Mediacom

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February 3, 2016

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written Ex Parte Communication; MB Docket No. 15-216

Dear Mr. Lake

Notwithstanding the concerns that led Congress to direct the Commission to initiate the above-referenced proceeding to update its rules governing retransmission consent negotiations, the broadcast industry remains intent on exploring new tactics that will have the effect of pushing such negotiations towards a breakdown. I write to describe one such tactic that Mediacom has recently encountered and that Mediacom understands has been encountered by other cable operators as well.

The tactic to which I refer is the insistence by a broadcaster on what might best be described as an after-acquired systems provision on steroids. It is common in retransmission consent negotiation for a broadcaster to demand that the terms agreed to by the parties automatically apply to any stations in which the broadcaster subsequently acquires an attributable ownership interest.

However, some broadcasters are now demanding the right to bring other stations under the terms of their agreements without obtaining any material financial or operational stake in those stations. Specifically, under these "Additional Stations" provisions, the concept of an after-acquired station would be expanded to encompass any station that grants the broadcaster future authority to negotiate retransmission consent on the station's behalf. By virtue of nothing more than this action, the cable operator's pre-existing retransmission consent agreement with the station immediately would terminate and be replaced with the terms of the cable operator's agreement with the broadcaster obtaining the grant of future authority.

In practice, what this provision would do is give the broadcaster a "hunting license" to seek proxies from any other station in any DMA in which the cable operator provides service. This is a far cry from the typical "after acquired" systems provision. To give an example: if Mediacom has an existing agreement with the owner of Station X under which it pays a dollar per subscriber less for carriage than it pays the owner of Station Y, and Station Y obtains Station X's proxy, Mediacom would immediately be required to increase its payment for Station X by one dollar. This new fee structure would not be based on any negotiations relating to the carriage of Station X, would not be related to the type or value of the "services" that Station Y provides Station X, and would not be based in any way on retransmission

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consent market conditions in the market served by Station X. The increased fees, of course, would ultimately be paid by consumers, who would not receive anything more in return for their higher payments.

Allowing a broadcaster to demand that a cable operator agree in advance to substitute the terms of their retransmission consent agreement for the terms of the retransmission consent agreements that the cable operator reached with any and all stations without negotiations and without any regard for whether those substitute terms are appropriate for the markets in which they would become applicable flies in the face of the fundamental principles underlying the notion of market-based, good faith retransmission consent negotiations. If the Commission allows this kind of arrangement to stand, there is every reason to expect that within a few years, a mere handful of stations will dictate the terms of retransmission consent for hundreds of unrelated stations in which they have no other material interest. These arrangements will all but write the concept of competitive market considerations out of the retransmission consent process. It will also vastly increase the already considerable leverage that the largest station group owners have in retransmission consent negotiations.

This type of consumer harming behavior deserves the same scrutiny that the Commission applied to the broadcast industry's use of Joint Sales Agreements ("JSAs") in retransmission consent negotiations. As Chairman Wheeler so aptly noted in March 2014, "consumers lose when broadcasters band together."[1] In the case of the "Additional Station" provisions described above, broadcasters do not even have to band together to avoid the one-on-one negotiations intended by Congress. Instead, stations get the benefit of higher prices obtained by another broadcaster without having to negotiate at all. And once again, as with joint negotiations, it is the consumer "who ultimately pays the price."[2]

I strongly urge the Bureau to consider addressing such provisions in the above-referenced rulemaking proceeding.

Sincerely,

Tom Larsen

Cc: FCC Chairman, Tom Wheeler
FCC Commissioner, Mignon Clyburn
FCC Commissioner, Ajit Pai
FCC Commissioner, Michael O'Rielly
FCC Commissioner, Jessica Rosenworcel
FCC General Counsel, Jonathan Sallet

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[1] See https://www.fcc.gov/news-events/blog/2014/03/06/protecting-television-consumers-protecting-competition.
[2] *Id.*