

August 13, 2015

**VIA ELECTRONIC COMMENT FILING SYSTEM**

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

***Re: Notice of Ex Parte Communication; Revision of the Commission's Program Access Rules, MB Docket No. 12-68***

Dear Ms. Dortch:

On August 12, 2015, on behalf of MSG Holdings, L.P. ("MSG"), Adam Levine of MSG, together with Tara Corvo and Radhika Bhat of Mintz Levin, met with Nancy Murphy, Steven Broeckaert, Kathy Berthot, Susan Singer (by telephone), and Mary Beth Murphy of the Media Bureau to discuss the above-captioned matter.

Responding to Media Bureau questions regarding ACA's proposal to update the definition of a buying group so that a buying group need only maintain cash or credit reserves to cover the cost of one month's programming, rather than an amount to cover the cost of all programming actually provided at the time of default, MSG noted that multichannel video programming distributor ("MVPD") payment cycles often stretch beyond one month, leaving programmers at serious financial risk of not being paid for programming provided if the buying group assumes liability only for one month outstanding. In addition, programmers often do not learn of underpayments until months later (*e.g.*, when the programmer undertakes its own audit) because, among other reasons, buying groups have not historically policed their members when they collect payments due to the programmer.

With regard to the proposal to deem a buying group comparable to an MVPD based solely on the number of subscribers, MSG noted the significant difference between potential subscribers and guaranteed subscribers, and that many factors go into an evaluation of comparability other than the number of subscribers. Comparability between two MVPDs today is not based only on the number of subscribers, and there is no reason that a buying group standing in the place of an MVPD should be given special rights exceeding those of MVPDs.

Discussing ACA's proposal that all NCTC members be given automatic rights to participate in NCTC master agreements, MSG noted that while it did not believe it was common practice for a programmer to exclude an NCTC member from participation, there are legitimate

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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business reasons such a decision might be made, including when the master agreement is outdated and no longer reflects market terms, when the MVPD has not complied with the terms of a prior carriage agreement, or when an MVPD seeks to use the threat of opting into the NCTC agreement as leverage to attempt to gain better carriage terms from the programmer in an individual carriage negotiation.

Finally, MSG observed that there is no record of any market failure that would justify any changes to the program access rules. The proposals would substantially harm the handful of programmers subject to the rules, but there is no suggestion that negotiations with those programmers are the problem the proposals seek to address. Given that the program access rules already single out these programmers for extra regulatory burdens, and that these proposals would limit those programmers' ability to innovate and compete even further, exacerbating the already unequal playing field between affiliated and unaffiliated programmers, ACA's proposals should be rejected.

Pursuant to section 1.1206(b) of the Commission's rules, a copy of this letter is being filed electronically with the Office of the Secretary.

Respectfully Submitted,

/s/

Tara M. Corvo

cc:

Nancy Murphy  
Steven Broeckaert  
Kathy Berthot  
Mary Beth Murphy  
Susan Singer