



Thomas J. Larsen
Senior Vice President
Government & Public Relations

February 16, 2016

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

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

Dear Ms. Dortch:

Rick Kaplan, NAB's General Counsel and Executive Vice President of Legal and Regulatory Affairs, recently submitted a letter to the Commission dated February 10, 2016, in the above referenced docket. Mr. Kaplan's letter was critical of Mediacom's efforts to draw the Commission's attention to a new tactic used by broadcasters during retransmission consent negotiations referred to as "Additional Station" provisions.

After reading this latest slapdash attempt by NAB to discredit Mediacom's call for retransmission consent reform, I am beginning to think that the folks at NAB believe the "N" in their name stands for "know-it-all" – as in the kind of people who obnoxiously purport expansive understanding of a topics and/or situations when in reality their comprehension is flawed or limited. Case in point, the very first sentence of Mr. Kaplan's letter begins by inaccurately describing Mediacom as a being "among the Top 10 largest pay TV companies in the country."¹ The letter then attempts to portray Mediacom as operating in some alternate universe where the consumer harming actions of the broadcast industry, like the record 193 station blackouts in 2015 and the incomprehensible 22,400% increase in retransmission consent revenues since 2005, are simply imagined.

With all the sincerity of an age and scale operator attempting to separate a hard-earned dollar from an unwitting carnival patron, Mr. Kaplan then moves on to argue that the "Additional Station" issue Mediacom brought to the attention of the Commission "is the rough equivalent of a most favored nation (MFN) clause." He writes, "[m]ost likely, Mediacom is mischaracterizing proposals made by broadcasters, which were originally intended to cover joint sales agreements."

Rather than let Mr. Kaplan's uninformed guess lie unchallenged in the record of this docket, we thought it best to share an example of an actual "Additional Station" provision that became a sticking point during recent retransmission consent negotiations between Mediacom and a

¹ The Top 10 largest pay TV providers in the U.S. are as follows: 1) AT&T/DirecTV, 2) Comcast, 3) Dish Network, 4) Time Warner Cable, 5) Verizon, 6) Charter, 7) Cox, 8) Cablevision, 9) Bright House Networks, and 10) Altice/Suddenlink.

large broadcast station owner. However, to protect the guilty, we have made cosmetic changes to the language in order to hide the identity of the broadcaster responsible for drafting the below language:²

If Station Owner acquires or obtains authority to negotiate retransmission consent on behalf of any television station that is licensed to a DMA served by MVPD (such station, an “Additional Station”), then if Station Owner so elects, this Agreement shall be expanded to include such broadcast television station as a “Station” for all purposes of this Agreement and any pre-existing retransmission consent agreement of MVPD with respect to such Additional Station shall terminate with respect to the carriage of such Additional Station.

On its face, that language precludes interpreting it as an MFN. Moreover, unlike Mr. Kaplan, who was not present for the negotiations over that language, Mediacom’s employees heard the broadcaster’s explanation of what it thought the language meant, which was exactly what we informed the Commission in our original letter. There is absolutely no doubt of that because the language was the subject of numerous discussions and email exchanges between the parties that continued to the very brink of the expiration of Mediacom’s retransmission consent agreement. Moreover, we have been advised that other broadcasters have demanded similar language from other MVPDs.

As has been true so many times before, NAB, for some reason, thinks that it is competent to speak to issues that arise in negotiations to which it was not a party, and its penchant for pretending to know more than it does has once again created an unfortunate diversion from the merits of the issue at hand.

In order to alleviate the confusion created by Mr. Kaplan’s letter, we thought it would be helpful to explain the differences in the operation of MFN clauses and the above “Additional Stations” language. MFNs granted to a broadcaster in a retransmission consent agreement are used to assure that if the MVPD grants another broadcaster more favorable price or non-price terms in a separate agreement, then the first broadcaster will get the benefit of those more favorable terms for its own stations. That is not what “Additional Station” provisions of the kind we have brought to the Commission’s attention do. Here are two examples that illustrate the difference:

MFN: Station Owner A negotiates a retransmission consent agreement with Mediacom under which the retransmission consent fee in each of the next three years is \$2 per subscriber and that includes a price term MFN. If Mediacom already has, or enters into, an agreement with Station Owner B that provides for a fee of \$2.50 per subscriber, then Station Owner A’s MFN means that Mediacom must increase the fee it pays Station A to \$2.50. If the Agreement with Station Owner B is for a fee of \$2 or less, its fee payable to Station A does not change.

² Because numerous broadcasters have threatened us with horrendous consequences if we dare to share contractual language with the Commission or Congress, we have made non-substantive changes to the language to prevent it from being identified with a specific station owner. The modifications do not affect the substance of the operative language relevant to the issue addressed in this letter. We would be happy to share the unaltered language if requested to do so by the Commission.

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“Additional Station” Provision: Station Owner A negotiates a retransmission consent agreement with Mediacom under which the retransmission consent fee in each of the next three years is \$2 per subscriber and which contains an “Additional Station” provision. Mediacom already has an agreement in place with Station Owner B under which it pays a retransmission consent fee during the same period of \$1 per subscriber. Station Owner A does not own or manage Station Owner B or any of its stations. Station Owner A tells Station Owner B the following: “I can get you a \$2 per subscriber retransmission consent fee from Mediacom and all you have to do is sign a piece of paper that tells Mediacom that you authorize Station Owner A to negotiate retransmission consent for Station Owner B’s stations during the term of your existing agreement (and not beyond). You do not have to give us any equity in Station Owner B, give us any management authority or hire us to perform any services—all you have to do is sign that simple document. If Mediacom is paying you less than \$2 per subscriber, doing this will be to your economic advantage. For providing you with this opportunity, we ask only that we receive 25% of the extra money you get from Mediacom. This is a win-win deal for both of us.” If Station Owner B signs the piece of paper, then its retransmission consent fees increase by 75 percent, notwithstanding the fact that it is already subject to a valid retransmission consent agreement with Mediacom and notwithstanding that there is no ownership or business relationship between Station Owner A and Station Owner B other than splitting the extra money that Mediacom will be forced to pay. And the owner of Station A gets \$0.25 per month for every subscriber receiving Station B, even if the owner of Station A doesn’t operate a station serving the subscribers who will end up paying that extra \$0.25.

Clearly, the language we have brought to the Commission's attention is not an MFN by any stretch of the imagination. It also is much different from provisions that, historically, broadcasters have used to bring under their retransmission consent agreements those stations which they do not have de jure control but over which they exercise extensive management authority under an LMA or other contractual relationship. By contrast, the new language does not require that the broadcaster have any management authority whatsoever over the additional stations, let alone a level that might plausibly be used as a justification for representing the additional stations in retransmission consent negotiations. The specific broadcaster who proposed the new language to Mediacom said that the difference in wording was intentional and not due to an inadvertent omission or drafting error.

We certainly hope the above examples dispel any doubt Mr. Kaplan’s letter may have created about how “Additional Station” provisions are intended to function. Once again, we urge the Commission to address such provisions in the above-referenced rulemaking proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Larsen', with a long horizontal flourish extending to the right.

Tom Larsen

Cc: Media Bureau Chief, William T. Lake