

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 207 of the Satellite)	MB Docket No. 05-89
Home Viewer Extension and Reauthorization Act)	
Of 2004)	
)	
Reciprocal Bargaining Obligations)	

**REPLY COMMENTS OF
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments in the above-captioned proceeding.

In its initial comments, NCTA argued that the Commission should make clear that the “good faith” obligations that the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”) imposes on cable operators engaged in retransmission consent negotiations with broadcasters do not require cable operators to agree to carry stations that opt for retransmission consent, much less to pay or otherwise compensate such stations for carriage. Otherwise, the statutory requirement that broadcasters choose between “must carry” and retransmission consent would make no sense. If cable operators were required to carry retransmission consent stations without compensation, broadcasters would never elect “must carry” status – because they could always do at least as well by opting for retransmission consent.

Some broadcasters maintain that cable operators and other MVPDs should have exactly the same good faith obligations as broadcasters.¹ But even they seem to recognize that the “good faith” requirements of the statute cannot reasonably be construed to create a requirement to negotiate for carriage of stations that do not otherwise have a right to carriage on cable systems. For example, the ABC, CBS, FBC, and NBC Television Affiliate Associations (“Network Affiliates”) argue that since cable operators have no obligation to carry broadcast signals from outside their designated market area, they cannot be deemed to have a “good faith” obligation to negotiate to carry any such signals that are willing to grant retransmission consent to be carried on their cable systems.

As they point out, “it would be illogical and inappropriate to force sophisticated business parties to incur costs to negotiate an agreement that one of the parties may lawfully refuse to enter into.”² The National Association of Broadcasters “agree with the conclusion and supporting analysis in the comments of the Network Affiliates” on this point.³ The same analysis applies to retransmission consent negotiations. Since a local broadcast station that opts for retransmission consent has no right to carriage on cable systems and systems may lawfully refuse to enter into an agreement to carry them, it makes no sense to force cable operators to negotiate for such carriage.

As NCTA pointed out, the Commission’s determination that local broadcasters that opt for retransmission consent *do* have an obligation to negotiate with cable operators and other MVPDs who wish to carry them reflects the unique statutory status of broadcasters. In return for

¹ See Comments of Network Television Affiliate Associations (ABC, CBS, FBC, and NBC); National Association of Broadcasters (NAB).

² Comments of Network Affiliates at 5.

³ Comments of NAB at 2-3.

their license to broadcast over-the-air, they are required to operate in the public service and to provide their over-the-air signals free throughout their service areas. They can elect to require local cable operators to carry their signals pursuant to must carry. And if they instead choose retransmission consent, they are prohibited from entering into exclusive contracts with any MVPDs.

All these factors explain broadcasters' unique obligation to enter into negotiations with MVPDs that wish to carry them. There are, however, no corresponding reasons why cable operators should be required to negotiate to carry the signals of broadcasters that have specifically elected to forgo their statutory right to be carried. To rule otherwise would obliterate the statutory distinction between must carry and retransmission consent.

Thus, the same *procedural* good faith bargaining requirements that the Commission has imposed on broadcasters that opt for retransmission consent should be extended to cable operators that wish to carry them once negotiations are underway. But the Commission should make clear that cable operators, since they have no obligation to carry stations that elect retransmission consent, have no obligation to negotiate with them. At the very least, the Commission should confirm that cable operators are entitled to insist, in negotiating with broadcasters, that they be compensated for such carriage.

Respectfully submitted,

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