

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS

Pioneer Communications (“Pioneer”), CT Communications (“CT”) and West Kentucky Rural Telephone Cooperative, Inc. (“WK”) (hereinafter referred to collectively as “Commentors”), by its attorneys and in response to the Federal Communications Commission’s (“FCC” or “Commission”) public notice requesting public comment,¹ hereby submit these comments in support of the Petition for Rulemaking (“Petition”) that initiated this proceeding. In that Petition, fourteen entities representing a diverse group of competing multichannel video programming distributors (“MVPDs”), public interest and trade groups joined together to request that the Commission take action to redress significant marketplace imbalances involving retransmission consent negotiations for the carriage of television broadcast signals.²

¹Public Notice, *Media Bureau Seeks Comment On A Petition For Rulemaking To Amend The Commission's Rules Governing Retransmission Consent*, DA 10-74 (rel. March 19, 2010).

² The Petitioners include Public Knowledge; DIRECTV, Inc.; DISH Network LLC; Charter Communications, Inc.; American Cable Association; New America Foundation; OPASTCO; Time Warner Cable Inc.; Verizon; Cablevision Systems Corp.; Mediacom Communications Corp.; Bright House Networks, LLC; Insight Communications Company, Inc.; and Suddenlink Communications (hereinfter referred to collectively as “Petitioners”).

I. BACKGROUND

Pioneer Communications is an affiliate of the Pioneer Telephone Association, Inc. (“PTA”) a rural telephone company³ that is cooperatively organized under the laws of the State of Kansas. PTA has been at the forefront of providing telecommunications services to an extremely rural service area in western Kansas since the early 1950s. Pioneer entered into the multichannel video arena in 1998, acquiring the cable television franchises in local communities from Classic Cable, and eventually merging those disparate systems into a single headend system served from Ulysses, Kansas via an area-wide fiber optical network backbone. Today the Ulysses headend provides more than 240 channels of programming, including both analog and digital services, to twenty-four community units located in 12 counties in western Kansas.

CT Communications is part of The Champaign Telephone Company, an independent telephone company serving the Champaign County/Urbana, Ohio community since 1898. CT Communications is a full-service, high quality telecommunications provider offering local phone service and calling features through approximately 7,400 access lines. Additional services include long distance, wired and wireless broadband Internet access, wireless telephone service and all-digital television. CT Communications was among the early pioneers of providing DSL-based video services over traditional twisted pair copper plan, having initiated this service in November, 2001. Today, CT Communications serves approximately 1000 video customers, primarily using IPTV technology in two television markets, Dayton, OH and Columbus, OH.

West Kentucky Rural Telephone Cooperative, Inc. is an incumbent telecommunications company providing local exchange, broadband, and video services to 18,000 households in

³ 47 U.S.C. § 153(37).

customers in rural western Kentucky and Tennessee. The company initiated video operations in late 2007, utilizing MPEG-4 format over copper telecommunications (broadband) facilities (IPTV). Since that time it has grown to over 3000 video customers in four television markets: Paducah, KY; Nashville, TN; Jackson, TN and Memphis, TN.

II. COMMENTS

The Petitioners have asked the FCC to take action to redress the significant imbalance that exists in the current regulatory regime governing retransmission consent negotiations. Specifically, the Petitioners have asked the FCC to establish a new dispute resolution framework for retransmission consent disputes that would take effect once the MVPD and broadcast station had reached an impasse in negotiations. To trigger the dispute resolution proceeding, which could take the form of compulsory arbitration, an expert tribunal, or some similar mechanism, the MVPD would need only show that the parties had reached an impasse and could not reach agreement on price or other terms of carriage. No showing of “bad faith” would be required. Additionally, the Petitioners request that the Commission take affirmative action to prevent broadcasters (and the group owners and broadcast networks that control the exercise of retransmission consent through affiliation and joint marketing agreements) from tying retransmission consent for the MVPD carriage of individual television broadcast stations to the carriage of multiple broadcast stations and/or non-broadcast programming services. Finally, the Petitioners request a rule that would allow an MVPD to continue to carry a particular broadcast station on the terms and conditions contained in its current and expiring retransmission consent agreement with that station during the pendency of the dispute resolution process. The Petitioners also request that the Commission consider the adoption of streamlined dispute

resolution procedures for smaller MVPDs that lack the resources to support arbitration or some other proceeding.

