

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

In the Matter of	)	
	)	
Expanding Consumers' Video	)	MB Docket No. 16-42
Navigation Choices	)	
	)	
Commercial Availability of	)	CS Docket No. 97-80
Navigation Devices	)	
	)	



**MOTION FOR EXTENSION OF TIME**

Pursuant to section 1.46 of the Commission's rules, 47 C.F.R. § 1.6, the American Cable Association ("ACA") respectfully submits this Motion seeking an extension of time for parties to file comments responding to the Notice of Proposed Rulemaking ("NPRM") adopted by the Commission in the above-captioned proceeding on February 18, 2016. Comments are currently due on April 15, 2016, and reply comments are due on May 16, 2016.<sup>1</sup>

Despite the tremendous complexity of the rules proposed by the NPRM, and the numerous questions posed to commenters, the NPRM affords parties a scant thirty days following the date that the NPRM is published in the Federal Register to prepare and file public

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<sup>1</sup> Federal Communications Commission, Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices, 81 Fed. Reg. 14033 (proposed Mar. 16, 2016); *Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, MB Docket No. 16-42, CS Docket No. 97-80 (rel. Feb. 18, 2016) ("NPRM").

comments, with reply comments due sixty days after publication in the Federal Register. This brief filing window is not sufficient for MVPDs that operate diverse networks under a variety of financial circumstances to adequately evaluate the proposal's impact, particularly in the case of smaller MVPDs with few employees. ACA, which represents a diverse membership of smaller MVPDs that rely upon it to file comments on their behalf, respectfully requests that the deadline for filing comments be extended by 30 days to afford a more reasonable opportunity for it and its members and all affected parties to evaluate the proposal, determine its technical, financial, and legal implications, and provide the Commission with a record sufficient to permit it to act responsibly in this proceeding. This request, if granted, would then provide parties an amount of time to file comments and replies consistent with that granted to parties in comparable proceedings related to Section 628.

As Commissioner Rosenworcel aptly noted, [t]his rulemaking is complicated,” and “[i]mportant questions have been raised about copyright, privacy, diversity – and a whole host of other issues.”<sup>2</sup> The NPRM includes 150 question marks, 87 recitations of the phrase “seek comment,” and numerous other statements that invite or warrant comment on scores of particulars of the NPRM's undeniably “complicated” proposals. The complexity of the rulemaking is compounded by the fact that the impact of its proposals will vary for MVPDs that have unique system architectures and financial circumstances. As the Downloadable Security Technical Advisory Committee (“DSTAC”) acknowledged in its Final Report, “there is a wide diversity in delivery networks, conditional access systems, bi-directional communication paths, and other technology choices across MVPDs (and even within MVPDs of a similar type).”<sup>3</sup>

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<sup>2</sup> *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, MB Docket No. 16-42; CS Docket No. 97-80 (rel. Feb. 18, 2016), Statement of Commissioner Jessica Rosenworcel.

<sup>3</sup> DSTAC Summary Report at 3 (Aug. 28, 2015), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-982A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-982A2.pdf).

While these factors and others in the NPRM place a tremendous burden on all potential commenters, smaller MVPDs would be particularly disadvantaged by the current 30-day filing deadline. ACA represents about 750 small and medium-sized MVPDs, including cable operators, rural telephone companies, and municipally-owned service providers, who cumulatively serve roughly seven million subscribers. ACA member companies operate a wide array of systems, from analog-only to hybrid analog-digital to all-digital to hybrid digital-IP to IPTV, and they have deployed a variety of headend and set-top box hardware and software from multiple manufacturers. Moreover, ACA members and their systems vary in size from a few dozen to hundreds of thousands subscribers, but most are very small. Eighty percent of ACA members serve fewer than 5,000 subscribers, and roughly fifty percent serve fewer than 1,000 subscribers. Further, video margins and levels of free cash flow varies significantly among these member companies. Lastly, most ACA members have few employees – half of ACA's members have ten or fewer employees, with typically just only one or two engineers or individual with technical expertise, and these employees perform many duties within their companies.

