June 3, 2015

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Written Ex Parte Communication, MB Docket No. 15-53

Dear Ms. Dortch:

On Monday, June 1, Rick Kaplan of the National Association of Broadcasters sent the attached written ex parte communication to Maria Kirby of the Office of Chairman Wheeler, Chanelle Hardy of the Office of Commissioner Clyburn, Valery Galasso of the Office of Commissioner Rosenworcel, Matthew Berry of the Office of Commissioner Pai, Robin Colwell of the Office of Commissioner O'Rielly, Bill Lake of the Media Bureau, and Jonathan Sallet, General Counsel.

In the above-referenced proceeding, cable operators have claimed that copyright royalty fees constrain their ability to re-tier broadcast stations.[1] The attached explains why these claims are specious.

Respectfully submitted,

Erin L. Dozier
Senior Vice President and Deputy General Counsel
Legal and Regulatory Affairs

Enc.
cc: Maria Kirby, Chanelle Hardy, Valery Galasso, Matthew Berry, Robin Colwell, Bill Lake, Jonathan Sallet

[1] *See* ACA Reply Comments in MB Docket No. 15-53 (Apr. 20, 2015) at iv, 11; NCTA Reply Comments in MB Docket No. 15-53 (Apr. 20, 2015) at 11.

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NATIONAL ASSOCIATION OF BROADCASTERS

RESPONSE TO CABLE ARGUMENT REGARDING COPYRIGHT ROYALTY "DISINCENTIVES"

While the shifting of local retransmission-consent stations to a new subscriber tier could incrementally increase copyright royalty payments under the cable statutory license, cable operators have the ability to adjust their tiers and pricing so as to minimize any such effect. Moreover, the fact that the statutory royalty rates are set at below-market levels means any resulting "disincentive" would be relatively small.

- Statutory royalties for the smallest systems are not based on gross receipts, and shifting a station to a new tier would have no impact on royalties. *See* 17 U.S.C. § 111(d)(1)(E).
- Larger systems pay royalties calculated by multiplying certain percentage rates by their total gross receipts, which include the monthly subscription revenues for all tiers of service that include one or more broadcast signals. 37 C.F.R. § 201.17(b)(1). The minimum fee for large cable systems is 1.045% of their gross receipts, and the incremental rate for carriage of additional distant signals drops to 0.701% and then to 0.33%. 17 U.S.C. § 111(d)(1)(B).
- Cable operators have freedom to adjust the contents, pricing, and bundling of the additional tiers of video service they offer subscribers in whatever way maximizes their profits, which may include minimizing statutory license royalties.
- For example, in recognition of a practice that large cable operators had already developed to minimize their royalty payments, STELA provided that distant signal royalties may now be calculated on the basis of the gross receipts solely from subscribers in the particular communities where the distant signal is offered, rather than from all of the system's subscribers. 17 U.S.C. § 111(d)(1)(C)(iii)(I).
- Moving a local retransmission-consent station to a tier that already includes any broadcast station would not produce any increase in copyright royalties. Even for the first station moved to a new tier of service, however, the increased cost resulting from the expansion of the gross-receipts base would, first, be subject to considerable control by the cable operator because of its control over pricing and content.
- But even an incremental increase in cable royalties would not likely represent a material change in a cable operator's programming costs or produce a significant disincentive to pursue its objectives. The statutory royalties paid by the entire cable industry, under royalty rates set at below-marketplace levels, represent far less than one percent of the total revenues of cable operators from video services. (As a gross comparison, total cable operator video service revenues in 2013 were $51 Billion,[1] while total cable statutory

[1] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Sixteenth Report, at 64 Table 9 (FCC 15-41, rel. April 2, 2015).

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royalties were $230 Million,[2] or about 0.45% of the revenues.) Incremental increases caused by moving stations to new tiers is unlikely to change this overall picture.

- Given this relatively minimal nature of an incremental increase in a system's statutory royalty obligations, it would not be expected to produce an effective disincentive for a cable operator who sees significant potential benefits in threatening to move a local retransmission-consent station off of the basic tier.

[2] U.S. Copyright Office, Licensing Division, Report of Receipts, May 26, 2015.