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August 4, 2008

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: 07-42

Dear Ms. Dortch

On August 1, 2008, Robert Herring, Sr., CEO and Co-Founder of WealthTV, and Charles Herring, President and Co-Founder of WealthTV met with Elizabeth Andrión, adviser to Chairman Martin, and separately with Rudy Brioché, adviser to Commissioner Copps.

Messrs. Herring urged that the proposed reforms to the process for filing complaints be promptly put back on the Commission's agenda to ensure fair redress for independent programmers. A sheet summarizing the proposed reforms is filed herewith.

Messrs. Herring discussed the wholesale unbundling issue and updated each advisor on support for changes to the FCC's rules that would give cable operators more flexibility in purchasing programming and result in more room on MVPDs' platforms for independent programming.

Messrs. Herring called to the advisors' attention letters recently received from Members of the U.S. Senate reflecting interest in the process reform issue; copies of these letters are filed herewith. They also inquired about the status of the complaints that WealthTV has filed against Time Warner and other MSOs and learned that these complaints remain pending.

Very truly yours,

//signed//

Kathleen Wallman

1. Establishment of a Shot Clock

Once a Complaint, Answer, and Reply are filed, there is neither a timeline for when the FCC will respond to the complaint nor when final resolution will take place. Proposed change to Section 76.1302:

(h) Deadlines for Commission Findings and Decisions

- (1) The Commission shall make a determination as to whether a complainant has made out a prima facie case under this section within 30 days of the filing of a complainant's reply to a defendant's answer to a complaint, or the date on which such reply would be due if none is filed.
- (2) The Commission shall issue a final order resolving a complaint found to have made out a prima facie case no later than 6 months from the date of the initial filing of the complaint.

2. Definition of Prima Facie Case

Currently, there is no definition in the rules of what constitutes a prima facie case. Consequently, defendants argue their own versions of the standard to try to get independent programmers' complaints dismissed. This lack of clarity is a problem for independent programmers who are in litigation before the Commission, and for programmers who are contemplating litigation to vindicate their rights. Proposed change to Section 76.1302:

- (c) *Contents of Complaint* (5) "Prima facie case" means that the complainant shall put before the Commission evidence of the elements of the discrimination offense, supported as appropriate by documents and testimony by declaration or affidavit, that, if subsequently found to be true by a finder of fact, would be sufficient to establish a violation under this section.

3. Prohibition against retaliation

It is important that the Commission make it clear that MVPD discrimination in the form of retaliation against independent programmers for their lawful assertion of their rights will not be tolerated, whether before, during or after carriage. Proposed change to Section 76.1301:

- (c) *Discrimination*. [Add the following at the end of subsection c] A multichannel video programming distributor's refusal to deal, or refusal to negotiate in good faith, with a non-affiliated video programming provider because of the latter's assertion of rights or remedies under this Subpart shall constitute discrimination.

4. Stay During Litigation

Independent programmers who have carriage and are offering their programming to cable or DBS subscribers may suffer discrimination in the terms or conditions of carriage. For example, after the network has made substantial investments and commitments in programming, and entered into advertising and other arrangements, the MVPD may seek to favor affiliated programming by "re-tiering" the independent programmer to an expensive or unpopular tier with reduced viewership and revenue during or after an initial term of the carriage agreement. Proposed change to Section 76.1302:

Insert before existing subsection (g) and renumber accordingly:

- (g) *Stay during litigation*: Upon a complainant's filing of a complaint alleging discrimination with respect to a change in the terms or conditions of carriage, any such change shall be null and void and the terms and conditions of carriage shall revert to *status quo ante* for the duration of the pendency of the Commission's decision upon such complaint.

