

February 15, 2007

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

Re: Supplemental Submission of the Coalition for Retransmission Consent Reform, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry*, MB Docket No. 06-189.

Dear Secretary Dortch:

In the *Notice*, the Commission solicited comments on the effect of retransmission consent on cable rates and the impact of agreements that require the carriage of non-broadcast networks in exchange for the right to carry local broadcast stations on multichannel video programming distributors (MVPDs) and consumers.<sup>1/</sup> In response to this solicitation, the Coalition for Retransmission Consent Reform (“Coalition”) submitted comments addressing these specific issues.<sup>2/</sup> This *ex parte* submission supplements the Coalition’s comments by providing data on the various effects that retransmission consent has had on the marketplace and consumers.

In its comments, the Coalition highlighted the degree to which the Big Four broadcast networks and other large broadcast conglomerates continue to leverage retransmission consent in a manner that increases both the price and size of popular cable service tiers. Retransmission consent has been a major factor in shaping the price and composition of cable’s expanded basic tier, resulting in consumers paying higher prices than they otherwise would for cable television service. Retransmission consent also has significantly reduced the opportunities for cable networks not affiliated with a broadcaster to obtain carriage on cable’s expanded basic tier, thereby depriving consumers of benefits in price and program quality.

---

<sup>1/</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry*, MB Docket No. 06-189 (rel. Oct. 20, 2006), at ¶ 38 (seeking comment on “the effect of retransmission consent compensation on cable rates, the ability of small cable operators to secure retransmission consent on fair and reasonable terms, and the impact of agreements that require the carriage of non-broadcast networks in exchange for the right to carry local broadcast stations”).

<sup>2/</sup> See Comments of Coalition for Retransmission Consent Reform, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, November 29, 2006 (“Coalition Comments”). The members of the Coalition are set forth in footnote 1 of those comments.

The impact of retransmission consent on cable television rates -- and the prospect of more service interruptions due to unreasonable and costly carriage demands by broadcasters -- is likely to increase as broadcasters push for large cash payments for retransmission consent.<sup>3/</sup> As starkly illustrated by Sinclair Broadcasting's withdrawal of its broadcast networks from Mediacom, broadcasters are more than willing to leverage the threat of service interruptions for network signals in order to extract higher fees for retransmission consent. Senators Inouye and Stevens -- two of the architects of retransmission consent -- recently stated that "Americans should not be cut off from broadcasting programming" due to an impasse in retransmission consent negotiations.<sup>4/</sup> Nevertheless, Sinclair insisted that the government -- which granted broadcasters their licenses for free, created retransmission consent, prohibited the importation of distant network signals to replace withdrawn network stations, and guaranteed broadcasters placement on cable's entry-level tier of service -- has no business becoming involved in such negotiations.<sup>5/</sup> Unable to risk the loss of further subscriber defections, Mediacom acceded to Sinclair's demands less than two days before the Super Bowl (which would have been blacked out in some Mediacom markets due to the dispute).<sup>6/</sup>

The cash fees that broadcasters are seeking to extract from cable providers through actual or threatened withdrawals of network signals will, of course, be borne by subscribers to cable's entry-level Basic tier of service. No cable operator or other MVPD can long afford to incur the onslaught of subscriber defections that arise due to the withdrawal (or threatened withdrawal) of network stations due to retransmission consent disputes.<sup>7/</sup> And the size of these fee increases could be significant. Sinclair reportedly was seeking \$0.40 - \$0.50 per subscriber per month for its broadcast signals (even though several of them are not affiliated with one of the Big Four) and CBS reportedly obtained \$0.50 per subscriber per month from Verizon for carriage of its owned

---

<sup>3/</sup> See, e.g., "Cable Impasse: Broadcasters Say Pay Up for Local Fare, but Cable Operators Aren't Budgeting," *Baltimore Sun*, January 21, 2007 (quoting Sinclair official: "We expect retransmission fees in all our markets"); "Stations, Cable Systems Face Off; Bloody Battle Brews Over Retransmission," *Television Week*, January 22, 2007 (noting that Northwest Broadcasting withdrew its Fox network signal from cable systems serving 3 states in the Spokane, WA area and quoting its president: "It's just not right. We want cash").

