



Joshua N. Pila
General Counsel
Local Media Group
T 404-327-3286

Joshua.pila@meredith.com

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VIA ECFS

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

Re: Reply Comments - MB Docket No. 15-216
Implementation of Section 103 of the STELA Reauthorization Act of 2014
Totality of the Circumstances Test

Dear Madam Secretary,

Meredith Corporation, which owns 16 television stations, hereby opposes efforts by multichannel video programming distributors (“MVPDs”) seeking to use this proceeding as a means to have the Commission regulate retransmission consent rates, force carriage on non-consenting television stations, and destroy the localism that allows broadcasters to compete against MVPDs. Meredith in its initial comments in this docket focused on the Commission’s lack of authority to regulate rates and the importance of localism and competition.

These reply comments, however, focus on proposals by MVPDs that would force non-consenting television stations to grant retransmission consent by government order or for certain programming, in contravention of the underlying statute and/or the U.S. Constitution. In particular, Meredith notes that suggestions by MVPDs that it be bad faith to deny an extension request or to time an expiration near a so-called “marquee event” are inconsistent with applicable law.

First and foremost, black letter law states that a television station cannot be carried without its consent.¹ Making it bad faith to grant consent for an extension would be the government forcing a television station to grant consent. No matter how MVPDs try to spin it, a forced extension is forced consent.

Furthermore, as a matter of policy, Duke Ellington might as well have been talking about MVPDs when he said ““Without a deadline, baby, I wouldn't do nothing.” Put simply, deadlines give parties the incentive to complete deals (and with less need for government intervention). Without a deadline, parties can argue constantly about overreaching² and/or unimportant items, just because they can. What incentive does an MVPD have to conclude a negotiation if they’re enjoying previous fees? There’s nothing “true” about MVPD plans to “true up” fees – they’re just a ruse for continued forced carriage at current terms indefinitely.

¹ 47 U.S.C. 325(b).

² For example, Meredith has faced demands for extremely broad “most favored nation” clauses or demands for intellectual property rights that Meredith does not possess late in negotiations.

In this vein, Meredith has often tried many unsuccessful attempts to get a response from an MVPD to a Meredith proposal, and then near a deadline, the MVPD provides pages upon pages of redline changes to the proposal and asks for an extension to debate minutia. Impasse is difficult for broadcasters, not just MVPDs. Broadcasters stand to lose advertising, ratings, and community goodwill. Unlike MVPDs, who force their customers to stay with onerous early termination fees, broadcasters can easily lose valued viewers with the click of a button during an impasse. Given that reality, Meredith views such tactics as simply a negotiating ploy, and not one that the Commission should condone by removing the pressure of a deadline.

Relatedly, several MVPDs complain about broadcasters setting deadlines prior to what they call “marquee events”. The Commission should be weary of making content-based decisions on what programming is “marquee” under the First Amendment to the U.S. Constitution.³ Broadcasters provide 168 hours a week of quality entertainment, news, sports, and informational programming. For the Commission to make determinations on what among that programming is “marquee” is an impermissible weight on broadcasters’ speech (and especially because such categorization could have the effect of leading broadcasters to self-censor their speech).

As a practical matter, many of Meredith’s (and based on news reports, Meredith believes many other) retransmission consent agreements expire at each year end (*i.e.*, December 31) and are not based upon any particular programming. Meredith believes that the value of its programming extends year round, 365 days a year.

In conclusion, it’s more the concept of a deadline at all that concerns these MVPDs. They apparently would simply prefer that broadcasters be forced to negotiate forever and not receive the fruits of that negotiation until far into the future (if at all). Generally, the Commission should reject the proposals put forth by MVPDs, including for the reasons provided in Meredith’s initial and reply comments in this proceeding. Meredith also supports the comments of the National Association of Broadcasters in this proceeding.

Very truly yours,



Joshua N. Pila

³ U.S. Const. amend. I