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

Re: Annual Assessment of the Status of Competition in the Market for the
Delivery of Video Programming, MB Docket No. 06-189

Dear Ms. Dortch:

NCTA wishes to respond to the July 17, 2007 submission by CBS Corporation, Fox Entertainment Group, NBC Universal, The Walt Disney Company and the attached paper, “The Effect of Retransmission Consent Negotiations On The Price and Quality of Cable Television Service” by David Leach LLC (“Leach”). We point out below that Leach includes erroneous assumptions about the Feb. 15, 2007 filing to which it responds. Further, because the numbers used to make its arguments cannot be verified, its conclusions should not be relied upon.

The Feb. 15, 2007, filing, by the Coalition for Retransmission Consent Reform (CRCR), addressed a simple, indisputable fact: the size and price of the cable programming service (also referred to the expanded basic tier) have increased in part because of the growth in cable networks associated with the big four broadcast networks. And the ability of the big four networks to launch some of these expanded basic tier networks is tied to the retransmission consent right, created by Congress in 1992 and held by the networks’ owned stations. Therefore, in assessing the role that retransmission consent plays in the price of cable basic and expanded basic service, the FCC needs to consider the costs associated with all the program services carried by big-four affiliated companies, not just what might be theoretically or factually attributable to the carriage of just the retransmission consent broadcast station.¹ Leach assumes

¹ NCTA made this point in “CABLE PRICING, VALUE AND COSTS”, NCTA White Paper (May 2003): “In recent years, many broadcast stations have insisted, as a condition of retransmission consent, that cable operators carry – on all cable systems owned by the cable operator – various cable networks that are also owned by the broadcaster.”

CRCR was addressing this last point alone and devotes the paper to its refutation. In doing so, it misses the point raised by CRCR.

The fact that a big-four retrans deal today can involve more than the broadcast station's carriage does not mean that cable networks affiliated with the big four are not valued by customers. Many rank among the most highly viewed and desired program services. And cable operators, in the early days of retransmission consent, welcomed non-cash arrangements, including the launch of a new program service that provided real value to viewers (and guaranteed ad purchases by the operator on the broadcaster's station), as a way to produce a win-win result in light of the rate regulation and retransmission consent provisions of the 1992 law. Our reading of what CRCR presented, contrary to the picture painted by Leach, is that it simply attempted to explain the full effect, including the full costs, of retransmission consent in 2007.

Having missed the point of the CRCR filing, Leach focuses on the wrong exercise, attempting to minimize retransmission consent costs to those attributable to the broadcast station carriage only. Leach does not use empirical evidence as to the amount of money attributed to the station carriage only (even though the networks he represents might know that number as to their stations in some markets²). Instead he does a calculation to come up with an *estimate* for that amount: 85 cents per subscriber. Without belaboring the shortcomings of his methodology,³ it is clear that this estimate is meant to include only the amount attributable to the carriage of broadcast stations and specifically excludes amounts paid for network-affiliated cable networks that are carried pursuant to retransmission consent agreements. As such, the reported numbers cannot shed accurate light on trends in basic and expanded basic service rates.

To conclude: Fifteen years of retransmission consent rights have resulted in a change in the video market – greater vertical integration between cable networks and broadcast networks across three of the top four broadcast networks (and all four until CBS and Viacom were split into two companies, although they remain affiliated under the FCC's attribution rules, since they are under common ownership and control). There are myriad factors that affect basic and expanded basic rates, and a fair inventory of those factors includes the results of retransmission

² Such a number may not exist in every retrans deal ; if an all-in price is paid for the broadcast station carriage rights as well as one or more program network license or other consideration (such as a spot ad purchase), there may in fact be no stand-alone retransmission consent fee.

³ In a nutshell, Leach's estimate is derived, first, by subtracting the cost of the top-40 networks carried by cable systems from the total cost of all programming carried by cable systems. This subtraction removes at the outset the costs of 27 cable networks that are affiliated with broadcast networks. This mistake is fatal. As noted above, part of the cost of broadcast affiliated cable networks must be included in any reasonable analysis of the cost of retransmission consent (for instance the retransmission consent deal may be an all-in arrangement that includes broadcast and non-broadcast services, ad purchases and other consideration). Next, the analysis assumes that the percentage of the remaining costs that is attributable to carriage of *broadcast* stations is the same as the ratio of the average number of broadcast channels carried (12.3) to the remaining number (64) of channels of video programming (excluding the top-40 networks). There is no basis to assume that the cost of *all* the remaining 64 channels – broadcast and non-broadcast --would be the same (e.g., PEG channels clearly cost less than Premium cable channels). And so the remaining share attributed to broadcast stations on a pro rata basis tells you nothing about what a cable operator may *actually* pay for those stations.

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consent negotiations. Leach is wrong to urge the FCC to conclude that retransmission consent's only effect relates to the fees assigned to broadcast channels. Instead, the FCC should conclude that retransmission consent fees may be paid as part of an overall arrangement that also includes licenses for networks on the expanded basic tier and other forms of consideration.

Respectfully submitted,

/s/ Daniel L. Brenner

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