Customer Rebates for Undelivered Video Programming During Blackouts	)	MB Docket No. 24-20
	)	

COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in connection with the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("Commission") in the above-captioned proceeding.[2]

In its NPRM, the Commission proposes to require cable operators and direct broadcast satellite (DBS) providers to give their subscribers rebates when customers do not receive channels in the event of a blackout due to failed retransmission consent negotiations or failed non-broadcast carriage negotiations. While well-intended, the proposals are unworkable and would harm small cable operators and ultimately, their subscribers. If the Commission nonetheless moves forward

[1] NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

[2] *Customer Rebates for Undelivered Video Programming During Blackouts,* MB Docket No. 24-20, FCC 24-2 Notice of Proposed Rulemaking (Rel. Jan 17. 2024).

with its proposal, it should require the disclosure of the fee or other terms that led to the failed negotiations and upon which the rebate is based.

I. THE PROPOSAL WOULD ADD AN ADDITIONAL REGULATORY BURDEN TO SMALL CABLE OPERATORS THAT ARE STRUGGLING TO CONTINUE TO PROVIDE SERVICE TO RURAL AREAS

Small providers lack negotiating power in retransmission consent discussions and the threat of blackouts does little to sway broadcasters when the number of affected consumers is a tiny fraction of total network viewership. As a result, small providers are often faced with last-minute, take-it-or-leave-it offers with non-disclosure provisions and forced tying and tiering of content. Moreover, blackouts are commonly threatened by broadcasters before major sports or entertainment events as a negotiating tool to force small multichannel video programming distributors ("MVPDs”) to accept otherwise unacceptable terms. In the end, the ever-increasing costs of content driven by these dynamics must be borne by the cable operator or passed onto the consumer, even as the cable operator is contractually prohibited from disclosing the reasons and amount of cost increases to its customers.

The business case for small cable providers serving rural communities does not resemble that of larger companies. Small operators are typically situated in the communities they serve and frequently provide video services because the community needs the service. More than one quarter of respondents to a recent NTCA survey indicated that 50% or more of their service area households cannot receive an over the air broadcast signal[3] and must rely on their local video providers for local news, weather, and sports. Many rural consumers also do not have the option of satellite service and the rural population is comprised of more elderly adults than the urban population[4] who are less likely to use streaming services.[5] Many rural broadband providers provide cable service for the simple reason that the community has few, if any, other video options.

Despite this clear need for their services, rural providers are being forced out of the video market. NTCA's survey found that 18% of current video providers who responded to the survey are not very likely to continue to offer service and another 11% reported that they already have plans to discontinue service.[6] The vast majority of respondents who reported having plans to discontinue, or are considering discontinuing, the offering of video service cite increased programming costs as the reason, and nearly six in 10 specifically cite difficulty negotiating retransmission consent agreements.

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[3] *See,* NTCA – The Rural Broadband Association, Broadband/Internet Availability Survey Report, p.27 (Dec. 2023) available at: https://www.ntca.org/sites/default/files/documents/2023-12/2023%20Broadband%20Survey%20Report%20FINAL.pdf.

[4] In a report from the US Census Breau on "The Older Population in Rural America," older adults comprise 17.5% of the rural population, while in urban areas it is 13.8%. Smith, A. S., & Trevelyan, E. (2019). The older adult population in rural America: 2012-2016. United States Census Bureau. https://www.census.gov/content/dam/Census/library/publications/2019/acs/acs-41.pdf

[5] A 2021 survey showed that 81% of adults 65 years old or more receive video services via cable or satellite. Among adults between 18 and 29 years old, only 34% receive video services via cable or satellite. Stoll, Julia (Nov. 11, 2022). Cable and satellite TV penetration in the US 2021, by age group. https://www.statista.com/statistics/659779/cable-tv-penetration-by-age/

[6] *See,* NTCA –Survey Report, p.27 (Dec. 2023).

The Commission questions why the number of blackouts has increased.[7] These numbers above provide a clear answer. While blackouts involving small cable operators serving rural communities are rare, retransmission consent agreements are a primary driver of video provider costs and the fees paid to broadcasters have increased exponentially year over year – and this reed can only bend so far before, at times, it breaks. NTCA survey respondents indicated that in just the last two years, fees paid to broadcasters increased by an average of nearly $150,000. While that amount might be a rounding error for a larger cable company, retransmission consent fees represent about 25% to 40% of total operating expenditures for small MVPDs. The proposal to require small cable operators to offer rebates to consumers would add yet another regulatory burden and cost onto the smallest cable operators, hastening their exit from rural markets, while adding yet another arrow to the quiver of broadcasters who know that MVPDs will bear an additional dose of pain if they do not take the last-minute, take-it-or-leave-it offers that characterize this market already.

II. IF THIS PROPOSAL IS ADOPTED, CUSTOMERS SHOULD BE PROVIDED CONTEXT FOR WHY A REBATE IS BEING PROVIDED AND THE AMOUNT BEING GIVEN

The proposal that would require small cable operators to offer rebates for a period of a blackout would force small providers to calculate a per day, or perhaps per hour, rate for each channel lost and then presumably, apply a credit to each customer's bill. These procedures do not exist. To create these processes and procedures not only would be expensive and time-

[7] NPRM ¶ 5.

consuming, but providers would be calculating the rebate on a rate they are contractually prohibited from disclosing to their consumers, or even to regulators.

If the Commission will require the provision of a rebate for a blackout, it should permit small cable operators to disclose fully to affected consumers the circumstances that gave rise to the blackout, or at the very least, the costs upon which the actual rebate is based. If a channel or set of channels goes dark, cable operators and DTV providers should be required to disclose the per subscriber retransmission cost of that channel or group of channels to their subscribers, along with information about the price increase or other terms that are proposed and the source of the dispute. The Commission's proposal to require providers to provide a rebate or credit that in "good faith" approximates the value of the consumer's access should not be adopted as it would perpetuate the shroud of secrecy that is wrapped around the cost of broadcast content and deny consumers the information they need to understand *why* a blackout is arising and what it could mean to them (in the form of a higher monthly bill) if the blackout is resolved. If customers will receive a rebate, they, and the regulators, should know what rate the rebate is based on and that it is calculated correctly.

Finally, if a blackout occurs and rebates are required, broadcasters should not receive any payment for the period of a blackout and should not be permitted to backdate agreed upon fees to any period before full service is restored. It would be a heads-I-win, tails-you-lose proposition indeed to compel cable providers both to rebate the customer *and* then to pay the broadcaster for its content associated with the period during which that content was <u>*not* distributed.</u>

III. CONCLUSION

For the foregoing reasons, the Commission should not adopt its proposal to require cable operators to offer rebates to consumers for periods of broadcast blackouts. If the Commission moves forward with its proposal, it should override non-disclosure provisions in retransmission agreements so that the rebates can be properly calculated and the context for them communicated in a meaningful and comprehensible way to consumers and regulators.

Respectfully submitted,

NTCA THE RURAL BROADBAND ASSOCIATION

By: _/s/ Jill Canfield_____
Michael Romano
Jill Canfield

4121 Wilson Boulevard
Arlington, VA 22203

703-351-2020 (Tel)