

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

RALEIGH, NORTH CAROLINA

EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL MCGINN
MICHAEL D. MEEKER
WILLIAM G. McNAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P.H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH RODENBOUGH IV
MARK J. PRAK
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVIDSON
JOHN W. ORMAND III
ROBERT J. KING III
V. RANDALL TINSLEY
S. KYLE WOOSLEY
FORREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JAMES C. ADAMS II
ELIZABETH S. BREWINGTON
H. ARTHUR BOLICK II
J. EDWIN TURLINGTON
JOHN M. CROSS, JR.
JENNIFER K. VAN ZANT
KEARNS DAVIS
DAVID W. SAR
BRIAN J. McMILLAN
DAVID KUSHNER
CLINTON R. PINYAN
COE W. RAMSEY
ROBERT W. SAUNDERS

GINGER S. SHIELDS
CHARLES E. COBLE
CHARLES F. MARSHALL III
PATRICK J. JOHNSON
STEPHEN G. HARTZELL
J. BENJAMIN DAVIS
JULIA C. AMBROSE
DARRELL A. FRUTH
JAIN MACSWEEN
NICOLE A. CRAWFORD
ALEXANDER ELKAN
PATRICIA W. GOODSON
SUSAN M. YOUNG
MELISSA H. WEAVER
WALTER L. TIPPETT, JR.
KATHERINE J. CLAYTON
ELIZABETH E. SPAINHOUR
BENJAMIN R. NORMAN
WES J. CAMDEN
CHARLES S. BALDWIN IV
ADAM P.M. TARLETON
D.J. O'BRIEN III
ANNA P. McLAMB
JOSEPH A. PONZI
ERIC M. DAVID
CLINT S. MORSE
DAVID D. SMYTH III
EDWIN L. WEST III
THOMAS G. VARNUM
BRYAN STARRETT
DANIEL F.E. SMITH
W. MICHAEL DOWLING
JUSTIN N. OUTLING
STEPHEN WILSON QUICK
TIMOTHY G. NELSON
CRAIG D. SCHAUER
KIMBERLY M. MARSTON
ANDREW L. RODENBOUGH
CAITLIN M. POE
ELIZABETH L. TROUTMAN
MATTHEW B. TYNAN
JESSICA B. THALLER-MORAN

MAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602

OFFICE ADDRESS
1600 WELLS FARGO CAPITOL CENTER
150 FAYETTEVILLE STREET
RALEIGH, N.C. 27601

TELEPHONE (919) 839-0300
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM

WILLIAM G. ROSS, JR.
OF COUNSEL

SARA R. VIZITHUM
OF COUNSEL

ANN H. STUART
OF COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)
W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1958)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)
HUBERT HUMPHREY (1928-2003)
L.P. McLENDON, JR. (1921-2010)

OTHER OFFICES
GREENSBORO, NC
WILMINGTON, NC

WRITER'S DIRECT DIAL
(919) 834-9216
Email: whargrove@brookspierce.com

April 8, 2016

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Notice of *Ex Parte*
Communication
MB Docket No. 15-216

Dear Ms. Dortch:

On April 6, 2016, Ralph Oakley and David Lougee (Chair and Vice-Chair, respectively, of the NBC Television Affiliates); Marla Drutz, Don Richards, Lloyd Bucher and Steve Baboulis, each of whom is a Director of the NBC Affiliates; Mark Prak and the undersigned, who are counsel to the NBC Television Affiliates, met with the following officials of the Commission to discuss the *Notice of Proposed Rulemaking* in the above-referenced docket: Commissioner O'Rielly and his Chief of Staff and Legal Advisor, Robin Colwell; David Grossman, Legal Advisor to Commissioner Clyburn; Marc Paul, Legal Advisor to Commissioner Rosenworcel; William Lake, Michelle Carey, Nancy Murphy, Diana Sokolow, Steve Broecker and Martha Heller of the Media Bureau; Phil Verveer, Senior Counsel to Chairman Wheeler, and Jessica Almond, Legal Advisor to Chairman Wheeler.