<sup>4/</sup> "Senators Press FCC to Resolve Cable Dispute With Sinclair; Dispute Threatens to Cause Viewers to Miss Super Bowl," *Baltimore Sun*, February 1, 2007.

<sup>5/</sup> See e.g. "Sinclair CEO Tells Congress to Stay Out of Dispute," *Cedar Rapids Gazette*, January 17, 2007; "Senators Press FCC to Resolve Cable Dispute With Sinclair; Dispute Threatens to Cause Viewers to Miss Super Bowl," *Baltimore Sun*, February 1, 2007 ("While I can appreciate your desire to make sure that the public is not inconvenienced by this situation, I hope you can understand the danger of suggesting the government should order private parties to enter into an agreement when they are not able to reach agreement on their own," wrote Barry M. Faber, Sinclair's vice president and general counsel).

<sup>6/</sup> See "Television's Power Shift: Cable Pays for 'Free' Shows," *Wall Street Journal*, February 5, 2007; "Sinclair, Mediacom Finally Strike Retrans Deal," *CableFax Daily*, February 5, 2007.

<sup>7/</sup> See e.g., William Rogerson, *The Social Cost of Retransmission Consent Regulations*, at 20-27 (February 28, 2005) ("Rogerson"), submitted in this proceeding as attachment A to Coalition Comments.

and operated network stations.<sup>8/</sup> Indeed, the onset of competition to cable from DBS and the telephone companies enhances the leverage of broadcasters by magnifying the competitive harm to any MVPD that cannot gain carriage of network stations.<sup>9/</sup> Since there is general consensus that broad attainment of cash compensation for retransmission consent by one network will lead to cash payments for all four networks, entry-level Basic tier subscribers could soon be looking at rate hikes of roughly 15% on average.<sup>10/</sup> Indeed, the *Wall Street Journal* has reported that “the fees some broadcast stations have been asking could drive cable bills up by around \$2 a month” and that some “broadcasters already are talking about at least doubling that over the next few years. . . .”<sup>11/</sup>

Another way to gauge the likely impact of broadcasters’ cash demands in retransmission consent negotiations is to examine the strength of their leverage in prior negotiations. Two years ago, members of the Coalition submitted comments in the competition inquiry conducted by the Commission pursuant to the Satellite Home Viewer Extension Reauthorization Act (“SHVERA”), Pub. L. No. 108-477, 118 Stat. 2809 (2004).<sup>12/</sup> Those comments included tables documenting the impact of retransmission consent on the size and cost of the expanded basic service tier.<sup>13/</sup> Those data showed that retransmission consent has been a significant driver of rate increases for the expanded basic tier. As shown by the charts below, updating the data from those tables demonstrates that retransmission consent continues to disproportionately impact the size of rate increases borne by subscribers to the expanded basic tier.

Table 1 shows that ten of the top twelve most widely carried video networks added to expanded basic since retransmission consent are broadcaster-affiliated. Only two channels of the twelve most widely carried channels added to expanded basic since the enactment of retransmission consent (*i.e.*, Animal Planet and TCM) are not affiliated with a broadcaster in any way.

---

<sup>8/</sup> See “Television’s Power Shift: Cable Pays for ‘Free’ Shows,” *Wall Street Journal*, February 5, 2007; “Stations, Cable Systems Face; Bloody Battle Brews Over Retransmission,” *Television Week*, January 22, 2007; see also Coalition Comments at 7, n. 16.

<sup>9/</sup> See *e.g.*, Rogerson, *supra* n. 7, at 28-29; “Conference Slips Back Into Groove,” *Television Week*, April 18, 2005 (NAB official saying that competition from DBS and telcos can enable broadcasters to “play one off the other and use that leverage to create a new revenue stream for local TV”).

<sup>10/</sup> See *Report on Cable Industry Prices*, MM Docket No. 92-266 (rel. Dec. 27, 2006), at Attachment 11 (noting current average Basic service price of \$14.30).

<sup>11/</sup> See “Television’s Power Shift: Cable Pays for ‘Free’ Shows,” *Wall Street Journal*, February 5, 2007.

<sup>12/</sup> See Comments of Joint Cable Commenters, *Inquiry on Rules Affecting Competition in the Television Marketplace*, MB Docket No. 05-28 (March 1, 2005), attached as Exhibit 1 hereto.

<sup>13/</sup> See *id.* at Tables D, F, G, and H.

