

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	MB Docket No. RM11728
Petition for Rulemaking to Amend)	
the Commission’s Rules Governing)	
Practices of Video Programming Vendors)	

**REPLY COMMENTS OF
CEQUEL COMMUNICATIONS, LLC D/B/A SUDDENLINK COMMUNICATIONS**

Cequel Communications, LLC d/b/a Suddenlink Communications (“Suddenlink”) hereby submits these Reply Comments in the above-captioned proceeding. Suddenlink supports Mediacom’s efforts to secure Commission assistance in curbing abusive, anti-consumer practices pursued by some of the nation’s largest programming conglomerates. In particular, Suddenlink submits these Reply Comments to address on-going anti-consumer practices Viacom, Inc. is taking against Suddenlink’s Internet subscribers.

Suddenlink serves approximately 1.4 million residential and commercial customers with video, high speed data, and voice service. Its customers are located in small and mid-sized cities and rural areas spread across 16 states.

In retaliation for Suddenlink rejecting Viacom’s demands for a “bundled” network affiliation renewal agreement that included a rate increase approaching 50%,¹ Viacom is now

¹ In response to Viacom’s unreasonable pricing demand, Suddenlink asked Viacom for its *a la carte* rates to consider carrying only those channels that Suddenlink customers watch most.

blocking all Suddenlink Internet customers from viewing full length videos that are otherwise freely available on its websites – regardless of whether the customer subscribes to Suddenlink for video service. To be clear, a Suddenlink Internet customer who subscribes to video service from another provider (or does not subscribe to video service at all) can no longer view full length videos on Viacom’s websites – videos that can be viewed by anyone else with an Internet connection for free. To make matters worse, Viacom is representing to Suddenlink’s Internet customers that Suddenlink is the one blocking Viacom’s online video content, which is certainly not the case.² The Commission should not countenance this extraordinary anti-consumer behavior.

Suddenlink historically has been reluctant to invite government intervention into private business negotiations, but the simple truth is that the programming marketplace is now broken. A small group of powerful programmers are increasingly exploiting competition among MVPDs to the obvious detriment of consumers. Indeed, the “Joint Opposition” filed in this proceeding by the self-proclaimed “Content Companies” (*i.e.*, CBS Corporation, the Walt Disney Company, Time Warner Inc., Twenty First Century Fox , Inc, and Viacom, Inc.) reflects utter disdain for the consumer concerns raised by Mediacom and sheer contempt for the Commission’s regulatory authority. They together mock Mediacom for repeating arguments that were raised “as far back as 2003,”³ while ignoring the painful truth that the intervening decade has proven the accuracy of Mediacom’s warning. In fact, Mediacom’s “perceived grievance” has grown “worse” during

Viacom demanded a higher rate for each single channel of its most popular programming (*e.g.* Comedy Central, MTV and Nickelodeon) than for all 24 of its channels together.

² See Attachment A.

³ Joint Opposition at 2.

that decade,⁴ with programming costs imposed by content providers increasing at a remarkable rate that bears no relationship to the overall economy. A combination of excessive pricing and packaging demands by content providers is making an MVPD video subscription untenable to an increasing number of Americans with stretched household incomes.

I. VIACOM HAS UNREASONABLY EXPANDED A CABLE PROGRAMMING MATTER INTO AN INTERNET MATTER.

Suddenlink understands that failing to reach a network affiliation agreement means that the programming network(s) at issue will no longer be part of its video service. It is dismayed, however, by certain content providers' recent expansion of the battlefield to encompass Internet access. As the Commission is well aware, Fox engaged in a similar practice in a network affiliation dispute with Cablevision,⁵ and CBS did the same in its affiliation dispute with Time Warner Cable.⁶ It is now evidently Viacom's standard practice to deny access to its full length video content, which is otherwise freely available on the Internet, to customers of a video service distributor that rejects Viacom's affiliation demands. Viacom has already denied access to CableOne's and other small providers' Internet customers for many months,⁷ and, since

⁴ *Id.*

⁵ See Brian Stelter, *Internet Is a Weapon in Cable Fight*, N.Y. TIMES, Oct. 19, 2010, available at http://www.nytimes.com/2010/10/20/business/media/20hulu.html?_r=0 ("In disputes between television programmers and distributors, the new battleground is the Internet. In its continuing contract showdown with Cablevision, the News Corporation tried to extend its blackout of the Fox Broadcasting network to Fox.com and to Hulu, the popular Web site for free TV viewing.").

⁶ See Ryan Lawler, *CBS Blocks Time Warner Cable Subscribers From Watching Full Episodes On CBS.com*, TECHCRUNCH.COM (Aug. 2, 2013), <http://techcrunch.com/2013/08/02/cbs-blocks-time-warner-cable-subscribers-from-watching-full-episodes-on-cbs-com/> ("In the wake of Time Warner Cable dropping the CBS and Showtime signals in most major markets, the broadcaster has decided to block access to full-episode viewing on CBS.com.").

⁷ See Shalini Ramachandran, *Viacom, 60 Cable Firms Part Ways in Rural U.S.*, WALL ST. J., June 17, 2014, available at <http://online.wsj.com/articles/viacom-60-cable-firms-part-ways-in-rural-u-s-1403048557>.

