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VIA ECFS

EX PARTE

April 25, 2016

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

Re: *Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*; MB Docket No. 15-216

Dear Ms. Dortch:

On April 21, 2016, Melissa Newman (in person) and Steve Beardslee, Joy McConnell-Couch, Tiffany Smink and Glenda Weibel (by telephone) all from CenturyLink, along with Genny Morelli from ITTA (in person) met with Martha Heller, Steven Broeckaert, Nancy Murphy, Raelynn Remy, Susan Singer, and Diana Sokolow of the Media Bureau.

At the meeting, CenturyLink discussed the comments it filed in the above-referenced proceeding on December 2, 2015. CenturyLink has been offering its Internet Protocol Television (IPTV) service, Prism® TV, since 2007. Prism® TV service is distributed over CenturyLink's managed two-way IP network and delivered to subscriber homes usually via a fiber/copper network or sometimes fiber-to-the-home technology. The service delivers high-quality video content, including HD channels, local broadcast stations, premium channels, on-demand content and international programming. Whole home DVR capability and wireless set-top boxes are available. Subscribers also have access to on-demand content, programmer provided apps and can download the Prism® TV App to their mobile device to watch content and manage their DVR. Prism® TV is not an over-the top, "best-effort" video service.

As a relatively new entrant into the video marketplace with approximately 300,000 customers but a significant provider of broadband internet access with over 6 million customers, CenturyLink is in the position to provide the Commission with the unique perspective of the challenges we face in the video marketplace. The vast majority of CenturyLink's broadband customers are not CenturyLink video customers. CenturyLink's broadband customers are irrelevant to CenturyLink's provision of video programming to its video customers. In turn, negotiation tactics that involve broadband customers such as threats by a broadcaster to prevent

access to its programming on-line during retransmission consent negotiations or a broadcaster's demand for per-subscriber fees for an MVPD's non-video customers have no legitimate place in retransmission consent negotiations and should not be permitted.

CenturyLink also discussed the deleterious impact to its Prism® TV customers when a broadcaster uses crawls to warn of a potential retransmission consent blackout. These crawls have unnecessarily worried CenturyLink video customers and triggered spikes in customer inquiries regarding potential loss of video programming even when CenturyLink is not a party to the negotiations. Not only does use of these crawls improperly involve consumers in retransmission consent negotiations between business entities, but it involves consumers that are not even customers of the negotiating entities. This should not be acceptable behavior during retransmission consent negotiations.

CenturyLink also discussed a recent twist on broadcasters' demands that MVPDs carry bundles of channels. Typically a broadcaster offers a bundle of channels that include must-have channels and less-desired channels at one price or channels on a standalone basis that make it more expensive to purchase the most desired channels on a standalone basis than to purchase the bundle. Even this Hobson's choice, however, includes existing, known channels. More recently, a broadcaster has offered a bundle that includes the agreement to launch an unknown new channel of the broadcaster at a future date, or else pay a per-subscriber fee in order to not have to carry the future channel. This puts the MVPD in an awkward spot of committing to carry a future channel without any information about the future channel. As a new entrant trying to compete with established MVPDs, CenturyLink is not positioned to challenge these pay-not-to-play games. MVPDs should not be forced to carry yet-to-be-determined channels or channels that they and their customers do not want.

Based on CenturyLink's experience, the Commission should find the following types of conduct to be per se evidence of bad faith in retransmission consent negotiations:

(1) a broadcaster preventing access to its programming on-line during retransmission consent negotiations;
(2) a broadcaster's demand for per-subscriber fees for an MVPD's non-video customers;
(3) a broadcaster's price discrimination among MVPDs without legitimate economic benefits; and
(4) a broadcaster preventing an MVPD from temporarily importing an out-of-market signal in cases where the broadcaster has blacked out its local signal after negotiations failed to produce an agreement by the expiration date.

Additionally, the Commission should identify the following types of conduct as conduct that may evidence that a party is not negotiating in good faith under the totality of the circumstances test:

(1) a broadcaster using crawls on its channels to warn of a potential retransmission consent blackout;

(2) a broadcaster's insistence on bundling broadcast signals with other broadcast stations or cable networks; and
(3) a broadcaster's insistence on contract expiration dates, or threats to black out a station's signal, in the time period just prior to "marquee" events.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this ex parte presentation is being filed in the appropriate docket.

Sincerely,

/s/ Melissa E. Newman

Copy via email to:

Martha Heller
Steven Broeckaert
Nancy Murphy
Raelynn Remy
Susan Singer
Diana Sokolow

Genny Morelli