**Table 1**  
**12 Most Widely Carried Video Networks**  
**Added to Basic/Expanded Basic Since Retransmission Consent**

| <b>Channel</b>        | <b>Year Added to Expanded Basic</b> | <b>Year One Expanded Basic Distribution</b> | <b>2005 Expanded Basic Distribution</b> |
|-----------------------|-------------------------------------|---|---|
| ESPN2 (ABC)           | 1993                                | 16%   | 94.8%                                   |
| History (NBC)         | 1995                                | 15%   | 94.1%                                   |
| Fox News (Fox)        | 1996                                | 23.7%                                       | 93.3%                                   |
| <i>Animal Planet</i>  | 1996                                | 2.8%  | 93.1%                                   |
| HGTV(Scripps)         | 1994                                | 15.7%                                       | 94.4%                                   |
| Disney (ABC)*         | 1994                                | 20.2%                                       | 92.3%                                   |
| FX (Fox)              | 1994                                | 28.2%                                       | 93.3%                                   |
| Food(Scripps/Tribune) | 1993                                | 9.5%  | 93.4%                                   |
| TV Land (CBS)         | 1996                                | 25.5%                                       | 91.4%                                   |
| MSNBC (NBC)           | 1996                                | 39.1%                                       | 90.3%                                   |
| Fox Sports Net (Fox)  | 1996                                | 73.4%**                                     | 87.0%                                   |
| <i>TCM</i>            | 1994                                | 11.5%**                                     | 75.9%                                   |

Source: Kagan, *Economics of Basic Cable Networks* (2005), at 33; Kagan, *Economics of Basic Cable Networks* (2006), at 24-25 and 41-45; \* Disney transitioned from a pay service to an expanded basic cable network in the mid-1990s; \*\*Data from Year 2.

It is evident that the addition of these broadcaster-affiliated cable channels to the expanded basic tier via retransmission consent leveraging has had a significant impact on the rates for that tier. As shown in Table 2, the increase in the aggregate monthly per-subscriber rate paid for these ten broadcaster-affiliated cable channels added to expanded basic through retransmission consent has outpaced the increase in monthly per-subscriber expanded basic cable rates over a comparable nine-year period by over 80%.<sup>14/</sup> Clearly, rates for the most popular broadcaster-affiliated cable channels have been a substantial driver of rate increases for the expanded basic tier.

---

<sup>14/</sup> The license fee tables and the average cable industry expanded basic rate tables aim to rely upon the most current data available. While the program network license fee data taken from Kagan is current through 2006, the expanded basic tier rate data reported in the FCC's Cable Price Survey is current only into 2005. Thus, while rate changes for both the license fees paid by cable operators for cable-affiliated broadcast networks and the subscription fees paid by cable subscribers for the expanded basic tier were measured over a nine-year period, the license fee data is from 1997 to 2006 while the expanded basic rate data is from 1996 to 2005.

**Table 2**  
**Rate Change of 12 Most Widely Carried Video Networks**  
**Added to Basic/Expanded Basic Since Retransmission Consent**

| <b>Network</b>  | <b>1997 Rate</b> | <b>2006 Rate</b> | <b>% Change</b> |
|---|------------------|------------------|-----------------|
| ESPN2 (ABC)   | 0.12             | 0.24             | 100%            |
| History (NBC)   | 0.10             | 0.19             | 90%             |
| Fox News (Fox)  | 0.08             | 0.75             | 838%            |
| <i>Animal Planet</i>  | 0.00             | 0.08             | N/A             |
| HGTV (Scripps)  | 0.03             | 0.08             | 167%            |
| Disney (ABC)  | 0.62             | 0.79             | 27%             |
| FX (Fox)  | 0.23             | 0.35             | 52%             |
| Food (Scripps/Tribune)  | 0.02             | 0.07             | 250%            |
| TV Land (CBS)   | 0.00             | 0.09             | N/A             |
| MSNBC (NBC)   | 0.13             | 0.15             | 15%             |
| Fox Sports Net (Fox)  | 0.50             | 1.67             | 234%            |
| <i>TCM</i>  | 0.16             | 0.23             | 44%             |
| Total Including Animal Planet and TCM   | 1.99             | 4.69             | 136%            |
| <b>Total Including Only Broadcast -Affiliated Nets</b>  | <b>1.83</b>      | <b>4.38</b>      | <b>139%</b>     |
| <b>Increase in Expanded Basic Rates 1996-2005</b>   | <b>24.28</b>     | <b>43.04</b>     | <b>77%</b>      |
| <b>Delta of the Increase in Broadcaster-Affiliated Programming Rates Versus Expanded Basic Rates, 1997-2006</b> |                  |                  | <b>81%</b>      |