United States Senate

WASHINGTON, DC 20510-4304

Honorable Kevin Martin
Chairman
Federal Communications Commission
45 12th Street, SW
Washington, DC 20554

Re: Program Carriage Disputes

July 27, 2008

Dear Chairman Martin:

In November of last year I wrote to you expressing my concerns about disputes between cable operators and independent programmers over carriage terms. At that time, I expressed my belief that the existing dispute resolution processes are not encouraging the timely resolution of these disputes or providing the proper incentives for the parties to negotiate terms. I remain concerned about this issue, and also about the growing number of disputes between broadcasters and cable operators relating to retransmission authority. I believe that the Commission needs to take a comprehensive look at both of these areas and determine whether the existing dispute resolution processes are sufficient to address the conflicts.

Negotiation between the parties without unwarranted intervention is the most effective approach; however, the realities in the marketplace do not always provide the right incentives for parties to negotiate in good faith. In such cases, it is critical that we have a comprehensive dispute resolution process with a predictable and expeditious time table for resolution. I believe the availability of this kind of process to both parties will actually help facilitate negotiations by providing structure and certainty to resolutions when negotiations fail to produce an agreement.

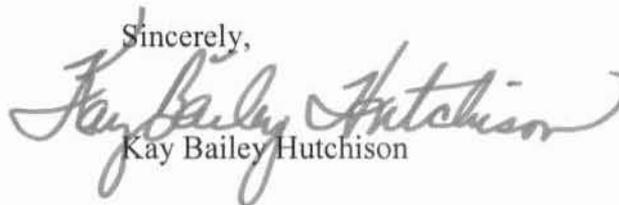
Congress has received some reports of broadcasters using so called "tying arrangements" to compel cable systems to carry multiple channels of programming as a condition for receiving a highly desirable channel, or threatening to withhold channels all together unless system operators agree to specific terms. Similarly, we have heard about the difficulties some independent programmers have in obtaining placement on cable, satellite, and telephone company systems, and the possibility that the system operators may have an ownership interest in competing programming. This latter concern raises concerns about fairness and conflicts of interest.

As member of the Committee on Commerce, Science, and Transportation, I would like a status report on the type and number of complaints received by the Commission involving carriage disputes between independent programmers and cable system operators, as well as

those between cable system operators and broadcasters relating to retransmission agreements. I would also like to know whether the Commission is considering any modified dispute resolution process.

I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Kay Bailey Hutchison". The signature is written in a dark ink and is positioned above the printed name.

Kay Bailey Hutchison

AMY KLOBUCHAR
MINNESOTA

COMMITTEES:
AGRICULTURE, NUTRITION,
AND FORESTRY
COMMERCE, SCIENCE,
AND TRANSPORTATION
ENVIRONMENT AND PUBLIC WORKS
JOINT ECONOMIC COMMITTEE

United States Senate
WASHINGTON, DC 20510

July 24, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Martin:

I am writing to you regarding the FCC's consideration of possible modifications to the agency's processes for resolving program carriage disputes in MB Docket No. 07-42. The agency should quickly complete its review and bring much-needed clarity and certainty to the program carriage rules.

Independent programming plays a vital role in providing a diversity of views and information and in promoting video competition. In order to ensure that consumers have access to independent programming, the statute is clear that unaffiliated providers of video programming must be protected from discrimination by multichannel video programming distributors (MVPDs), and that the FCC is to provide expedited review of any complaints made by unaffiliated programming providers.

Independent programming providers continue to express concern that continued uncertainties and delays create a chilling effect on their willingness to bring discrimination complaints, because of their fear of potential retaliation by MVPDs while a complaint remains pending. Meanwhile, I understand that the FCC is considering adopting mechanisms such as time clocks and further clarifying the elements of a *prima facie* discrimination case.

Without an effective and timely FCC process to decide complaints – including protections for those parties bringing the complaints – the integrity of any safeguards against program carriage discrimination is undermined. Accordingly, I urge the FCC to quickly resolve any outstanding issues raised with respect to its program carriage rules in order to ensure that consumers continue to reap the benefits of independent programming.

Sincerely,



Amy Klobuchar
U.S. Senator

Cc: Michael J. Copps, Commissioner
Jonathan S. Adelstein, Commissioner
Deborah Taylor Tate, Commissioner
Robert M. McDowell, Commissioner