

Remarks of Judy Meyka
National Cable Television Cooperative
FCC Diversity Workshop
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My name is Judy Meyka. I am the Executive Vice President of Programming at the National Cable Television Cooperative (“NCTC”), a buying group for small cable operators. I would like to thank you for allowing me to provide my perspective on issues related to programming diversity. I hope to provide you with an overview of the market from my perspective and my experience negotiating programming agreements for 850 or so small and mid-sized cable operators, all with unique viewpoints and serving diverse communities. My career negotiating programming agreements spans over twenty years and I have had the opportunity to negotiate programming agreements with all of the large programming media groups, as well as numerous independent programmers.

Independent programmers with diverse voices face a number of challenges in obtaining distribution of their content by NCTC members. Small cable operators are often better positioned to provide diverse programming given their demographics and would like to offer more independent programming consistent with the demands of their consumers. The tactics engaged in by some programming providers, however, impede their ability to do so. Most

significantly, this includes the forced bundled carriage of multiple networks and the onerous penetration guarantees that accompany such bundling.

Forced bundled carriage of multiple networks from a single programming provider is a prevalent practice that all large programmers engage in to some degree. In order to carry what is considered a must-have network, an operator is required to carry a number of other networks, some of which are far less desirable channels with low ratings and little or no consumer demand. NCTC has agreements in place with the 9 largest programmers in terms of the size of the entity and the number of networks they own. Those 9 entities represent well over 100 different networks or channels. Because of bundling, an NCTC member seeking to distribute just one network from each of those large programmers would be required to carry up to 65 channels in total, and potentially more in certain circumstances.

Forced bundling takes up a tremendous amount of often scarce bandwidth that could be utilized for independent programming or other services. Members routinely complain that large programmers' forced bundling is an egregious use of their market power. When members prefer to distribute an independent network that may have higher customer demand or a better connection to their subscriber

demographics, they are unable to do so given the capacity and cost they must allocate to the bundled channels of the large programmers.

Programmers use their leverage aggressively to force members to take their bundles. Contrary to what they often publicly state, large programmers are not forthcoming and willing to negotiate unbundled or standalone rates. NCTC has tried multiple times to obtain standalone rates from large programmers who have either ignored our request or told us that while they exist, our members would not be interested in them. In a recent negotiation, the programmer ignored our request for standalone rates and went on to suggest that NCTC members reallocate bandwidth from their broadband offerings to their video offerings solely for the purposes of carrying all of the programmer's networks as part of their bundle.

Large programmers' demand for penetration guarantees further inhibits the proliferation of independent networks. Penetration guarantees may be structured in different ways but they all guarantee a certain amount of distribution. They require an operator to distribute a network to large numbers of subscribers in the most widely distributed packages regardless of what the operator or the consumer wants. Given the capacity and cost required by these networks, independent networks, if carried, are often relegated to less widely distributed, less popular, packages that cost consumers more to access.

While programmers argue that penetration requirements are entirely the result of back and forth negotiations and an exchange of value, that has not been my experience. Large programmers forcefully pursue penetration and packaging requirements and generally refuse to treat them as the subject of much negotiation. NCTC members view these requirements as another abuse of a programmer's market power and detrimental to a member's ability to support programming diversity and offer consumers more choice.

In my experience, large programmers use every conceivable tactic to enforce their bundles and ensure that it remains intact. They strictly prohibit the discontinuance of a network once carried, regardless of the performance of that network. To coerce carriage of the bundle, programmers have engaged in a number of egregious tactics including misleading and disruptive messages and crawls on their networks, limiting access to free programming on a programmer's website and using RSNs and broadcast stations as leverage to further force the bundle. In some cases, they have arbitrarily denied a member participation in an NCTC agreement until the member concedes in accepting additional carriage requirements.

For all of the foregoing reasons, the FCC should proceed to a rulemaking in this proceeding. I also understand there are a number of pending proceedings

where the Commission can take more immediate steps to address these issues. For example, the program access statute permits “buying groups” to bring complaints, but outdated rules prevent NCTC – the most utilized buying group in this market – from doing so. ACA has urged the FCC to update the rules and I agree with that request.

Thank you again for allowing me to participate in this workshop. I’m happy to take any questions you might have.