Source: Kagan, *Economics of Basic Cable Networks* (2006), at 60-61; 110; 215; 227; 248; 266; 278; 308; 311; 365; 476; 482; "Fox News Triples its Pleasure," *Multichannel News*, October 23, 2006; Expanded Basic Rate data from *Report on Cable Industry Prices*, FCC 06-179, MM Docket No. 92-266 (rel. December 27, 2006).

The degree to which license fees paid for carriage of newly added broadcaster-affiliated cable channels are driving expanded basic rate hikes is illustrated even more starkly by comparing the revenue growth rate for the ten newly added broadcaster-affiliated cable channels with the growth rate of cable industry expanded basic revenues. Table 3 shows the growth in total expanded basic tier revenues for the cable industry for the nine-year period from 1997 to 2006. By comparison, Table 4 shows that total license fees paid for newly-added broadcaster-affiliated cable channels have increased at a much faster rate than total cable industry expanded basic revenues over a comparable nine year period:

**Table 3**  
**Growth in Cable Industry's Average Annual Basic/Expanded Basic Revenue**  
**1997 - 2006**

|  | 1997             | 2006             | 9 yr. % change |
|--|------------------|------------------|----------------|
| <b>Total Annual Basic/Expanded Basic Revenue</b> | \$20,405 million | \$32,274 million | 58.17%         |

Source: <http://www.ncta.com/ContentView.aspx?contentId=69>; Kagan 2006 *Broadband Cable Financial Databook*.

**Table 4**  
**License Fee Revenue Growth of**  
**12 Most Widely Carried Video Networks**  
**Added to Basic/Expanded Basic Since Retransmission Consent**

| <b>Channel</b>  | <b>License Fee Rev. 1997 (\$ mill.)</b> | <b>License Fee Rev. 2006 (\$ mill.)</b> | <b>9 yr. % change</b> |
|---|---|---|-----------------------|
| ESPN2 (ABC)   | 70.7                                    | 267.3                                   | 278.1                 |
| History (NBC)   | 42.0                                    | 203.6                                   | 384.8                 |
| Fox News (Fox)  | 20.0                                    | 285.3                                   | 1,326.5               |
| <i>Animal Planet</i>                                      | 0.0                                     | 86.4                                    | N/A                   |
| HGTV** (Scripps)  | 12.0                                    | 87.3                                    | 627.5                 |
| Disney (ABC)  | 359.7                                   | 841.4                                   | 133.9                 |
| FX (Fox)  | 87.9                                    | 374.7                                   | 326.3                 |
| Food** (Scripps/Tribune)                                  | 5.6                                     | 79.3                                    | 1,316.1               |
| TV Land (CBS)   | 0.1                                     | 98.3                                    | 98,200.0              |
| MSNBC (NBC)   | 50.0                                    | 151.6                                   | 203.2                 |
| Fox Sports Net (Fox)                                      | 318.0                                   | 1,682.8                                 | 429.2                 |
| <i>TCM</i>  | 34.4                                    | 198.7                                   | 477.6                 |
| <b>Total</b>  | <b>1,000.4</b>                          | <b>4,356.7</b>                          | <b>335.5%</b>         |
| <b>Total for 10 Broadcaster-affiliated Cable Networks</b> | <b>966</b>                              | <b>4,071.6</b>                          | <b>321.5%</b>         |

Source: Kagan, *Economics of Basic Cable Networks* (2006), at 110; 215; 227; 248; 266; 278; 308; 311; 365; 476; 482.

The data are equally compelling if one examines the full slate of expanded basic cable channels, and compares rate and revenue increases for broadcaster-affiliated and non-broadcaster-affiliated cable channels. Table 5 shows the per-subscriber license fees reported by Kagan for the 40 most widely carried satellite-delivered cable networks. Two-thirds of these cable networks are affiliated with broadcasters. The data reveal that aggregate license fees for the broadcaster-affiliated cable channels are growing more than twice as fast as the fee growth for cable channels unaffiliated with broadcasters.