October 1, it has denied access to Suddenlink's Internet customers. Not surprisingly, this burden falls disproportionately on smaller operators serving smaller communities and rural America, as these operators have less leverage in negotiating with major programmers.

Viacom's blocking of online video content is anathema to broadband deployment and the non-discriminatory flow of Internet content. Viacom is not, after all, simply retaliating against Suddenlink video customers, it is punishing Suddenlink Internet customers. Although the two customer categories overlap, Suddenlink provides Internet service to a substantial group of customers who do not also subscribe to Suddenlink's video service. In fact, Suddenlink has over 325,000 such customers. These non-video Internet customers presumably subscribe to a Suddenlink competitor for video service or forego subscription video service entirely. Viacom's blocking of its online video content is objectionable generally, but it is particularly outrageous with regard to these non-video Internet customers, who had access to the content prior to October 1 but are now being discriminated against by Viacom.

Imagine the outrage that would arise if Suddenlink used its capacity as an Internet service provider to discriminate against Viacom's online programming in hopes of securing better leverage in its cable network affiliation negotiations. Yet that is precisely what Viacom is doing with impunity in this case. As Chairman Wheeler testified before Congress, this sort of activity is something "we should all worry about."

Suddenlink submits that Viacom's cross-service discrimination is a direct threat to the open Internet. Moreover, as Public Knowledge notes in its Comments, it offends "the broader principles of consumer protection."⁸

⁸ Public Knowledge Comments at 9.

II. NAB ERRS IN DENYING THE EXISTENCE OF A CONSUMER PROBLEM.

Unwilling to acknowledge that rapidly escalating programming costs are harmful to hard pressed American consumers, NAB summarily asserts in its Comments, “Mediacom’s proposals [are] an unlawful solution in search of a problem.”⁹ NAB compounds its indifference to the plight of consumers by mischaracterizing Mediacom’s arguments regarding blocking of online video content. NAB insists, “No content provider is under any legal or regulatory obligation to offer online content. . . .”¹⁰ But the issue in this proceeding is *not* whether a content provider must offer online content. The reality here is that Viacom does offer online content, but it is discriminating against Suddenlink Internet customers by denying them the same ability to freely view full episodes of Viacom programming that customers of other Internet service providers enjoy.

III. THE COMMISSION HAS THE LEGAL AUTHORITY TO REIGN IN VIACOM’S ABUSIVE PRACTICE.

Notwithstanding the arguments of the Content Providers and NAB to the contrary, the Commission has the necessary authority to act on Mediacom’s Petition. Section 616 of the Communications Act is entitled “Regulation of Carriage Agreements,” and it expressly provides that “the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and programming vendors.”¹¹ In enacting Section 616, Congress was focused on potential abuses by cable operators, but Congress did not limit the Commission’s authority over carriage

⁹ NAB Comments at 3.

¹⁰ *Id.* at 4-5.

¹¹ 47 U.S.C. § 536(a).

agreements to specific operator practices, and the intervening changes in the marketplace make clear that it is now time for the Commission to reign in abusive programmer practices.¹² The D.C. Circuit's recent decisions in *National Cable & Telecommunications Ass'n v. FCC*¹³ and *Cablevision Systems Corp. v. FCC*¹⁴ both make clear that the Commission's authority to address the video programming marketplace under Section 628 is not limited to the specific regulatory components mandated under that statute. That same reasoning is equally applicable to Section 616.

In any event, the Commission should consider all of the legal tools available to it to ensure that edge providers do not disrupt the "virtuous cycle" of broadband investment and deployment. Viacom is brazenly engaging in anti-consumer practices today undeterred by either an innate sense of fair play or the threat of a regulatory response. In so doing, Viacom is making it more challenging for Suddenlink (and other cable operators) to simultaneously serve the public as both an MVPD and a broadband provider.¹⁵

¹² Section 325 provides alternative regulatory authority with regard to retransmission consent practices. 47 U.S.C. § 325(b)(3)(B).

¹³ 567 F.3d 659 (D.C. Cir. 2009).

¹⁴ 649 F.3d 695 (D.C. Cir. 2011).

¹⁵ In the event the Commission concludes that it lacks authority to grant the relief sought here, Suddenlink urges the Commission to promptly and unequivocally urge Congress to provide that authority.

CONCLUSION

For the reasons set forth above, Suddenlink urges the Commission to prohibit Viacom and other cable programmers from retaliating in cable programming disputes by blocking access to video programming otherwise available to broadband consumers.



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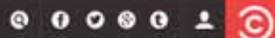
October 14, 2014

Attachment A

 **SUDDENLINK DROPPED UP TO 24 CHANNELS... AND THEY'RE STILL CHARGING YOU FOR THEM!** Call (877) 794-2724
VIACOM BET+ CNT nba iPhon VIM AND MORE



FULL EPISODES VIDEOS EXTENDED INTERVIEWS GUESTS NEWS TEAM PODCAST TICKETS



Suddenlink has dropped up to 24 of your favorite channels and blocked you from seeing this content.

We at Viacom understand your frustration and are making every effort to reach a distribution agreement.

Call Suddenlink now at 877-794-2724 and tell them to return your channels. Visit KeepViacom.com for more information.

October 9, 2014 - Jeremy Renner ⓘ

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