TACOMA PUBLIC UTILITIES
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Tacoma, Washington 98409-3192

December 1, 2015

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

RE: MB Docket No. 15-216

To whom it may concern:

Thank you for the opportunity to comment in the FCC's rulemaking (MB Docket No. 15-216). In addition to these comments, Click! is a member of the American Cable Association (ACA) and associate ourselves with the views of ACA.

In our comments, we intend to provide background on the Click! network – a division of Tacoma Public Utilities, an overview of recent experiences regarding retransmission consent negotiations, our comments on how the current regime could be made more equitable in the context of the "Totality of the Circumstances Test," and some publicly reported information about the dramatic increase in our cost for content – including the negative influence of the current retransmission consent negotiation regime on those costs.

About Tacoma's Click! Network

Click! network is a division of Tacoma Power and owned by Tacoma Public Utilities and our rate-paying customers. Tacoma Public Utilities was founded in 1893 and continues to focus on providing the people and businesses we serve with reliable, low-cost electricity, drinking water and telecommunication services. TPU is the third largest public power utility in Washington State, managing $2.6 billion in capital assets and operations that generate $500 million in annual revenues.

The Click! network was formed in 1997 and provides wholesale broadband services and retail cable television service in the City of Tacoma, WA and in several surrounding communities. The broadband and television infrastructure is currently valued at more than $200 million. The Click! cable television network serves approximately 19,000 retail customers.

The costs of programming represent Click!'s largest costs. From 2013/2014 to 2015/2016, total programming costs are projected to increase by 24% from approximately $21 million to approximately $26 million. The increase from 2014 to 2015 in the cost of broadcaster programming was 68% (more than $4 a customer per month). Overall, programming costs account for 43% of Click!'s total expenses, and 51.5% of its cost of providing cable TV.

TACOMA POWER
TACOMA WATER
TACOMA RAIL

Given the ongoing dramatic increases in programming costs and broader challenges in the cable industry, Click!'s operations have not been self-sustaining. Local policymakers are considering reforms to Click!. Those potential initiatives combined with more equitable retransmission consent policies will make our operations more financially sustainable.

<u>Current retransmission consent regime has hurt Click!'s customers</u>

Tacoma Public Utilities' Click! Network was forced to drop ABC affiliate, KOMO TV, as well as KUNS, This TV, and MundoFox, from its channel lineup at midnight on December 31, 2012, when our retransmission consent contract with Fisher Communications expired and the two sides were unable to reach a new contract. When the renewal negotiations did not result in a deal, Fisher required Click! to drop the channels when the existing contract expired.

Fisher's initial rate proposal for 2013 represented a more than 200% increase compared to 2012 rates. While Fisher subsequently lowered its offer, Click! Network and Fisher were unable to close the gap and agree on carriage rates. Fisher blamed the increases on the costs of acquiring programming from ABC. Click! believes that the rates it was initially offered by Fisher were much higher than rates charged to its larger competitors in the same market.

The impacts to our customers and Click!'s business operations were significant. The timing of the blackout of the ABC affiliate coincided with the 2013 Tournament of Roses Parade and football game on ABC. Customers who had regular viewing habits of ABC shows had to scramble for other options to view their favorite content. Internally, Click! management and employees were forced to reassign staff to call centers to deal with upset customers and disconnect requests.

From a broader perspective, to effectively compete in the market means having a channel lineup that is comparable to its rivals. Without a local ABC affiliate, Click! was put at a competitive disadvantage and ultimately lost 500 customers during the Fisher-induced blackout. When a small cable operator like Click! Network is required to pay higher per-customer fees than its competitors, customers pay with higher costs and suffer from the effects of reduced competition.

Unfortunately, this situation is not unique to Click! Network. According to ACA, which represents small cable operators like Click!, broadcasters charge small operators retransmission consent fees as much as twenty times more than what the largest distributors pay. There is no justification for price discrimination based on the size of the system.

We can verify these figures. As a municipally-owned utility, Tacoma Public Utilities and Click! are subject to the provisions of the Washington State Public Records Act. As the result of court action brought by *The News Tribune,* the newspaper of record in our area, Click! was required to disclose the records of its retransmission consent agreements. *The News Tribune* wrote the article, "Latest Click cable contracts show more big increases in broadcaster fees," in March 2015. We have included a copy of that article at the end of these comments.

