



March 14, 2016

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

Re: Ex Parte Communication, MB Docket Nos. 15-216 and 10-71

Dear Ms. Dortch:

On March 10, 2016, Jerianne Timmerman, Scott Goodwin and the undersigned of the National Association of Broadcasters met with Bill Lake, Michelle Carey, Nancy Murphy, Susan Singer, Steve Broecker, Diana Sokolow, Raelynn Remy, and Kathy Berthot, of the Media Bureau, Jonathan Levy of the Office of Strategic Planning and Policy Analysis, and Susan Aaron of the Office of the General Counsel to discuss certain aspects of the Commission's current proceeding examining the retransmission consent totality of the circumstances test.

At the outset, NAB noted that multichannel video program distributors (MVPDs) have completely failed to demonstrate any breakdown in the retransmission consent market that warrants the Commission's intervention. Instead, MVPDs have merely assumed the problem and have visited the Commission with increasing frequency with a laundry list of requests, each designed to benefit MVPDs and hobble broadcasters in retransmission consent negotiations. The inconvenient fact for MVPDs – notwithstanding the American Television Alliance's very loud, public applause whenever an agreement is *not* completed in a timely fashion – is that nearly every retransmission consent negotiation is completed successfully. For the handful that are not, the aggregate impact on the general public is de minimis.¹ This helps explain why the Commission receives relatively few consumer complaints regarding

¹ Last month, NAB submitted an updated report showing that retransmission consent-related service interruptions impacted, on average, only 0.01486 percent of total television viewing hours annually during the period of 2011-2015. NAB, Written Ex Parte Communication, MB Docket No. 15-216 (Feb. 8, 2016), attaching Mark R. Fratrick, Ph.D, B/A Kelsey, *Updated Analysis of Carriage Interruptions on Viewing Hours: 2011-2015* (Feb. 3, 2016). In the rare instances where disputes do occur, they usually involve the same large MVPDs. See Atif Zubair, *2015 retrans roundup: Industry consolidation leads to larger renewals, high-profile disputes*, SNL Kagan (Jan. 22, 2016). See also, *AT&T: Univision will unblock channels for debate*, Politico (March 8, 2016), <http://www.politico.com/blogs/on-media/2016/03/at-t-univision-will-unblock-channels-for-debate-220438>; (Aug. 21, 2015) (Univision agreed to carriage of its signal by Dish during an impasse so viewers could watch the Democratic presidential debate), <http://www.tvnewscheck.com/article/87841/2-washington-stations-back-on-dish-for-now>; 2 *Washington Stations Back On Dish, For Now*, TVNewsCheck (Morgan Murphy asked Dish to reinstate carriage of two Washington state broadcast stations during a retransmission disputes so that viewers could receive important safety updates regarding a string of intense wildfires).

retransmission consent disputes as compared to the thousands of incoming messages regarding shoddy consumer treatment by MVPDs and artificially inflated pay TV charges.²

NAB asked the Media Bureau to focus on the potential consequences of many of the MVPD proposals. Even those that may seem innocuous often reduce the flexibility of the parties to reach a mutually acceptable deal. For example, NAB noted that restricting the ability of broadcasters to negotiate for carriage of additional channels would limit a broadcaster's ability to accommodate an MVPD's request for a lower price point in favor of additional capacity. A restriction of this sort will thus increase the upward pressure on price. Restraining the parties by arbitrarily removing terms from the negotiating table will only restrict the options they have to reach mutually acceptable agreements.

Finally, NAB discussed the fact that broadcasters compete not only for high-value content, but also for viewers more generally. This leads to increases in investments, including, most notably, rights fees for specialty programming like sports. Reducing broadcasters' ability to recoup that investment threatens their ability to compete for programming that they, in turn, can make available free and over-the-air. Downward pressure on only one participant in the ecosystem – in this case, broadcasters – will threaten the ability of all Americans to access the essential news, public safety information and entertainment that local broadcasters provide throughout the nation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal line extending to the right.

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs
National Association of Broadcasters

Cc: Bill Lake, Michelle Carey, Nancy Murphy, Steve Broeckaert, Diana Sokolow, Raelynn Remy, Kathy Berthot, Susan Singer, Jonathan Levy, Susan Aaron

² See, e.g., Brad Tuttle, "Here's Everything That's Wrong With Cable and Satellite TV Bills," Money (March 13, 2015).