No commenter in this proceeding represents more diverse entities that would be uniquely impacted by the Commission's proposal than ACA. Furthermore, many of these entities rely exclusively on ACA to advocate on their behalf. All potential commenters will likely be hard-pressed to address the NPRM's myriad issues, which include a wide variety of complex technical questions, in the brief period of time allotted by the Commission. ACA, however, will find it particularly challenging to adequately identify and present, in just thirty days, the facts necessary to explain how the NPRM, if adopted, would impact its members' businesses. This is not just an expectation. ACA has started working on its comments, and is certain that not enough time is available to file the extensive comments that are required.

In order to advocate effectively, ACA needs time to educate its members about the Commission's proposals, to solicit feedback as to the impacts – both technical and financial –

that these proposals would have on members' business operations, and to analyze the data collected.<sup>4</sup> Most ACA members have few if any employees capable of quickly and easily understanding the Commission's proposal, and they will need time to educate themselves and provide feedback to ACA at the same time they are performing duties necessary to serve their customers. ACA and its smaller cable operator members are still trying to play "catch-up" as a result of their exclusion from the DSTAC and the extensive deliberations of its working groups, which were not open to the public, whose proposals serve as the bases of the NPRM. Few small operators are members of CableLabs, and most do not participate in industry standards bodies where their employees could have developed prior expertise on these issues or that could provide resources to them today in analyzing the impact of the NPRM's proposals on their particular systems. Moreover, industry vendors that could aid in understanding key aspects of the proposal likely will prioritize their assistance during this short comment window to their larger customers. ACA has already run into all of these problems as it has started its work. The sheer volume of education and analysis that ACA and its members must undertake in order to present an accurate picture of the current marketplace and the potential impact of the proposal is significant, and it warrants a comment period substantially longer than thirty days.

A thirty-day deadline for preparing initial comments on a set of proposals as complex as those contained in the NPRM is not only unrealistic, it is out of step with comment cycles historically associated with comparable proceedings related to Section 629. In its first proceeding on the implementation of Section 629, commenters were granted 85 days to file comments, and 116 days to file reply comments.<sup>5</sup> In the AllVid proceeding, the Commission set

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<sup>4</sup> Gathering the data on current operations and assessing the impacts of the NPRM's proposals on technical and financial factors alone will be a significant undertaking, but ACA must also grapple with the implications of the various certification and licensing issues raised in the NPRM.

<sup>5</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking, 12 FCC Rcd 5639 (1997) (Notice of Proposed Rulemaking was released on February 20, 1997, comments due May 16, 1997).

a 60/90 day comment period for the Notice of Inquiry (“NOI”), and the NOI was not published in the Federal Register for 23 days, giving parties a total of 83 days to file initial comments and 113 to file replies.<sup>6</sup> In the instant case, because the NPRM was published in the Federal Register 28 days after it was adopted by the Commission, parties have just 57 days to prepare comments on this complex issue and 87 days to submit replies. Thus, parties will have, in total, 27 fewer days for filing comments than the Commission has granted (on average) in other comparable proceedings under Section 629. This fact, standing alone, suggests that additional time, consistent with ACA’s request in this motion, is warranted.

Additional time to analyze and prepare comments for the Commission’s consideration in this proceeding is particularly important when considering such sweeping changes to the MVPD operating environment because, if adopted as written, these regulations could threaten the continued operations of many smaller MVPDs. This is not hyperbole. Even before the NPRM, the economics of small cable systems has been precarious. The smallest cable operators make very little, if any, profit from their video service, and an increasing number of small cable systems are shutting down.<sup>7</sup> And even among small cable operators that could continue to provide video service notwithstanding additional regulatory burdens, the allocation of technical and financial resources devoted to implementation of new rules would necessarily divert resources from other investments. For instance, many smaller operators have been attempting to meet customer demands for more choice in linear and over-the-top video and devices by using limited capital to deploy advanced set top boxes, including some that employ TiVo-

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<sup>6</sup> *Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, 25 FCC Rcd 4275 (2010).

