Via ECFS

December 1, 2015

Ms. Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Implementation of Section 103 of the STELA Reauthorization Act of 2014, MB Docket No. 15-216*

Dear Ms. Dortch:

TheBlaze TV ("TheBlaze") wishes to provide its assessment of the right of broadcast stations to grant retransmission consent ("Retransmission Consent Rules") and the impact of these regulations on independent programmers. As the Commission reviews the *Good Faith Order* and the totality of the circumstances standard, we hope these views will be helpful in guiding your *Implementation of Section 103 of the STELA Reauthorization Act of 2014* to ensure support for unique and diverse media voices.

TheBlaze believes that free market forces, not government regulation, should be the preferred mechanism for licensing and distributing video programming, but recognizes that the efforts undertaken by various groups, including the American Television Alliance "ATVA", to urge the FCC to modify the *Good Faith Rules* touches on market-distorting industry practices that have had, and will continue to have (if left unmodified), a deleterious effect on emerging independent video programming providers, consumer choice and competition - principles and practices the FCC is charged with protecting for the public good.

A healthy communications landscape is one that supports access to a wide variety of viewpoints and diverse sources of, and access points to, information. Ensuring the viability of diverse independent voices that reflect consumer demand is essential to serve the public interest. Singling out broadcasters for special treatment by virtue of Retransmission Consent Rules that create incentives and opportunity to advantage their content and business interests over independent networks, does little to support the health of the communications landscape and undermines these values.

While we take no position on proposed remedies, we share the views of ATVA that the current scheme of Retransmission Consent Rules, as well as the processes for enforcing them, are convoluted, create an artificial market advantage for broadcasters and bestowing upon them special legal and financial benefits. They neither serve the purposes for which they were originally intended nor are appropriately relevant in the context of today's media landscape.

Fundamentally, the Retransmission Consent Rules are a creation of government that are ineffective at replicating and replacing a true market. Retransmission consent is built upon a foundation of patchwork legislation that first extirpated the property rights of copyright owners through a compulsory license and has operated to replicate the legal and financial benefits of those property rights through various regulations like network nonduplication and syndicated exclusivity.

Ideally, TheBlaze believes that the best course of action is for Congress to repeal the compulsory licenses provided to cable and satellite providers under 17 U.S.C. Sections 111,119 and 122 and to fully repeal retransmission consent and associated market exclusivity provisions. However, since Congress recently reauthorized the provisions of 17 U.S.C. 122 for another five years, this Rulemaking represents the only opportunity to address the most egregious market distortions of the current regime.

While TheBlaze believes business should operate relative free of government intervention and structured regulation, the issues raised regarding Retransmission Consent Rules are the product of market distorting regulations that are outdated and no longer serve the public interest. As such, they deserve the FCC's careful review and the companies that operate under these rules should be held accountable to the public.

TheBlaze urges the FCC to re-examine the current Retransmission Consent Rules and the current practices outlined by ATVA in its filings related to this Rulemaking, many of which are anti-competitive, reduce consumer choice and artificially raise prices for pay TV. None of these serve the public interest and all of them disproportionately adversely impact the viability and existence of independent programmers.

Among the most egregious, market distorting practices which we urge the FCC to carefully examine against the backdrop of the *Good Faith Order* include forced bundling, online blocking and charging for subscribers that do not receive service.

I. Forced Bundling is an Abuse of Market Power and the Public Interest Standard

Independent programmers like TheBlaze, must rely on actual market demand to justify carriage of their programming. The hallmark of a healthy, functioning market is the ability of cable and satellite providers to purchase the content their consumers want to watch. The decision to bundle broadcast content with other pay-TV content should be at the discretion of the MVPD. Unfortunately, over the last decade, large media conglomerates, particularly broadcasters or companies affiliated with broadcasters, have leveraged their retransmission consent rights to unfairly force MVPDs to carry a stable of televisions channels that have little or no consumer value or demand.

This forced bundling drains scarce programming resources and monopolizes channel capacity to the detriment of emerging independent programmers like TheBlaze. Moreover, unlike emerging independent networks for which MVPDs are resistant to pay license fees, MVPDs are required to pay license fees for these unwanted broadcaster-affiliated networks.