**Table 5**  
**Percentage Change in License Fees**  
**40 Most Widely Carried Video Networks**  
**1997-2006**

| <b>Broadcaster-Affiliated Network</b> | <b>1997 Fee (\$)</b> | <b>2006 Fee (\$)</b> | <b>Non-broadcaster Affiliated Network</b> | <b>1997 Fee (\$)</b> | <b>2006 Fee (\$)</b> |
|---------------------------------------|----------------------|----------------------|---|----------------------|----------------------|
| TV LAND (CBS)                         | 0.00                 | 0.09                 | TRAVEL                                    | 0.03                 | 0.09                 |
| SPEED (Fox)                           | 0.04                 | 0.18                 | ANIMAL                                    | 0.00                 | 0.08                 |
| ESPN (ABC)                            | 0.73                 | 2.91                 | CARTOON                                   | 0.07                 | 0.15                 |
| FOX NEWS (Fox)                        | 0.08                 | 0.75                 | TCM                                       | 0.16                 | 0.23                 |
| FOX SPORTS (Fox)                      | 0.50                 | 1.67                 | TNT                                       | 0.51                 | 0.89                 |
| CNBC (NBC)                            | 0.13                 | 0.26                 | TBS                                       | 0.18                 | 0.39                 |
| E! (ABC)                              | 0.10                 | 0.20                 | TLC                                       | 0.10                 | 0.16                 |
| SCI FI (NBC)                          | 0.08                 | 0.17                 | GOLF                                      | 0.13                 | 0.23                 |
| ESPN2 (ABC)                           | 0.12                 | 0.24                 | DISC                                      | 0.17                 | 0.25                 |
| LIFETIME (ABC, Hearst)                | 0.11                 | 0.23                 | COURT TV                                  | 0.08                 | 0.11                 |
| MTV (CBS)                             | 0.16                 | 0.29                 | TWC                                       | 0.07                 | 0.10                 |
| HIST (NBC, ABC, Hearst)               | 0.10                 | 0.19                 | CNN                                       | 0.33                 | 0.44                 |
| VH1 (CBS)                             | 0.07                 | 0.13                 | AMC                                       | 0.19                 | 0.23                 |
| NICK (CBS)                            | 0.23                 | 0.41                 |   |                      |                      |
| A&E (ABC, NBC, Hearst)                | 0.13                 | 0.22                 |   |                      |                      |
| FAM (ABC)                             | 0.14                 | 0.23                 |   |                      |                      |
| FX (Fox)                              | 0.23                 | 0.35                 |   |                      |                      |
| CMT (CBS)                             | 0.03                 | 0.05                 |   |                      |                      |
| BET (CBS)                             | 0.10                 | 0.15                 |   |                      |                      |
| USA (NBC)                             | 0.35                 | 0.47                 |   |                      |                      |
| COM (CBS)                             | 0.08                 | 0.11                 |   |                      |                      |
| DISNEY (ABC)                          | 0.62                 | 0.79                 |   |                      |                      |
| SPIKE (CBS)                           | 0.14                 | 0.19                 |   |                      |                      |
| BRAVO (NBC)                           | 0.12                 | 0.16                 |   |                      |                      |
| MSNBC (NBC)                           | 0.13                 | 0.15                 |   |                      |                      |
| FOOD (Scripps/Tribune)                | 0.02                 | 0.07                 |   |                      |                      |
| HGTV (Scripps)                        | 0.03                 | 0.08                 |   |                      |                      |
| <b>Total</b>                          | <b>4.57</b>          | <b>10.74</b>         | <b>Total</b>                              | <b>2.02</b>          | <b>3.35</b>          |
| <b>Percentage change</b>              |                      | <b>135.0%</b>        |   |                      | <b>65.8%</b>         |

Source: Kagan, *Economics of Basic Cable Networks* (2006) at 60-61; 97-103; 110; 125; 152-162; 167; 176; 192; 215; 221-228; 248; 266; 278; 287; 308-311; 341; 365-368; 395; 425; 440-443; 455; 464-467; 473-476; 482; 488-491; 512; "Fox News Triples its Pleasure," *Multichannel News*, October 23, 2006. Networks without license fees such as QVC, HSN, and CSPAN were excluded; data in 1997 column for TBS is from 1998.