<sup>7</sup> Programming fees have risen rapidly in recent years, at a greater rate than video revenues, and the delta between the two is expected to grow in the future, putting increasing pressure on small MVPDs. More than 1,000 cable systems have shut down over the past five years. *See generally Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 15-158, Comments of American Cable Association (filed Aug. 21, 2015).

software and provide access to the Netflix service.<sup>8</sup> Moreover, all smaller operators have been investing in their current broadband network and in new broadband deployment in order to ensure high quality performance over their networks of over-the-top video services during prime time.<sup>9</sup> It is therefore critical to small MVPDs that ACA and other affected parties are afforded a meaningful opportunity to provide a substantial record in support of their proposed exemption of MVPD systems serving fewer than one million video subscribers.<sup>10</sup>

The modest extension that ACA requests serves the public interest by allowing the Commission to develop a more comprehensive and robust record on these issues, which are of vital importance to consumers. By imposing unrealistic and unreasonable comment filing deadlines, the Commission would preclude meaningful participation by smaller operators, who in most cases, will rely on ACA to speak on their behalf. Moreover, the requested extension would not harm or prejudice the Commission or any interested parties. There is no statutory deadline to be met requiring a comment cycle as abbreviated as the one set forth in the NPRM. Rushing a decision in this proceeding on an incomplete record would be reckless, especially in light of the Commission's repeated prior failures in this area. For the foregoing reasons, ACA

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<sup>8</sup> In 2009, RCN became the first company to enter into a strategic relationship with TiVo. See Press Release, RCN Selects TiVo as its Primary DVR Platform (Aug. 4, 2009), *available at* <http://pr.tivo.com/manual-releases/2009/RCN-Selects-TiVo-as-its-Primary-DVR-Platform>. See also, Press Release, Grande Communications Selects TiVo's Family of Set-Top Boxes as Its Next-Generation Whole Home Solution (Apr. 24, 2011), *available at* <http://pr.tivo.com/press-releases/grande-communications-selects-tivo-s-family-of-set-nasdaq-tivo-0791176>; Press Release, TiVo and Armstrong Partner to Deliver Advanced, Whole-Home and Multi-Screen Viewing Experience to Cable Subscribers (Sep. 9, 2014), *available at* <http://pr.tivo.com/press-releases/tivo-and-armstrong-partner-to-deliver-advanced-whole-home-and-multi-screen-view-nasdaq-tivo-1143031>; Press Release, Frontier Communications Announces Strategic Relationship With TiVo (Feb. 25, 2015), *available at* <http://pr.tivo.com/press-releases/frontier-communications-announces-strategic-relationship-with-tivo-nasdaq-tivo-1177479>; Press Release, WOW! Selects TiVo to Power New Set-Top, Web, and Mobile Experience (Jul. 22, 2015), *available at* <http://pr.tivo.com/press-releases/wow-selects-tivo-to-power-new-set-top-web-and-mobile-experience-nasdaq-tivo-1207866>.

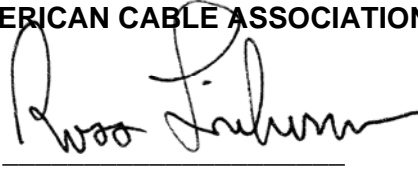
<sup>9</sup> According to the Netflix ISP Speed Index (as of February 2016), of the ten best ISPs, six of them are smaller ISPs. <https://ispspeedindex.netflix.com/country/us/?small=True>.

<sup>10</sup> See NPRM, ¶ 81. ACA appreciates that the NPRM presents a tentative conclusion that analog-only systems should be exempted from any rules adopted, but even this tentative conclusion must be supported by data and analysis in the record. The research necessary to present complete and accurate information will take more time than is available under the current deadline.

respectfully requests that the Commission grant the foregoing extensions of time for all parties to file comments and reply comments in this proceeding.

Respectfully submitted,

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