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Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent	)	MB Docket No. 10-71

FILED/ACCEPTED

MAY 11 2010

Federal Communications Commission
Office of the Secretary

COMMENTS OF THE
OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

The Office of Advocacy of the U.S. Small Business Administration ("Advocacy") submits these comments to the Federal Communications Commission ("FCC" or "Commission") in the above-referenced docket.[1] On March 9, 2010, fourteen entities filed a petition for rulemaking requesting that the Commission "amend and supplement its retransmission consent rules."[2] The Commission now seeks comments on the petition, which argued that the Commission's current retransmission consent rules[3] do not account for the considerable changes in the video programming distribution market over the last twenty years. The petition includes suggested reforms meant to address these changes in the market, and to even the playing field for all participants.

[1] *In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, MB Docket No. 10-71 (rel. March 19, 2010); Motion for Extension of Time filed by the National Association of Broadcasters GRANTED April 2, 2010.
[2] *Media Bureau Seeks Comment on a Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, Public Notice, DA 10-474 (rel. March 19, 2010).
[3] 47 C.F.R. §§ 76.64-65. The underlying statutory provisions were added to the Communications Act of 1934 by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

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Small video providers and the trade associations that represent them have been in contact with Advocacy to voice their concerns about the impact of the current retransmission consent rules on their businesses' ability to survive and thrive. The comments below summarize these small business concerns.

I. Advocacy Background

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration ("SBA"), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act ("RFA") requires Advocacy to monitor agency compliance with the RFA.[4] Part of our role under the Regulatory Flexibility Act ("RFA") is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is not lost within the regulatory process.[5]

Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.[6] In addition, the RFA's purpose is to address the adverse affect that "differences in scale and resources of regulated entities" has had on competition in the marketplace.

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[4] Pub. L. No. 96-354, 94 Stat. 1164 (1980).

[5] See generally, Office of Advocacy, U.S. Small Business Administration, A Guide for Federal Agencies: How to Comply with the Regulatory Flexibility Act (2003), available at http://www.sba.gov/advo/laws/rfaguide.pdf.

[6] Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

Executive Order 13272 further gives small business owners a voice in the complex and often confusing federal regulatory process by directing the Office of Advocacy to work closely with the agencies to ensure that the agencies can properly consider the impact of their regulations on small entities.[7]

II. The Current Retransmission Consent Rules Have a Significant Impact on Small Businesses

For small providers of video service, having access to broadcast network programming is essential in order to remain competitive in today's market. Without the ability to offer this content to their customers, these providers will not be able to compete with their larger counterparts.

In order for these smaller businesses to be able to get the consent from the broadcasters to retransmit the content demanded by their customers, they need to be able to negotiate a fair and reasonable price, as the law requires.[8] Advocacy has learned that, because many of the smaller providers serve a smaller customer base, they are often left with little bargaining power when negotiating with the broadcast stations. The rules currently require parties to negotiate, in good faith, retransmission consent fees, or alternatively elect the must carry provisions, every three years.[9] Advocacy has heard from these small providers that during negotiations retransmission fees are often raised substantially, and offered in a "take it or leave it" manner. This threatens the ability of

[7] Exec. Order. No. 13272 at § 1, 67 Fed. Reg. 53,461 (2002).
[8] "The Commission shall consider ... the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable." Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 § 3(A) (1992).
[9] *See* 47 C.F.R. §§ 76.64 (f)(2). "Television and broadcast station and multichannel video programming distributors shall negotiate in good faith the terms and conditions of retransmission conseut agreements to fulfill the duties established by section 325(b)(3)(C) of the Act." 47 C.F.R. §§ 76.65.

the small providers to survive as they face going without the broadcast content or paying greatly increased fees, which often must be passed on to consumers, making it increasingly difficult to offer competitive prices.

Although few instances of broadcast stations pulling their signal during retransmission consent fee negotiations are reported in the news, Advocacy has learned that these are not isolated incidents. Broadcasters pulling their signal, or threatening to do so in order to influence negotiations, is a real concern for small video providers.

In order to alleviate these concerns, small business representatives have suggested that the Commission establish a formal process to ensure interim carriage in the event of a retransmission consent dispute, as well as the inclusion of a dispute resolution mechanism that would allow parties who have come to an impasse to have a forum to continue discussions and reach an agreement that remains "reasonable" within the meaning of Section 325.[10] As the Commission considers these and other recommendations, Advocacy urges the agency to ensure that any dispute resolution mechanisms that may be adopted employ a streamlined process to ensure that it is not cost prohibitive for smaller entities to participate meaningfully.

In addition, small businesses have also expressed concern about the "mandatory tying" of retransmission consent negotiations to the sale of other programming offered by the broadcast stations. Advocacy urges the Commission to be mindful of these practices as the agency considers this important issue and any possible reforms.

III. Conclusion

Because of the large number of small businesses that comprise the multichannel

[10] 47 U.S.C. § 325(b)(3)(A).

video programming distributor "MVPD" market, and the important role they play in creating a healthy, competitive marketplace, it is essential that the retransmission consent negotiations produce fair and reasonable results. In addition to creating jobs and fueling the economy, these small businesses serve as a touchstone of their local communities, often providing services to the most rural areas. They serve to increase competition and promote diversity in the distribution of video programming, one of the aims of the 1992 Act.

The Office of Advocacy is available to assist the Commission as it considers this important issue and can work with the Commission in any outreach to small businesses that may be needed. For additional assistance, please contact me or Kate Reichert of my staff at (202) 205-6972 or kate.reichert@sba.gov.

Respectfully submitted,

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cc:
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