Further, as shown by Table 6, the rise in per-subscriber license fees for broadcaster-affiliated cable networks in the last nine years has substantially exceeded the growth in expanded basic cable rates over a comparable nine-year period. While cable channel license fees have increased over the last five years, broadcaster-affiliated license fees have increased far more than the overall average, while fees for non-broadcaster affiliated channels have gone up less than average:

**Table 6**  
**Summary: Comparison of Per-Subscriber License Fee Increases**  
**For 40 Most Widely Carried Video Networks**  
**1997-2006**

|  | 1997 Total<br>Monthly Per-<br>Subscriber<br>License Fees (\$) | 2006 Total<br>Monthly Per-<br>Subscriber<br>License Fees (\$) | % Change |
|--|---|---|----------|
| <b>Broadcaster-<br/>affiliated<br/>networks</b>    | 4.57  | 10.74   | 135.0%   |
| <b>Non-broadcaster<br/>affiliated<br/>networks</b> | 2.02  | 3.35  | 65.8%    |
|  | <b>1996</b>   | <b>2005</b>   |          |
| <b>Expanded Basic<br/>Cable Rate</b>               | \$24.28   | \$43.04   | 77.3%    |

The same results are shown when comparing total license fee revenues for broadcaster-affiliated cable networks with non-broadcaster affiliated cable channels and total cable industry expanded basic revenues: broadcaster-affiliated cable networks enjoyed a rate of total revenue growth that far outpaced the aggregate revenue growth of non-broadcaster affiliated cable networks. *See* Table 7 on the next page.

**Table 7**

**Percentage Change in License Fee Revenue  
40 Most Widely Carried Video Networks  
1997-2006**

| <b>Broadcaster-Affiliated Network</b> | <b>1997 Fee Rev. (\$ mill)</b> | <b>2006 Fee Rev. (\$ mill)</b> | <b>Non-broadcaster Affiliated Network</b> | <b>1997 Fee Rev. (\$ mill)</b> | <b>2006 Fee Rev. (\$ mill)</b> |
|---------------------------------------|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| TV LAND (CBS)                         | 0.1                            | 98.3                           | TRAVEL                                    | 8.3                            | 87.4                           |
| SPEED (Fox)                           | 5.0                            | 143.3                          | ANIMAL                                    | 0.0                            | 86.4                           |
| ESPN (ABC)                            | 626.5                          | 3,199.5                        | CARTOON                                   | 34.0                           | 165.6                          |
| FOX NEWS (Fox)                        | 20.0                           | 285.3                          | TCM                                       | 34.4                           | 198.7                          |
| FOX SPORTS (Fox)                      | 318.0                          | 1,682.8                        | TNT                                       | 435.1                          | 960.1                          |
| CNBC (NBC)                            | 95.0                           | 280.0                          | TBS                                       | 211.5                          | 426.0                          |
| E! (ABC)                              | 54.7                           | 207.0                          | TLC                                       | 68.9                           | 177.1                          |
| SCI FI (NBC)                          | 40.6                           | 171.2                          | GOLF                                      | 17.0                           | 187.6                          |
| ESPN2 (ABC)                           | 70.7                           | 267.3                          | DISC                                      | 148.4                          | 271.8                          |
| LIFETIME (ABC, Hearst)                | 89.1                           | 250.2                          | COURT TV                                  | 30.7                           | 110.4                          |
| MTV (CBS)                             | 130.4                          | 312.5                          | TWC                                       | 54.0                           | 107.2                          |
| HIST (NBC, ABC, Hearst)               | 42.0                           | 203.6                          | CNN                                       | 280.9                          | 483.9                          |
| VH1 (CBS)                             | 51.0                           | 138.1                          | AMC                                       | 139.0                          | 239.0                          |
| NICK (CBS)                            | 191.9                          | 452.4                          |   |                                |                                |
| A&E (ABC, NBC, Hearst)                | 109.8                          | 236.5                          |   |                                |                                |
| FAM (ABC)                             | 117.0                          | 250.7                          |   |                                |                                |
| FX (Fox)                              | 87.9                           | 374.7                          |   |                                |                                |
| CMT (CBS)                             | 15.0                           | 49.0                           |   |                                |                                |
| BET (CBS)                             | 57.7                           | 148.0                          |   |                                |                                |
| USA (NBC)                             | 299.7                          | 504.3                          |   |                                |                                |
| COM (CBS)                             | 41.4                           | 119.2                          |   |                                |                                |
| DISNEY (ABC)                          | 359.7                          | 841.4                          |   |                                |                                |
| SPIKE (CBS)                           | 115.8                          | 207.1                          |   |                                |                                |
| BRAVO (NBC)                           | 39.1                           | 154.2                          |   |                                |                                |
| MSNBC (NBC)                           | 50.0                           | 151.6                          |   |                                |                                |
| FOOD (Scripps/Tribune)                | 5.6                            | 79.3                           |   |                                |                                |
| HGTV (Scripps)                        | 12.0                           | 87.3                           |   |                                |                                |
| <b>Total</b>                          | <b>3045.7</b>                  | <b>10,894.8</b>                | <b>Total</b>                              | <b>1462.2</b>                  | <b>3501.2</b>                  |
| <b>Percentage Change</b>              |                                | <b>257.7%</b>                  |   |                                | <b>139.4%</b>                  |

