



NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

*The Voice of Rural Telecommunications*

www.ntca.org

September 16, 2010

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

***Ex Parte Notice***

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

Dear Ms. Dortch:

The National Telecommunications Cooperative Association (NTCA) is filing this letter, in the above proceeding, on behalf of Clear Creek Mutual Telephone Company, a NTCA member and rural telephone company that offers cable television service to subscribers in Oregon.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2020.

Sincerely,  
/s/ Jill Canfield  
Jill Canfield  
Senior Regulatory Counsel  
Legal and Industry

JC:rhb

Attachment: Clear Creek Mutual Telephone Company  
Written ex parte response, 9.16.10

cc: Mitchell Moore, President  
Clear Creek Mutual Tel. Co.



Clear Creek  
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September 16, 2010

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, DC 20554

Re: Written Ex Parte Response

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

Dear Ms. Dortch:

On August 30, 2010, Fisher Communications, Inc. ("Fisher") filed an ex parte letter in the above-referenced proceeding in which it accused Mr. Keith Galitz, President of Canby Telecom, of making false statements and flagrantly misrepresenting the facts regarding its retransmission negotiations.

I am President and General Manager of Clear Creek Mutual Telephone Company ("Clear Creek"), a rural telephone company that offers cable television service to subscribers in Oregon. My own experience with Fisher can only be described as difficult. Whether the tactics used by Fisher were heavy handed or whether the system used today to negotiate retransmission consent was flawed, the end result is a process that resulted in significant price increases and inconvenience for our rural customers. Of all the stations Clear Creek negotiated with during this retransmission consent cycle, KATU, owned by Fisher, was the only broadcaster that went "dark" in Clear Creek's service territory. Our customers were unable to view any ABC network content for more than a week in January 2009.

During the period in question I was the Clear Creek executive with responsibility for retransmission consent negotiations. The timeline of events is as follows:

1. On September 29, 2008, Clear Creek received notification of Fisher's intent to negotiate retransmission consent for station KATU (the ABC affiliate in the DMA). Prior to this time, KATU opted for "must carry" status.
2. Clear Creek, in an attempt to address retransmission consent negotiations in a timely manner, engaged legal counsel on October 9, 2008 to represent our interests.

3. Clear Creek received Fisher's draft retransmission consent agreement for KATU, dated November 17, 2008, by certified mail on November 24, 2008.
4. Clear Creek received a letter dated December 3, 2008 from Randa Minkarah of Fisher indicating that "Univision Communications will be conducting the retransmission consent negotiations on behalf of each Fisher Station" and listed Gretchen Barnes from Univision as the negotiation contact.
5. Interpreting that to mean KATU, Clear Creek's counsel attempted to reach Gretchen Barnes telephonically several times during early-to-mid December 2008.
6. On December 18, 2008 Clear Creek's counsel contacted Randa Minkarah to find out if she was the correct contact for negotiations with KATU, and she indicated that she would be negotiating with Clear Creek.
7. The terms of Fisher's retransmission consent agreement were unacceptable, and Clear Creek's counsel prepared a redlined mark-up of the agreement.
8. On December 29, 2008 Clear Creek's counsel sent Randa Minkarah a redlined mark-up of the draft retransmission consent agreement for review and proposed a counter-offer to Fisher's initial price.
9. On December 30, 2008 KATU forwarded its first counter offer, which was unacceptable to Clear Creek.
10. Fisher and Clear Creek's counsel engaged in numerous communications on December 31, 2008, but ultimately Fisher rejected Clear Creek's offer. Fisher offered no commentary regarding the majority of the suggested contract revisions contained in Clear Creek's mark-up of the retransmission consent agreement. Clear Creek's counsel requested temporary retransmission consent for KATU while the negotiations continued, but as explained below, Fisher would not grant temporary retransmission consent until an agreement on price was reached.
11. Shortly before midnight on December 31, 2008, Clear Creek asked Fisher if they should remove station KATU from its channel line-up. Fisher responded that Clear Creek "may" remove KATU. Upon inquiry as to whether Fisher wanted the KATU signal pulled while negotiations

continued, Fisher responded that they “would be happy to continue negotiations,” but “unless we can reach agreement on economic terms by midnight tonight, Clear Creek will no longer have Fisher’s retransmission consent for carriage of KATU.”

12. Clear Creek immediately removed station KATU from its channel line-up on January 1, 2009, and sent notice to its local franchising authority and its customers.
13. Fisher and Clear Creek’s counsel engaged in additional communications, but by January 5, 2009 Fisher and Clear Creek had not reached an agreement.
14. Congressman Schrader’s office contacted KATU on behalf of Clear Creek’s subscribers on January 7, 2009, encouraging resolution of the matter.
15. Clear Creek sent a letter on January 8, 2009 to Colleen Brown, President of Fisher Communications, requesting that they return to the negotiation table, and restore their signal to reduce the impact on the television viewing public.
16. On January 9, 2009, Clear Creek and Fisher agreed to the basic terms of the agreement and Clear Creek signed a temporary retransmission consent agreement; Clear Creek immediately restored KATU to its channel line-up.
17. A final retransmission consent agreement was fully executed on January 16, 2009.

The terms of the agreement with Fisher and five other local broadcast stations prevent Clear Creek from disclosing any price information. However, Clear Creek’s costs for basic cable programming increased 252% in 2009 due solely to these retransmission negotiations. This resulted in a significant rate increase for our basic cable tier of service. Clear Creek incurred considerable expense during these negotiations, one of which took 17 1/2 months to complete.

Our negotiations with Fisher Communications are an illustration of what is wrong with the retransmission consent rules. Fisher employed negotiation techniques that it felt would allow them to receive the greatest gain. Were these heavy handed techniques? Did they exert undue pressure? Or is the system by which we negotiate these agreements flawed? I would suggest it is a flawed system that permits a broadcaster to leverage a brief negotiation period combined with the

threat of withholding their signal to their advantage. In this system a broadcaster can demand that smaller cable operators pay higher per-customer fees than other larger operators in the same market.

Fisher has been singled out in these comments in part as a reaction to Canby's experience described in their comments, and in part because they employed the most aggressive techniques in this market. Fisher completed deals with the large MSO's serving Oregon well in advance of the retransmission consent deadlines. The smaller operators were approached much later, compressing the negotiation period. KATU was the only broadcaster in the DMA that refused to permit carriage of their signal during continuing negotiations. Of the retransmission deals for the 2008 cycle, Clear Creek was able to sign with only one broadcaster prior to the December 31, 2008 deadline. This was with KOPB, a public station under the nationally negotiated NCTA/PBS agreement. All other broadcasters in the market gave consent for continued carriage through the completion of a final retransmission consent agreement. All negotiations, and the majority of the agreements, were signed within weeks of the extension with two exceptions extending to December, 17, 2009 and the final signature obtained on March 19, 2010.

Clear Creek joins those parties requesting that the Commission amend and reform its retransmission consent rules. The current rules do not account for changes in the video programming distribution market. The broadcasters hold all of the power in the negotiating process, using the threat of turning off the signal to force small independent cable operators to accept inequitable fees and contract terms. Reforms including dispute resolution mechanisms and a period of mandatory interim carriage during active negotiations are essential. When small independent cable operators are forced into disproportionately higher per-subscriber fees to carry a broadcast signal, the result is increased costs for consumers and reduced competition. Without this reform it is ultimately the rural consumer who suffers.

Sincerely,



Mitchell Moore  
President