

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter” or the “Company”) hereby submits these brief Reply Comments in the above-captioned proceeding. Charter participated in the joint Petition for Rulemaking that triggered this proceeding. Charter has now reviewed the submitted Comments and believes they confirm that the public interest would be well served by the Commission enhancing its retransmission consent oversight. Accordingly, Charter urges the Commission to continue scrutinizing retransmission consent activities and to consider adopting the various remedial measures advanced in the Petition for Rulemaking and the subsequent MVPD Comments.

Not surprisingly, the Comments submitted by various broadcasters invariably insist that retransmission consent is operating properly and that the Commission lacks a logical basis to intervene. In fact, the broadcasters repeatedly contend that retransmission consent today remains a relative bargain. The Opposition of the Broadcaster Associations (representing NAB, as well as the affiliate associations of ABC, CBS, FBC, and NBC), for example, includes an entire section entitled, “Retransmission Consent Fees are Modest In Comparison To The License Fees That MVPDs Pay For Far Less Popular Programming.”¹ The Broadcaster Associations claim:

¹ Opposition of the Broadcaster Associations at 33-39.

MVPDs already pay ten times more than these estimated retransmission consent fees in monthly subscriber fees for the Top 4 most heavily viewed cable networks, even though those cable networks produce only a little more than a third of the audience that the Big 4 Networks attract. If anything, retransmission consent fees should be expected to be at least comparable to, if not greater than, the fees paid for those cable networks. Indeed, a strict viewing comparison, without more, would suggest retransmission consent fees of as much as \$3.50 per subscriber per month for each station affiliated with a Big 4 Network.²

The Broadcaster Associations are essentially advocating a \$14.00 increase in the costs of the basic service tier! Based on that reasoning, broadcasters understandably are anxious to avoid Commission intervention.

The Broadcaster Associations are not alone in arguing that retransmission consent fees should increase far beyond their current “modest” level. Virtually every broadcaster Comment advances this argument in some form. The Opposition of the Local Television Broadcasters, for example, reiterates that “cable operators paid *more than 10 times the per-subscriber fee* for cable networks that were *less than half as popular* as the broadcast network channels.”³ It then concludes, “Rates for retransmission consent have been depressed below fair market value in the past, and are only beginning to move towards fair.”⁴

None of the broadcasters deny that retransmission consent fees have increased at a dramatic pace in recent years as a result of a changed marketplace, and none of them deny that retransmission consent fees are likely to increase at a dramatic pace in the future. In short, while attempting to allay possible Commission concerns, these broadcasters unintentionally confirm that there is cause for grave concern. Broadcasters have now put the Commission on notice that they will be seeking dramatically higher retransmission consent fees prospectively.

² *Id.* at 38.

³ Opposition of the Local Television Broadcasters at 9.

⁴ *Id.* at 10.

The real question is this proceeding is *not* whether retransmission consent has operated satisfactorily in the past, but how it will operate in the future. The Petition for Rulemaking that initiated this proceeding was prompted by a recognition that a changed marketplace is already transforming retransmission consent in a manner that threatens to grossly inflate future MVPD costs and associated subscriber rates. The broadcasters typically belittle the cost increases MVPDs have experienced to date, but they ultimately confirm the ominous cost trajectory underlying the Petition for Rulemaking. The more they argue that the broadcast industry must rely increasingly on retransmission consent fees to survive, the more they demonstrate the need for the Commission to seriously explore the operation of retransmission consent.

Charter urges the Commission not to be dissuaded by broadcaster assertions that the Commission lacks any legal basis to intervene in retransmission consent negotiations. These assertions either ignore or improperly construe Section 325(b)(3)(A) of the Communications Act, which expressly instructs the Commission to regulate the exercise of retransmission consent in a manner consistent with the Commission's obligations to ensure reasonable rates for basic service. Section 325(b)(3)(A) plainly provides:

The Commission shall...establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent [and] shall consider in such proceeding 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 obligations...to ensure that the rates for the basic service tier are reasonable.⁵

Notwithstanding broadcasters' claims to the contrary, this statutory provision clearly establishes Commission oversight regarding the exercise of retransmission consent and clearly

⁵ 47 U.S.C. § 325(b)(3)(A).