Source: Kagan, *Economics of Basic Cable Networks* (2003) at 53-54; Kagan, *Economics of Basic Cable Networks* (2006) at 97-103; 110; 125; 152-162; 167; 176; 192; 215; 221-228; 248; 257; 266; 278; 287; 308-311; 341; 365-368; 395; 425; 440-443; 455; 464-467; 473-476; 482; 488-491; 512; "Fox News Triples its Pleasure," Multichannel News, October 23, 2006. Networks without license fees such as QVC, HSN, and CSPAN were excluded; data in 1997 column for TBS is from 1998; data for TV Land is from 1999.

The data shown in these tables underscore the degree to which broadcast-affiliated cable networks have been a significant driver of rate increases for the expanded basic tier of cable service. Submissions from the broadcasters themselves acknowledge this phenomenon. Two years ago, in the SHVERA inquiry, CBS/Viacom noted that license fee increases attributable to cable networks launched via retransmission consent tie-ins increased from \$1.11 in 1997 to \$3.67 in 2004,<sup>15/</sup> an increase of approximately 231%. By contrast, expanded basic rates had increased by 57% during that same time period.<sup>16/</sup>

Broadcasters' insistence that their leverage in retransmission consent negotiations simply reflects the operation of market forces rings particularly hollow, since they are insulated from the workings of the marketplace by their status as recipients of scarce government-provided spectrum and their guaranteed placement on cable's most widely-purchased tier. In a market negotiation, a programmer insisting upon unreasonable cash-for-carriage demands would face the risk of being moved to a higher tier of service or dropped. The current scheme, however, shields the broadcast conglomerates from the consequences of their unreasonable cash demands, and shifts the burden of shouldering those demands onto basic cable consumers.

---

<sup>15/</sup> See Reply Comments of Viacom, *Inquiry on Rules Affecting Competition in the Television Marketplace*, MB Docket No. 05-28 (March 31, 2005), at 9-10; *id.*, "Response to Comments Regarding Economic Consequences of Retransmission Consent," attached to Viacom Reply Comments, at 10-11.

<sup>16/</sup> See Joint Cable Comments, *supra* n. 8, at Table H.

In short, the government-created retransmission consent scheme has been leveraged by the broadcast conglomerates to enable them to become the largest force in MVPD programming, and has fueled the continued expansion of the size and price of the most popular tier of MVPD service. The Commission's Video Competition Report should clearly reflect this reality.

Respectfully Submitted,



Bertram W. Carp  
Williams & Jensen  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20036

---

Bruce D. Sokler  
Christopher J. Harvie  
Fernando R. Laguarda  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
701 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 434-7300

*Attorneys for Coalition for Retransmission Reform*

February 15, 2007

Attachment

CC (via E-mail):

Heather Dixon  
Jessica Rosenworcel  
Bruce Gottlieb  
Rudy Brioché  
Chris Robbins  
Christina Chou Pauzé  
Seth Davidson, Mediacom  
Matthew Polka, ACA  
Marsha MacBride, NAB  
Anne Lucey, CBS Corp.  
Maureen A. O'Connell, Fox/News Corp.  
F. William LeBeau, NBC Universal  
Susan L. Fox, ABC/Disney  
Kathryn R. Schmeltzer, Sinclair