The Commentors fully support the relief sought by the Petitioners but believe that it doesn't go far enough to redress the market imbalance as it affects small, rural MVPDs. As accurately recounted in the Petition, retransmission consent negotiations are occurring under entirely different market conditions than those existing in 1992 when retransmission consent was added to the Communications Act. On the demand side, the MVPD landscape has become extremely competitive since the days when traditional cable systems controlled virtually the entire MVPD market. Changes in copyright laws have allowed direct-to-home satellite services to capture a significant share of that market and improvements in technology have allowed traditional landline telephone companies offer MVPD services over their existing network architectures.

At the same time the emergence of new players has increased the demand side of the retransmission consent equation, the supply side of the retransmission consent equation has been artificially constrained. Limits on broadcast ownership have been relaxed leading to increased group ownership within and across many television markets. Even in cases where stations remain independently owned, local marketing arrangements between and among television stations are used to require MVPDs to negotiate retransmission consent rights for multiple local stations as a single package. Thus, in a number of markets, one or two broadcasters can effectively control access to the retransmission consent rights to most if not all of the major network programming available in that market. While this may not present a significant problems for larger MVPDs that have a significant regional or even national audience base, it creates an extreme inequality of

bargaining power in favor of stations/networks that are negotiating with smaller MVPDs, such as the Commentors, that serve only a small fraction of a station's market audience.

Even though retransmission consent was enacted to give local broadcasters control over the use of their signal, and *not* the programming contained on that signal, the major networks have all but forced local stations to cede control over retransmission consent through restrictive terms contained in their network affiliation agreements that prohibit stations from granting retransmission consent to an MVPD located outside of the broadcaster's television market, except in very narrowly limited circumstances. Powerful station group owners have used local marketing agreements to similar ends. The result is that availability of particular broadcast programming is artificially constrained and small MVPDs, left with no alternative sources for popular network programming, are forced to negotiate retransmission consent rights on terms dictated by the network, not the individual local station, and on what is essentially a take it or leave it basis.

As pointed out in the Petition, consolidation in the broadcast industry has led to tremendous concentration of power in the four major national broadcast networks.. Additionally, a number of station group owners have used their clout in particular markets to enter in marketing arrangements that allow them to negotiate retransmission consent agreements for weaker stations in their market that they do not own. These powerful media conglomerates routinely use their substantial market power to disadvantage smaller MVPDs entering the video distribution market in competition with established larger established providers, such as cable television or direct-to-home satellite. Unlike cable affiliated programming services, which are subject to program access restrictions and obligations under Section 628 of the Communications

Act and FCC regulations, programming services affiliated with the major terrestrial broadcast services operate free from such restrictions.

Retransmission consent has allowed the major television networks and powerful station group owners to use their substantial market power to require new entrants into the video distribution market in competition with established cable companies to pay hefty and ever increasing retransmission consent fees, often in cases where no fees or substantially lower fees are charged to the incumbent cable operator. Through bundling, tying, forced carriage on basic and other requirements of retransmission consent, broadcasters control a substantial number of the services carried on independent cable systems and do not hesitate to use this market power when dealing with small MVPDs. The irony is that small rural MVPDs, such as the Commentors, that compete with larger incumbent MVPDs for customers are disadvantaged not only by the higher network costs inherent in serving rural areas, but also by higher retransmission consent fees demanded by stations/networks who know full well that they can survive the temporary loss of a small fraction of their television audience far better than a new entrant into the video marketplace can survive without the ability to offer its customers the “must have” programming of popular local broadcast stations..

For these reasons, Commentors believe that any attempt to redress the marketplace imbalance that has developed must prohibit broadcasters from using their substantial bargaining power to discriminate against smaller MVPDs *vis a vis* the terms and conditions for retransmission consent granted to their larger MVPD competitors. To this end, retransmission consent agreements routinely contain confidentiality clauses and nondisclosure provisions designed to keep discriminatory treatment from coming to light and to prevent MVPDs from

informing even their own customers why basic rates must be raised to cover newly imposed or increased retransmission consent fees attributable to specific stations. The Commentors believe that a Commission rule prohibiting such non-disclosure provisions and practices, combined with general non-discrimination requirement should be included in any actions the Commission takes to redress the market imbalance described in the Petition.

III. CONCLUSION

It is very rare that competitors can agree on any major regulatory initiative. The fact that the Petition for Rulemaking has received such broad support by large and small cable companies, large and small telephone companies, direct to home satellite service providers and public interest groups is itself eloquent testimony to the existence of a very real problem and the need for Commission intervention to craft a thoughtful, fair and effective solution that will let the market function as it should.

Respectfully submitted,

**PIONEER COMMUNICATIONS
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WEST KENTUCKY RURAL
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