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September 4, 2008

FILED/ACCEPTED
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Federal Communications Commission
Office of the Secretary

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

Re: *In the Matter of Establishment of a Digital Transition Quiet Period for Retransmission Consent*
Notice of Ex Parte Presentation Filed in Docket No. 07-148

Dear Ms. Dortch:

On Wednesday, September 3, 2008, Megan Delany of Charter Communications, Craig Rosenthal of Suddenlink Communications, Tom Larsen of Mediacom Communications Corporation, and the undersigned (together, the "Cable Petitioners") met in separate meetings with Amy Biankenship of Commissioner Tate's office and Nicholas Alexander of Commissioner McDowell's office to urge adoption of a retransmission consent "Quiet Period" surrounding the February 17, 2009 DTV transition. The discussions focused on ensuring that the timing of the proposed Quiet Period be sufficiently long to accomplish its intended objective. In particular, the Cable Petitioners advocated a start date early enough to incorporate the large number of retransmission consent agreements scheduled to expire by year-end 2008. The Cable Petitioners emphasized that consumers otherwise would hear about actual and potential broadcast channel deletions in a manner that would undermine the ongoing national DTV education initiative at a critical juncture. This education initiative is clearly of critical importance. As Chairman Dingell stated earlier this summer, "Consumer education is the key to a successful DTV transition, and its importance cannot be overemphasized."[1]

[1] Remarks of Rep. John Dingell, Wednesday, July 9, 2008, Proceedings on S. 2607 "DTV Transition Assistance Act," 110th Cong., 2nd Sess., 154 Cong. Rec. H6306-01, 2008 WL 2678606.

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The Cable Petitioners noted that the Commission has the statutory authority to adopt the proposed Quiet Period under Section 336 of the Communications Act. That provision, entitled "Broadcast Spectrum Flexibility," instructs the Commission to "prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity." 47 U.S.C. § 336(b)(5). The fact that Congress created a special "sweeps" exception to the must carry rules set forth under Section 614 of the Communications Act, *see* 47 U.S.C. § 534(b)(9), does not mean that the FCC is precluded from imposing any other timing restriction on retransmission consent negotiations. The Commission has express authority to adopt "regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent. . . ." 47 U.S.C. § 325(b)(3)(A). Safeguarding the digital transition is surely a compelling "public interest" basis for the Commission to act.

Moreover, the proposed Quiet Period would not actually deny broadcasters their retransmission consent rights. In the end, MVPDs still would be required to secure retransmission consent, and the resulting agreements presumably would require retroactive obligations so that each broadcaster is made whole. MVPDs and broadcasters would, of course, be free to continue negotiating during the Quiet Period. Given the short time involved (even under Cable Petitioner's request), the parties presumably would continue to negotiate and reach agreements. The objective of the proposed Quiet Period is not to secure negotiating leverage but to minimize consumer confusion regarding the digital transition and the role of MVPDs in continuing to deliver broadcast programming in a viewable format.

The Cable Petitioners noted that the Commission may adopt new rules without notice and comment when it finds that notice and comment would be "impracticable, unnecessary, or contrary to the public interest." 47 U.S.C. § 553(b)(3)(B). The Commission now faces an unprecedented communications event that warrants extraordinary action. Under the circumstances, it would be reasonable for the Commission to proceed under the existing *Further Notice of Proposed Rulemaking* in its already open *DTV Consumer Education Initiative* proceeding (MB Docket No 07-148).

With that said, the Cable Commenters made clear that they have no objection to a formal notice and comment period. Indeed, the Quiet Period Petition was originally filed in April to provide ample time to accommodate that process. There is still sufficient time to seek formal comment, but only if the Commission were to release its notice immediately, establish a single-cycle, abbreviated comment period, and act quickly upon receipt of any comments submitted.

The existing activity on this issue by NAB, DISH Network, the American Cable Association and others demonstrates that there already has been ample disclosure to, and participation from, the key stakeholders. Under the circumstances, an expedited comment period of two weeks would be more than sufficient.[2] It would be unfortunate if the proposed Quiet

[2] *Omnipoint Corporation v. FCC*, 2 CR 816 (D.C. Cir. 1996).

Period is stymied by procedural issues or rendered ineffective by adopting a start date subsequent to the date on which the majority of contracts are set to expire.

Please let me know if you have any questions.

Respectfully submitted,

Steven J. Horvitz

cc: Amy Blankenship, Commissioner Tate's Office
Nicholas Alexander, Commissioner McDowell's Office