The NBC Affiliates representatives (“Affiliates”) recommended that the Commission make no change in the “totality of circumstances” test of the Commission’s “good faith” negotiating requirement for retransmission consent negotiations. They pointed out that hundreds of local broadcast station retransmission consent negotiations take place each year with no interruption of service to MVPD subscribers. They observed that the handful of service interruptions that do occur, occur repeatedly with the same four large, national satellite and cable companies, and that the Commission’s current proceeding, unfortunately, only serves to encourage these and other MVPDs to exploit the proceeding with additional service interruptions to secure a regulatory advantage in future retransmission consent negotiations.

The Affiliates underscored, as noted in their formal *Comments* and *Reply Comments*, that the Commission does not have statutory authority to mandate interim carriage during retransmission consent disputes. They pointed out that, contrary to arguments of some MVPDs, Section 325 of the Communication’s Act differs materially in this respect from the Taft Hartley Act, which expressly authorizes the courts, under certain conditions, to preserve the *status quo* during certain protracted labor negotiations.

The Affiliates noted the unfortunate, but unmistakable, trend in which top-rated sports and entertainment programming is rapidly migrating from *free*, over-the-air local broadcast stations to various subscription-based payTV services, a reflection of the growth in competition for top-rated programming among all video distribution platforms. The Affiliates cited, as examples, this week’s NCAA Final Four championship basketball game, the College Bowl Series, and other top-rated collegiate and professional sports programs, along with various entertainment programs, which have migrated from the nation’s *free*, over-the-air broadcast service to various subscription-based pay TV services. The Affiliates noted these changes are a direct result of the intensely competitive nature of today’s video market, and if the Commission adopts rules that impairs, impedes, or handicaps the retransmission consent negotiating ability of local broadcast stations to the competitive advantage of national payTV distribution platforms, it would only serve to assist and accelerate the migration. Not only would such a result be competitively unfair to local broadcast stations and their broadcast networks, it would be contrary to the interests of all viewers, and, in particular, it would deprive *all access* to the nation’s top-rated sports and entertainment programming by those economically unable to subscribe to a payTV service. In addition, it would eliminate the financial ability of local broadcast stations to provide to their local communities news, public affairs, public safety, emergency, and other public service programming. Such a result, the Affiliates observed, was clearly not the intent of Congress in enacting Section 325 of the Act, nor in instructing the Commission in the reauthorization of STELAR to review the “totality of circumstances” test.

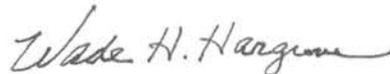
Finally, in response to the repetitive whining of MVPDs of increases in retransmission consent fees for top-rated local broadcast stations, the Affiliates pointed out the dramatic increase in monthly subscriber fees for various payTV cable/satellite program services as noted in the attached March 26, 2016 *Wall Street Journal* article—fees which, clearly, dwarf the most aggressive broadcast retransmission consent fees paid by MVPDs for *significantly more popular* local broadcast stations.

Program Services	Monthly Subscriber Fee
Yankees Channel	\$5.36 (increase to \$6.00 pending)
Dodgers Channel	\$4.59
New England Sports Channel	\$4.25
SportsNet Philadelphia	\$4.12

The Affiliates discussed the “unregulated” negotiating process for MVPD carriage of the above and other payTV program services, and the Affiliates respectfully urged the Commission not to give unregulated payTV services an unfair competitive advantage over local broadcast stations in negotiating for carriage of their signals. To do so would impair the ability of the nation’s *free*, over-the-air broadcast service to compete and acquire top-rated sports and entertainment television programming and, in turn, relegate, by regulatory fiat, the nation’s *free* over-the-air broadcast service to a fourth-rate video service. If, as it should be, the goal of the Commission in this proceeding is to serve the interests of consumers and the nation’s television viewers, the Commission should terminate this proceeding with no change in the existing “totality of circumstances” test.

If you should have any questions in connection with this matter, it is respectfully requested that you communicate with this office.

Very truly yours,



Wade H. Hargrove
Counsel to the NBC Television Affiliates

cc: Commissioner O’Rielly
Robin Colwell
Phil Verveer
David Grossman
Marc Paul
William Lake
Michelle Carey
Nancy Murphy
Diana Sokolow
Steve Broecker
Martha Heller
Jessica Almond