



December 17, 2015

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

Re: Notice of Ex Parte Communication, MB Docket No. 15-216

Dear Ms. Dortch:

On Tuesday, December 15, 2015, Rick Kaplan, Erin Dozier and the undersigned of the National Association of Broadcasters (“NAB”) met with Bill Lake, Michelle Carey, Nancy Murphy, Steve Broeckaert, Diana Sokolow, Raelynn Remy and Kathy Berthot of the Media Bureau to discuss the ongoing proceeding examining the FCC’s good faith rules governing negotiations between broadcasters and pay TV distributors.

In the meeting, we discussed NAB’s concern that the proceeding’s notice of proposed rulemaking presents a distinctly asymmetric view of the video marketplace, suggesting that only pay TV providers, not broadcasters, have seen increased competition since passage of the 1992 Cable Act.<sup>1</sup> As we noted in our comments,<sup>2</sup> this viewpoint, heavily endorsed by major pay TV operators, ignores the massive upheaval in the video programming marketplace during the last decade, an upheaval that all available evidence suggests can only increase in the years to come.<sup>3</sup> These marketplace changes have put extraordinary pressure on broadcasters to reach deals with pay TV distributors to ensure they are seen by the most viewers. In this “Golden Age” of television – all forms of television – broadcasters

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<sup>1</sup> See Notice of Proposed Rulemaking, *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, in MB Docket No. 15-216 (Sept. 2, 2015) (“Notice”).

<sup>2</sup> See Comments of the National Association of Broadcasters in MB Docket No. 15-216 (filed Dec. 1, 2015).

<sup>3</sup> See, e.g., Michael Malone, “FX ‘Peak TV’ Poll: Count ‘em, 409 Scripted Series,” *Broadcasting & Cable* (Dec. 16, 2015) (according to a quote attributed to Julie Piepenkotter, executive VP of research for FX Networks, the increase in the number of scripted series “is staggering and almost unimaginable from where it was a decade ago.”).

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and their partners must invest heavily to produce and purchase the best programming to attract increasingly fragmented audiences.

Against this backdrop, it is odd that the Commission would consider proposals from the pay TV industry that are little more than transparent attempts to shift negotiations in their favor and lower their cost of doing business. Today's incredibly dynamic video marketplace demands a light touch from regulators, not a new set of rules that will put the Commission deeper into the middle of everyday business negotiations between sophisticated and experienced players.

NAB and Media Bureau staff also discussed a few of the specific proposals being pushed by pay TV advocates, including the proposal that would force broadcasters into carriage extensions before or during "marquee events."<sup>4</sup> As evidenced by the American Television Alliance's wildly complicated attempt to define a broadcaster's obligations near a "marquee event,"<sup>5</sup> we noted that, under such a rule, broadcasters would be required to extend retransmission consent agreements almost indefinitely. In addition to being a clear violation of Section 325 of the Communications Act, such a rule also ignores the intense pressure on broadcasters to ensure that such events are seen as widely as possible. These tentpole events are often critical to a broadcaster's business. Without carriage of these events on pay TV, broadcasters could lose money through lost or lower cost advertising, and diminished promotional value.

We also discussed the pay TV industry's concern that broadcaster's might negotiate for payment that counts certain non-video subscribers. While NAB staff is unaware of a broadcaster asking for payment in this manner, we noted there nothing about such a practice that suggests bad faith. Indeed, according to a recent article in the Wall Street Journal, certain cable programmers are apparently asking for payment based on all subscribers, not just those that can access their channels.<sup>6</sup> Regardless of whether broadcasters are or are not asking for payment that includes non-video subscribers, we argued that negotiations over payment for carriage, including the form of payment and how that payment might be calculated, are specific to each negotiation and it would be unwise for the Commission to inject itself into such nitty-gritty details. Further, the Commission should not view such common negotiating practices in isolation, especially as these terms tend to include delicate and ever-developing discussions about digital rights and online distribution.

We want to thank the staff for taking the time to meet with us and for hearing our concerns.

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<sup>4</sup> Notice at ¶16.

<sup>5</sup> See Comments of the American Television Alliance in MB Docket No. 15-216, at 47 (filed Dec. 1, 2015).

<sup>6</sup> See Shalini Ramachandran, "AMC Takes Aim at Skinny Bundles in Cable Carriage Fight," The Wall Street Journal (Dec. 15, 2016).

Sincerely,

A handwritten signature in black ink that reads "Scott Goodwin". The signature is written in a cursive, flowing style with a prominent dot on the end of the last name.

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Scott Goodwin  
Associate General Counsel  
Legal and Regulatory Affairs