

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014	)	MB Docket No. 15-216
	)	
Totality of the Circumstances Test	)	

**REPLY COMMENTS OF FORUM COMMUNICATIONS COMPANY**

Forum Communications Company (“Forum”) submits these reply comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”)<sup>1</sup> in the above-referenced docket. In this proceeding, the Commission is reviewing its “totality of the circumstances” test for evaluating whether broadcast stations and multichannel video programming distributors (“MVPDs”) are negotiating for retransmission consent in good faith. The *NPRM* seeks comment on dozens of questions, asking whether any number of wide-ranging negotiating practices—overwhelmingly focusing on *broadcasters’* practices and not MVPD practices—should be considered evidence of bad faith under the totality of the circumstances test.

The questions raised in the *NPRM* suggest that changes to the totality of the circumstances test will solve a retransmission consent negotiating “problem” that does not exist. As the evidence in the comments filed shows, thousands of private, market-driven retransmission

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<sup>1</sup> *In the Matter of Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, Notice of Proposed Rulemaking, FCC 15-109, ¶ 1 (Sept. 2, 2015) (“*Notice*”).

consent negotiations that take place each year between broadcasters and MVPDs arrive at mutually-agreeable resolution without issue. In short, the totality of the circumstances test is not broken and does not need fixing, updating, or amending. The Commission should conclude the limited “review” Congress directed by finding that the totality of the circumstances test is working as Congress intended, the retransmission consent market is healthy and thriving, and consumers are benefitting.

Forum’s own experience makes the point. Forum is a family-owned company headquartered in Fargo, North Dakota with business units in the broadcast, newspaper, and commercial printing industries. Forum’s broadcast division operates ABC and CW affiliates and XTRA (a local news, weather, and sports channel) that service all of North Dakota and portions of Montana, South Dakota, and Minnesota. Forum takes great pride in its commitment to localism and the fact that it is considered the heritage station area that viewers depend on, both in good times and in times of crisis.

With four stations in North Dakota carrying local and network programming, Forum has engaged in many retransmission consent negotiations over many years. Like many other commenters,<sup>2</sup> Forum’s experience is that those negotiations are almost uniformly fruitful. Forum has successfully negotiated over 100 retransmission consent agreements with MVPDs both large and small, ranging from the largest cable and satellite providers to small, local cable operators with just a few hundred subscribers. Every negotiation is unique, but Forum always proceeds with the best interest of its viewers in mind—and mindful of the Commission’s two-part, good faith retransmission consent negotiating regime, which requires the parties to negotiate in a spirit

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<sup>2</sup> See, e.g., Comments of Graham Media Group at 2; Comments of Morgan Murphy Media at 8-9; Comments of The E.W. Scripps Company at 2.

of “honesty, purpose and clarity of process”<sup>3</sup> but leaves the outcome of negotiations to the private marketplace. The lack of regulatory intrusion into the substance of private retransmission consent negotiations is a principal reason that Forum’s negotiations are successful. The parties bargain—sometimes intensely—over key terms and conditions to reach agreement, and basic economic terms, including retransmission consent rates, are determined by the market, not by government directive.

Retransmission consent negotiations are not easy for either party, but they continue to get done successfully. To be sure, the terms, rates, and distribution methods have changed over time; but then again, what has not changed with time? Certainly, the market for the creation and distribution of video programming has changed. It is more vibrant and competitive today than ever before, with hundreds of channels of programming available from over-the-air broadcasters, cable networks, and over-the-top services.<sup>4</sup> It should come as no surprise that the cost of obtaining quality network, syndicated, and sports programming that viewers want to watch is steadily increasing. Local broadcast stations compete with cable networks and cable companies for sought-after programming. The livelihood of Forum’s business depends on its ability to make the investments necessary to provide the high-quality local and network programming that its viewers desire. Retransmission consent revenues are important to Forum’s continued ability to create and obtain that programming, just as advertising revenues are. And getting Forum’s programming in front of as many viewers as possible is essential to both, so

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<sup>3</sup> *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 at ¶ 24 (2000).

<sup>4</sup> See Comments of the National Association of Broadcasters at 8-12.

