



SETH A. DAVIDSON
(202) 939-7924
SDAVIDSON@FH-LAW.COM

August 12, 2010

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Atwell Baker
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker:

I am writing today on behalf of Mediacom Communications Corporation to offer additional thoughts and perspective on the suggestion made by some broadcasters that the Commission adopt new "notice" rules as an alternative to real reform of the retransmission consent regime. While Mediacom opposes the adoption of new or additional "notice" requirements as a substitute for meaningful changes in the rules governing the exercise of retransmission consent, we believe that the Commission should consider adopting certain notice-related restrictions to prevent broadcasters from targeting a multichannel video programming distributor's customers with inflammatory messages that are intended not to educate the public but rather to influence the outcome of retransmission consent negotiations.

As Mediacom has previously stated (in reply comments filed jointly with Suddenlink on June 3, 2010), the broadcasters' proposal for new "notice" rules is mere window dressing that will not protect consumers from the broadcasters' use of fear mongering as a negotiating tactic but instead will simply formalize and legitimize such tactics. More specifically, it is becoming a common practice in retransmission consent negotiations for a broadcaster to conduct or threaten to conduct a media blitz directed at the MVPD's customers unless the MVPD capitulates to the broadcaster's demands. The media campaign typically includes use of radio, television and print ads, "crawls" during the station's normal programming, and messages on the station's Website. MVPD customers are bombarded with messages saying they face the imminent loss of access to the broadcaster's signal. Rather than being an honest effort to convey accurate and useful information to consumers on a timely basis, the messages are alarmist in tone

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Atwell Baker
August 12, 2010
Page 2

and blame the MVPD for the situation, ignoring the fact that the station has the power to prevent a service interruption by extending the expiring agreement while negotiations continue... The goal is to create pressure on the targeted MVPD by frightening its customers into changing service providers even before a shutoff is certain to occur.

Typically, the station's messages become more frequent and more foreboding as the deadline approaches, resulting in growing subscriber anxiety and accelerating losses to competing service providers. In addition, broadcasters often manipulate the deadline when consent will be withdrawn through temporary extensions of the expiring contract so that consent will end on the eve of a major television event that it will broadcast, such as an NFL playoff game, the Super Bowl, a college bowl game of special local interest, a special event like the *Oscars* or an important episode in a network series (*e.g.*, the finals of *American Idol*). All the while, the broadcast station continues to be carried by the cable company during the period leading up to signal termination, so there is no comparable impact upon the broadcaster's revenues. As the Congressional Research Service report on retransmission consent concluded:

There often is a timing element to must-have programming that programmers can use strategically in their negotiations with distributors. Television households are far more likely to switch MVPD providers if they fear the loss of particular time-sensitive programming, such as the Super Bowl, the Olympic Games, the National Football League season, or the finale of *American Idol* or some other extremely popular series. **Some programmers have effectively timed their negotiations with distributors to take advantage of such program schedules. In some cases, programmers with the rights to sports events have agreed to month-to-month extensions of lapsed agreements with MVPDs until a time when a key sports event was imminent and then used the threat of lost access to that sports event as leverage to complete a more favorable distribution agreement with the MVPDs.**¹

To add insult to injury, the broadcaster is using the MVPD's own facilities to convey its threatening messages to the MVPD's subscribers and thereby induce those subscribers to switch to a competing service provider.

The broadcasters of course claim that all that they are trying to do with their media campaigns is inform the public about the status of retransmission consent negotiation and provide consumers with information about alternative ways that they can receive a station's

¹ C. Goldfarb, *Retransmission Consent and Other Federal Rules Affecting Programmer-Distributor Negotiations: Issues for Congress*, Congressional Research Service, at CRS-26 (July 9, 2007 (internal footnotes omitted) (emphasis supplied).

signal if a shutdown occurs. But the' real goal of these campaigns is to interfere with the MVPD's relationship with its own subscribers in order to increase the broadcaster's negotiating leverage. Mediacom recently experienced an extreme version of this tactic. A broadcast group with which Mediacom had retransmission consent agreement that was scheduled to expire at the end of the month not only began running crawls on the stations covered by that agreement, but also on another co-owned station that was covered by a separate retransmission consent agreement that was not scheduled to expire for more than five months. The broadcaster claimed that it was running the crawls on the latter station in order to keep viewers informed of the status of the station's agreement with Mediacom and to avoid confusion. But in fact, the clear motivation for running the crawls so far in advance was to create additional pressure on Mediacom with respect to the agreement whose expiration was imminent.

Cable operators already are required under the Commission's rules to give their customers 30 days advance notice before a retransmission consent agreement is scheduled to expire. Thus, it is not an "information gap" that is harming consumers in retransmission consent disputes. To the contrary, the harm comes from an information "overload" that can leave consumers scared, confused, and even tricked into making a costly and often unnecessary decision to drop their existing MVPD service and to subscribe to a new provider or purchase and install over-the-air reception equipment. The fact that their messaging causes consumers to make hasty, ill-advised decisions is of no concern to the broadcasters – they are not the ones paying for antennas and digital-to-analog converters needed for over-the-air reception or picking up the direct and indirect costs that consumers incur when they change service providers.

Under the circumstances, what is needed, if anything, is the adoption of a rule that restrains broadcasters from abusing their public trust during retransmission consent negotiations. While Mediacom is sensitive to the constitutional limitations on regulating speech, there is ample precedent for the Commission's having prescribed the specific content of messages of public importance regarding communications service. For example, during the run-up to the digital transition, the Commission promulgated and enforced rules mandating both the frequency and specific text of messages that broadcasters, MVPDs, and others were required to deliver to consumers about the transition.

With that precedent in mind, Mediacom suggests that, in addition to other, more substantive steps that have been proposed to reform the retransmission consent regime so that it is not harming consumers (including, but not limited to, an interim carriage requirement), the Commission should consider adopting a standard text to which both MVPDs and broadcasters would have to adhere in their messaging to consumers. Such text would eschew emotional appeals suggesting that a particular party is threatening to deny consumers access to a station's signals and would simply provide consumers with accurate information about the current status of retransmission consent negotiations and would direct consumers to contact their own MVPD directly for additional information. Such rules also should bar other MVPDs serving the same area as the targeted MVPD from publicly suggesting prior to the actual expiration of a

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Atwell Baker
August 12, 2010
Page 4

retransmission consent agreement that consumers need to switch providers in order to avoid losing access to a particular signal or signals.

Mediacom looks forward to the prompt initiation of formal rulemaking process to consider these and other ideas for providing real relief to consumers from broadcaster abuse of the retransmission consent process.

Sincerely,

A handwritten signature in black ink, appearing to read "Seth A. Davidson", with a long horizontal flourish extending to the right.

Seth A. Davidson
Counsel for Mediacom Communications Corporation

cc: Marlene Dortch

210941_1.DOC