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The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Communication of the American Cable Association; *Amendment to the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71; *Implementation of Section 103 of the STELA Reauthorization Act*; *Totality of the Circumstances Test*, MB Docket No. 15-216

Dear Chairman Pai,

We have followed with interest news reports that a television broadcaster “blacked out” satellite TV viewers in Puerto Rico and the U.S. Virgin Islands for a period of time while those islands remained under a state of emergency in the aftermath of catastrophic destruction caused by Hurricane Maria.¹ According to these reports, retransmission consent negotiations conducted under the Commission’s auspices and subject to the Commission’s rules broke down at the worst possible time, harming viewers that have already suffered greatly. We were heartened to learn that, at least in part because of your intervention, the parties have agreed to restore some—but not all—of the broadcaster’s programming.² I write on behalf of the American Cable Association to urge the Commission to consider acting to prevent this from happening again.

If there is one thing that we should all be able to agree upon, it is that Americans need access to news and information—particularly breaking news and information—during emergencies. This is why the Commission has taken a variety of actions to provide relief in areas affected by the recent hurricanes, including issuing nearly daily updates on

¹ Dish: Lilly Stations off Satellite Service, Multichannel News (Sept. 30, 2017) (“DISH Article”) http://www.multichannel.com/news/retransmission-consent/dish-lilly-stations-satellite-service/415614?utm_content=buffer0a403&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

² Pai Contacts Lilly, Dish over Caribbean TV Impasse, Broadcasting and Cable, (Oct. 2, 2017) <http://www.broadcastingcable.com/news/washington/pai-contacts-lilly-dish-over-caribbean-tv-impasse/169046#.WdKesoAqsil.twitter>

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the status of communications networks in those areas.³ It is why our members have been working around the clock to restore service in those areas. And it is why broadcasters deserve much of the credit they have sought in recent weeks for their work in keeping their viewers in these areas informed.

Against this backdrop, the Commission should find it intolerable for a broadcaster seeking to leverage higher retransmission consent fees to block viewers in a state of emergency from accessing critical, and potentially life-saving, information. It is no answer in such a situation for the broadcaster to suggest that viewers should switch providers or install antennas in order to access this information.⁴ *Nobody* in circumstances such as those faced by viewers in Puerto Rico and the U.S. Virgin Islands can prioritize switching television providers or installing antennas over securing such necessities as water, food and shelter.

The Commission should find it equally intolerable for an MVPD to refuse to retransmit local broadcast signals to viewers during emergencies. No MVPD should be permitted to, for example, refuse an offer to extend an expiring retransmission consent agreement to leverage its negotiating position by “going dark.” Although, to be clear, press reports contain no indication that this is what has occurred in this case.

Fortunately, a regulatory structure already exists by which the Commission can prevent broadcasters and MVPDs from harming the public by causing the loss of access to broadcast signals during emergencies. The Commission’s “good faith” rules prohibit certain behaviors that represent *per se* bad faith on the part of broadcasters and MVPDs alike.⁵ The Commission should add to this list a broadcaster’s failure to provide an MVPD with authorization to retransmit its signals, or an MVPD’s refusal to retransmit such signals, to any county for which the Commission has activated the Disaster Information Reporting System during the period of such activation. We urge the Commission to propose and seek comment on such a rule change as soon as possible in order to avoid consumer harm in future emergencies.

Sincerely,



Matthew M. Polka
President & CEO
American Cable Association

³ For a list of these actions, see <https://www.fcc.gov/maria>. The utter devastation to Puerto Rico and its infrastructure caused by Hurricane Maria came fast on the heels of significant damage inflicted to the U.S. Virgin Islands and Puerto Rico by Hurricane Irma. See <https://www.fcc.gov/irma>.

⁴ DISH Article (“A recorded message at WSEE apologized for the inconvenience said Lilly was continuing efforts to resolve the impasse and hoped it would be resolved ‘soon,’ but advised viewers to call Dish to register their complaints (and helpfully provided a Dish contact number).”).

⁵ 47 C.F.R. § 76.65(b)(1).