That article made public our retransmission consent fees -- the numbers are striking. According to the article, "Collectively the five networks will charge Click about $2 million to rebroadcast their signals this year. Had the fees adjusted with inflation, Click would have paid about $415,000." Some further breakout below:

- Fees paid to Fisher Communications who was bought by Sinclair in 2013 for KOMO (ABC affiliate), MundoFox, KUNS and other stations have increased 842 percent since 2009.
- Fees paid to Belo who was bought by Gannett in 2013 for KING (NBC affiliate), KONG, and NWCN have increased by 333% since 2009.
- Fees paid to CBS broadcasting have increased by 69% since 2009.
- Fees paid to Tribune Broadcasting for KCPQ (Fox Affiliate) have increased 485% since 2009.
- Fees paid to the Cox Media Group for KIRO (CBS affiliate) have increased 736% since 2009.

In short, Click! believes a market construct that allows the price of broadcast content to rise as much as 800% in less than a decade is broken and requires close regulatory oversight to protect the access of consumers to vital news and information at affordable rates. Click! will provide specific input on the FCC's rulemaking later in these comments.

Click!'s comments on "Totality of the Circumstances Test"

As previously stated, Click!, a division of Tacoma Public Utilities, is a small municipally-owned telecommunications network providing wholesale broadband services, retail broadband to large commercial customers, and retail cable television service in the City of Tacoma, WA and in several surrounding communities. Click! serves approximately 19,000 retail customers. Click!'s customers have had to deal with the consequences of a retransmission consent regime that has led to increasing costs and service interruptions.

We are required to dedicate spectrum, carry stations that elect "must-carry" status, and negotiate in good faith with stations that elect retransmission consent. Broadcasters know that an ultra-competitive market driven by consumer expectations weakens the negotiating position of small cable operators like Click!. Customers want their local news, weather, sports, and popular programming and want this content from their local station(s) of choice (i.e. NBC, ABC, CBS, FOX, Univision, etc.).

As we know from our 2013 impasse with Fisher Communications, not carrying one or more of these stations for any duration results in a significant loss of customers -- the 2013 Fisher-induced blackout resulted in a loss of more than 500 basic cable customers. Click! is in the unique position of having our retransmission consent fees in the public domain due to disclosure under the Washington State Public Records Act and subsequent reporting by our regional newspaper. The competitive forces in this market badly need rebalancing. Click! will lay out our challenges here:

<u>Broadcasters are not required to substantiate price drivers in negotiations – dramatic increase in fees raises the specter of bad faith.</u>

- Despite the fact that customers of Click! and other cable operators have been forced to pay dramatically higher costs for their retransmitted content than even a few years ago, broadcasters have few requirements to substantiate their justifications for higher fees. Often, broadcasters claim to be, "passing on" higher costs they are paying in affiliation fees that our customers ultimately pay. Unfortunately, those claims cannot be substantiated and increases suspicion from cable operators that increasing costs are the result of bad faith.

<u>Cross-default should be disallowed in retransmission consent agreements</u>

- The ability of broadcasters to bundle multiple stations into retransmission consent negotiations exposes consumers to increased costs, reduces transparency, and creates inequitable leverage for broadcasters over cable operators. Click! knows this all too well. In our 2013 impasse with Fisher, content from KOMO (our local ABC affiliate) KUNS, This TV, and MundoFox was interrupted when we would not agree to dramatically higher fees. Generally, this type of arrangement allows broadcasters to hide less-popular broadcast stations in the costs for more-popular content. Further, losing content without a direct relationship to the broadcast station hurts the ability of customers to understand the prices they are paying to access the content they want.

<u>During retransmission consent impasses, cable operators should have the flexibility to offer broadcast content from nearby markets</u>

- One of the unfortunate and potentially consequential impacts on consumers from retransmission consent negotiation impasses is the interruption of local news and information delivered by television. This impacts a consumer's ability to access current event updates, local and regional political updates, and information about emergencies and the ability to safely protect themselves and their families. In the case of a retransmission consent negotiation impasse, we believe that local cable operators should be able to transmit broadcast signals from a proximate market.

Ultimately, the Click! network believes that consumers and the industry at large would be best served by a market construct that provides retail services "a la carte." Until federal policy is amended to that end, we hope that the FCC will take significant action to level the currently inequitable retransmission consent regime.

Thank you for the opportunity to comment. Should you have any questions, please call me at 253-441-4159.

Thanks,

Clark Mather
Senior Manager of External Affairs

Article from *The News Tribune* – March 22, 2015

Latest Click cable contracts show more big increases in broadcaster fees

Seattle broadcasters are charging striking rate increases for new contracts with Tacoma-owned Click Cable TV. Viewers like you pay the price.

By Kate Martin - Staff writer

Seattle broadcasters are charging striking rate increases for new contracts with Tacoma-owned Click Cable TV. Viewers pay the price.

