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SUBMITTED ELECTRONICALLY VIA ECFs

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Communication in MB Docket No. 15-216 –
Implementation of Section 103 of the STELA Reauthorization Act of 2014:
Totality of the Circumstances Test**

Dear Ms. Dortch:

We are writing regarding the Ex Parte Notice, dated March 28, 2016 (the “INCOMPAS Notice”), submitted by Christopher Shipley of INCOMPAS about a meeting on March 24, 2016, between representatives of the Networks for Competition and Choice Coalition (the “Coalition”) and Steve Broecker, Martha Heller, Calisha Myers, Nancy Murphy, Raelynn Remy and Diana Sokolow of the Media Bureau.

Although Mediacom is larger than most of the MVPDs represented by the Coalition, our experiences in retransmission consent negotiations mirror those detailed in the INCOMPAS Notice. That is particularly true of our dealings with the large multiple-station owners that have resulted from the continuing wave of consolidation that the Commission has allowed despite the clear record that the alleged “synergies” and other claimed benefits cited by rote by the proponents of past transactions have never been realized and, for consumers, these deals have produced nothing but higher costs, fewer choices, diminished diversity of voices and less localism.

Mediacom also supports the proposals for revising the Commission’s good faith rules made by the Coalition in the INCOMPAS Notice. While we favor those proposals, we do not believe that, by themselves, they will be sufficient to produce a significant improvement in the outcomes of the retransmission consent process from the perspective of consumers—threatened and actual blackouts will still be resorted to by broadcasters as a coercive tool, even though a true negotiating impasse does not exist, and consumer costs will continue to rise at astronomical rates. Additional measures designed to restore balance in negotiating leverage are needed, and we refer the Commission to Mediacom’s filings in this proceeding for our suggestions.

One of Mediacom's proposals happens to dovetail perfectly with the Coalition's proposal that it be a violation of the good faith rules for either the station owner or the MVPD to refuse a request by the other party to commence (and thereafter diligently conduct) negotiations up to six months prior to expiration of an existing contract. Mediacom has recommended that the Commission adopt a "**cooling off period/mediation**" requirement (loosely modeled on concepts drawn from labor law) to create conditions under which negotiations would be more likely to result in a mutually agreeable meeting of the minds and less likely to result in a threatened or actual disruption of service to consumers. Under the original version of this proposal, it would be evidence of bad faith for a negotiating party not to agree to an extension of an expiring agreement (with a true-up) unless that party had publicly declared that the negotiations were at an impasse.

- Such a declaration would trigger a 60-day cooling off period during which the existing agreement would remain in place and the MVPD could seek to arrange for the carriage of a substitute station to mitigate the harm to subscribers.
- If the MVPD initiated the cooling off period by declaring an impasse, it would have to respect exclusivity requirements and contractual restrictions that may limit its ability to find a substitute station; however, if the station declares that the negotiations have reached an impasse, it would be a presumptive violation of the good faith requirement for that station to invoke exclusivity protection and/or for a distant station to refuse to negotiate with the MVPD based on a contractual agreement purporting to limit its authority to grant retransmission consent for out-of-market carriage.
- During the cooling off period, it also would be presumptively bad faith for either party to refuse to submit to a fast track mediation process based on the parties' last offers. Both parties would be required to participate in the process in a good faith effort to reach a deal. The outcome of this mediation would be the issuance (within 30 days) of a report to the parties that would be made public if the parties do not reach an agreement within 10 days after receiving the report.
- If a blackout occurs at the end of the cooling off period and the parties thereafter resume negotiations and reach an agreement, the MVPD would be required to terminate carriage of any station carried as a substitute for the blacked out station.

Under a variation of this cooling off period proposal we subsequently offered for consideration, there would be no post-expiration "interim carriage" requirement. Rather, the parties would be obligated to begin good faith negotiations at least 90 days prior to the expiration date. If no agreement had been reached by the 60th day before expiration, then the mediation/public-report process described above would be triggered. If we adapt that variation to the INCOMPAS proposal, then the requirement to exchange offers and counteroffers could be triggered up to six months before the scheduled contract expiration date, and if no mutually acceptable agreement was reached by the 60th day before the expiration date, then the mediation/public-report process would commence.

The introduction of this process could, we believe, significantly increase the likelihood of a deal being reached without a blackout and also help ameliorate the increase in retransmission consent fees at rates far in excess of those for any other consumer product or service of which we are aware.¹ Among other things, the requirement to engage in good faith mediation with the knowledge that a public report will be issued by a neutral mediator if an agreement is not reached may increase the pressure on both parties to moderate their behavior and be more willing to compromise. The process would be funded by the parties and would not require Commission involvement or resources. If an impasse and a blackout nonetheless resulted, then the Commission and the public would benefit from the objective report of the independent mediator in determining responsibility and assessing next steps. We think that the history of the mandatory cooling-off period in labor negotiations confirms our conclusions.

Thank you for your consideration.

Sincerely,

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

Tom Larsen

cc: Bill Lake
Michelle Carey
Nancy Murphy
Diana Sokolow
Steven Broeckaert
Raelynn Remy
Martha Heller
Kathy Berthot
Susan Aaron
Marilyn Sonn

¹ While there are recent examples of pharmaceutical companies run by Martin Shkreli increasing prescription drug prices for Thiola and Daraprim by 2,000% and 5,000%, respectively, we have been unable to find any market like the retransmission consent market in which prices have risen 22,400% since 2005.