The problem of wholesale bundling is only becoming more acute and the harm to independent programmers more severe. Over the past 10 years, the average number of bundled channels for cable's Expanded Basic Service has increased by nearly 250% and the cost of these channels has increased by 42%.[1]

Forced bundling undermines and is antithetical to the FCC's fundamental pubic interest objectives of promoting diversity, competition and innovation. This practice has had the unintended consequence of impeding, and at time foreclosing, the opportunity for independent programmers – the entrepreneurial risk-takers that provide greater choice by creating diverse, innovative content to underserved audiences – to access consumers in a non-discriminatory manner, as compared to those broadcasters that force MVPDs to carry (and pay for) networks with little if any consumer demand (or audience) as a condition to carrying broadcast stations that have statutory carriage rights.

Forced bundling drives up the cost of linear television to MVPDs and ultimately to consumers and challenges the price elasticity of pay-TV. As consumers resist the upward price pressure created by wholesale bundling, MVPDs are forced to eliminate other programming options to cut costs. Independent programmers, without market leverage, bear the disproportional brunt of these cost cutting measures by being denied carriage, forced to accept carriage on less than market rates and terms, or dropped altogether from channel line ups.

What is most concerning is that broadcasters have utilized public spectrum to build their "must have" programming, yet the public interest obligations associated with this free spectrum appear to be less important to licensees. Broadcasters continue to consolidate and shared services agreements "SSAs" and joint sales agreements "JSAs" which have become more prevalent allow broadcasters to close newsrooms and eliminate local staff. In short, broadcasters seem to interested in fulfilling their localism obligations only to the minimum extent necessary to continue to take advantage of the Retransmission Consent Rules. In the opinion of TheBlaze, the FCC has reached an inflection point in which broadcasting is at risk of becoming less about serving the public interest and more about obtaining a spectrum license simply to make use of more favorable carriage treatment under retransmission consent.

When independent programmers face structural obstacles to carriage that bundled networks do not, consumers lose. Consumers are offered fewer diverse channels at higher prices – a condition that could not exist in a truly free market.

II. Online Blocking

This Commission has been particularly focused on the evolving online video marketplace. In recent mergers and acquisitions and rulemakings, the FCC has been acutely focused on protecting consumers (particularly "cord cutters" and "cord nevers") access to programming on the Internet. As the first mainstream television channel to have launched on the Internet first, building its audience and proving the value of its content online before seeking MVPD carriage, TheBlaze is always eager to work closely with the Commission on ensuring the availability of content on both traditional and online platforms.

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[1] *In The Matter of Petition for Rulemaking to Amend The Commission's Rules Governing Practices of Video Programming Vendors*, RM 11728 Comments of Charter Communications, Inc. at 2.

When broadcasters utilize retransmission consent impasses to block access to online programming it otherwise provides free over-the-air, the viability of streaming video content is threatened. Section 706 of the Telecommunications Act has been read to say many things, but what is unambiguous is that the FCC has a statutory requirement to encourage broadband deployment and adoption. When consumers are blocked from viewing content that is provided free to all Internet subscribers simply because their ISP is involved in an unrelated business dispute, it acts as disincentive to subscribing to broadband for streaming video. Such action is intended to do nothing more than extract additional payments from ISPs and is functionally equivalent to behavior the FCC has already ruled not to be in the public interest. This transfer of enhanced economics to broadcasters is not in the public interest inasmuch as it further limits the ability of MVPDs to launch and pay license fees for independent networks, thereby reducing consumer choice, limiting completion and raising consumer prices.

III. Charging for Subscribers That Do Not Receive Service

Recently, Broadcasters have begun to demand payment for MVPDs customers who do not subscribe to video services ("cordcutters"). Broadcasters argue they should be paid simply because cordcutters presumably view broadcast content free over-the-air in the MVPD's operating area.

Besides abdicating the fundamentals of broadcasters public interest obligation use free spectrum to provide a public service to consumers, charging telephone and internet subscribers for video content has an adverse impact on independent programmers like TheBlaze. Just as forced bundling drains scarce programming dollars and bandwidth, requiring retransmission consent payments for subscribers of ancillary business lines also encumbers resources that would otherwise be spent on unique and diverse voices.

Further, if the cost of these "phantom subscribers" is borne by the the ISP or telephony business of an MVPD, resources for deployment of these advanced services declines and broadband availability and adoption suffers.

Broadcasters have a dominant position in the video marketplace, in large part as a result of the largesse of government regulation. They can and do operate in a manner that ignores the desires and requests of consumers. Left unchecked, this market power will result in even less consumer choice, less competition and higher MVPD bills, all of which disproportionally adversely impact the viability of independent networks and threaten their existence.

Respectfully submitted,

/s/

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