New contracts that took effect Jan. 1 show the broadcasters' fees are rising far faster than inflation.

No fee has increased over the years more than that of Seattle broadcaster KOMO. In 2009, the broadcaster received only 31 cents per month per home from Click. That amount has soared this year to $2.43 — a 684 percent increase.

Had the broadcaster's fee risen equal to inflation, KOMO would earn only 34 cents per subscriber — or approximately $78,000 for all of 2015.

Instead, the new fee structure will mean Click pays about $561,000 this year. That cost is likely to be passed down to the utility's 19,250 subscribers.

Chris Gleason, spokeswoman for Tacoma Public Utilities, which operates Click, said Friday the utility board will consider a 17.5 percent rate increase for Click subscribers for 2015 and an undetermined increase for 2016 during a Wednesday meeting.

That contrasts with an earlier plan to have two 10-percent rate increases, one this year and another in 2016.

The TPU board's first public vote on the new proposal could happen April 8, after which the Tacoma City Council would have the final say.

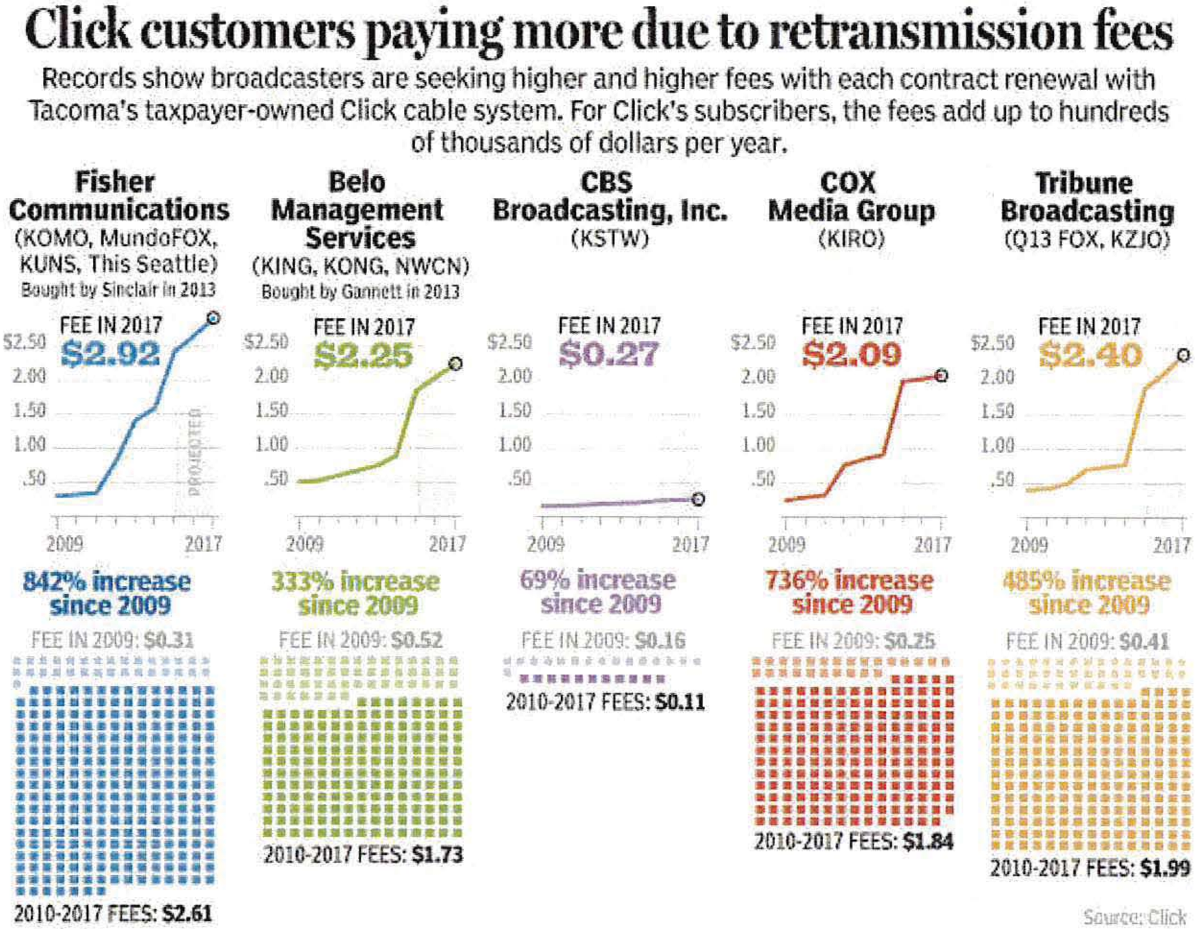
Comcast and Click charge $52.99 per month for similar 88-channel packages. If the Tacoma City Council approves a 17.5 percent rate hike, it would add nearly $10 onto Click's offering.

Outside of Click's service area, where there is no competition from another cable provider, Comcast charges $69.49 for the same channels.

The "17.5 percent increase is a massive increase for us," Gleason said. She cited increasing fees to broadcasters as "a huge driver" for the rate increase.
The fees Click pays, and by extension its subscribers, will continue to rise. The three-year contract KOMO's owners negotiated calls for Click to pay $2.92 per month per subscriber in 2017.

KOMO isn't alone. Click also signed new, three-year contracts with KING, KIRO, KSTW andQ13 FOX — all stations based in Seattle and whose signals are available for free over the air.

Collectively the five networks will charge Click about $2 million to rebroadcast their signals this year. Had the fees adjusted with inflation, Click would have paid about $415,000.



The broadcaster contracts, called retransmission consent agreements, doubled fees overnight for three of the five Seattle broadcasters as Tacomans rang in 2015. Four of the five broadcasters will charge more than $2 per subscriber per month by 2017.

The agreements, long held secret, were released by Click after a two-year court battle that led to the state Court of Appeals ruling for The News Tribune.

The broadcaster fees represent a sharp turnaround from a few decades ago, when broadcasters feared a nascent cable industry that led to the rise of pay-TV networks like HBO and Showtime. In the 1980s and 1990s, broadcasters worried their programming — and the advertising they are paid to carry — would be shut out of living rooms across America.

In 1992, Congress adopted a law allowing local broadcasters to choose either to require a cable system to carry its signal or to charge a fee to carry its signal.

For a while, many broadcasters continued to send their signals to cable networks at no charge to get their programming and advertising to more viewers. It wasn't until 2006 that Seattle network affiliates started charging Click to carry their content.

Industry analyst SNL Kagan predicted in 2013 that broadcasters nationwide would rake in $7.64 billion by 2019 from retransmission fees. But the fees have increased even faster than Kagan predicted, and the company revised its 2019 estimate upward to $8.78 billion, according to Multichannel News.

Still, cable systems pay much more for other programming. ESPN receives more than $6 per viewer per month, according to the Wall Street Journal.

Retransmission fees are a means to help offset broadcasters' declining advertising revenues. They also allow broadcasters to afford to pay the increasing cost of access to NFL and other sports, local news and other entertainment programming, National Association of Broadcasters spokesman Dennis Wharton told The News Tribune in January.

"They need a healthy revenue stream that sustains that," Wharton said.

The amounts outlined in the new Click contracts are lower than what broadcasters initially proposed, Gleason said, but there's nothing else the utility can do "other than going dark, which doesn't seem to help us."

Gleason is referring to a month in 2013 when KOMO withheld the signal from Click customers over a contract dispute. Even though Click customers were unable to view the programming that month, Click was forced to pay KOMO's parent company $31,843anyway.

"We don't really have a lot of bargaining power with these broadcasters," Gleason said. "... We do negotiate with them but there's not a lot of leverage for us."

Escalating fees could accelerate the trend of "cord cutters" — people who don't have a cable subscription and who watch shows online.

Comcast and Click, like most cable companies nationwide, have bled subscribers in recent years. But Click is losing customers faster than the cable industry as a whole, according to Click subscriber counts and a nationwide analysis by Leichtman Research Group, a broadband industry analyst.

The top cable companies lost 1.7 million subscribers in 2013 — or 3.4 percent of their customers. By comparison, Click lost 7.6 percent of its customers in 2013. By the end of that year, Click had 20,650 subscribers and that number continues to drop.

At some point viewers could succumb to fee fatigue and revert to the old standard of hanging an antenna to pull free broadcast signals from the air, said Philip Napoli, a Rutgers University journalism and media studies professor.

"In some ways it's ironic that broadcasters and cable folks have been at each other's throats for so long," Napoli said. "If you are a broadcaster, you are not rooting for people to cut the cord at all."

TPU Director Bill Gaines has hinted that change could be coming for Click, which is becoming a budget drag in part because of growing programming costs.

Among the options are handing off the cable TV operation to a private provider while maintaining ownership of Click's fiber-optic network that also helps maintain the power grid and provide broadband Internet service.

Mayor Marilyn Strickland has said the City Council will discuss the future of Click soon. Last week, Strickland said the city plans to schedule two public forums for residents to "weigh in on what should happen to Click."

Those meetings could happen in the next few months.