



February 3, 2011

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication, GN Docket Nos. 09-47, 09-51, 09-137, 10-25, and 10-66; MB Docket No. 10-71

Dear Ms. Dortch:

Yesterday, Jane E. Mago and the undersigned of the National Association of Broadcasters (NAB), Chris Cornelius of Barrington Broadcasting Co., LLC, David Barrett of Hearst Television, Inc., and Marci Burdick of Schurz Communications, Inc. met with Eddie Lazarus and Rick Kaplan of the Office of Chairman Genachowski and William Lake and Rebecca Hanson of the Media Bureau.

During the meeting, we discussed legal issues affecting broadcasters' continuing role as the leading providers of local news and information, entertainment, and other innovative content and services. First, with regard to spectrum policy, we noted the importance of both broadcasting and broadband to America's communications future. In particular, we explained that spectrum policy should be based on facts, including a thorough inventory of spectrum. We stated that knowing what spectrum is being used, and how, will best guide the Commission's efforts to develop an appropriate spectrum plan for the future.

We explained that although broadcasters are not opposed to incentive auctions, we are concerned that broadcasters who choose not to participate in the auctions must be held harmless. The Commission's spectrum policy must permit broadcasters to offer new and innovative services to the public now and in the future. These public interest innovations include new channels, mobile DTV, possible 3D television, more coordination with over-the-top television services, and broadband supplement solutions that could substantially lessen the load on wireless and wireline broadband networks during peak times. We expressed concerns that repacking could increase interference or reduce the service areas of broadcasters that want to continue providing free local television service. We stated that repacking and/or stacking

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stations also could severely hamper the ability of stations to innovate and offer new services to viewers.

Finally, we discussed how the imposition of new spectrum fees could financially cripple many local broadcasters. We discussed how smaller, independently-owned stations – the new voices that the Commission has encouraged for decades – would be especially vulnerable to such fees.

We also discussed the Commission's anticipated notice of proposed rulemaking on retransmission consent. We emphasized that such a notice should approach retransmission consent issues in a balance manner, and should not proceed from the incorrect assumption that the current system is not working. We emphasized that any notice should ask questions about the roles that both broadcasters and pay television providers play in the retransmission consent marketplace. In keeping with this goal, we distributed the attached list of examples of questions the Commission could raise as part of a notice of proposed rulemaking. We also discussed the current retransmission consent system to the ability of broadcast outlets to invest in local news, emergency information and public affairs content. We noted that changes proposed by the pay television industry would tilt the market-based retransmission consent system in their favor, harming competition and local stations' service to their communities.

Finally, we discussed the need for ownership regulations that reflect current marketplace realities. In particular, we discussed the importance of expanding opportunities for common ownership of local television stations and newspaper/broadcast cross-ownership in small to mid-sized markets, which are bearing the brunt of the economic challenges facing all broadcasters. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Erin L. Dozier
Senior Vice President and Deputy General Counsel
Legal and Regulatory Affairs

cc: Eddie Lazarus, Rick Kaplan, William Lake, Steven Broeckaert, Eloise Gore, Rebecca Hanson, Mary Beth Murphy, Nancy Murphy, Diana Sokolow

Potential Questions for Retransmission Consent Rulemaking Notice

The Federal Communications Commission (FCC) should issue a fair and balanced NPRM that does not assume that the retransmission consent process is broken and asks questions about the roles of both broadcasters and multichannel video programming distributors (MVPDs). Potential questions to be raised in an FCC Notice include:

1. What is the impact of early termination fees and/or other MVPD policies on consumers' option to terminate service so as to watch television over-the-air and/or change MVPD service providers in the event of a retransmission consent carriage dispute? Should consumers be entitled to a rebate, credit or other decrease in their bills if broadcast channels are removed from their lineup?
2. MVPDs seeking to change the retransmission consent regime have argued that changes are needed to protect consumers from rate increases. Are there other modifications to our rules that would help control consumer rates?
3. We tentatively conclude that our cable consumer notification requirements should be applied on a technologically neutral basis so that all MVPDs (cable, DBS, and telco) must provide notifications of changes in service. We seek comment on this tentative conclusion. Would consumers benefit from such a change to our notification rules?
4. In many markets, a single MVPD controls the majority of MVPD households. Where a single MVPD controls a large segment of the market, a broadcaster's ability to reach substantial numbers of MVPD subscribers depends upon successful negotiations with that operator. How does MVPD market share at the local, regional, and/or national levels impact bargaining power in negotiations for retransmission consent?
5. Many MVPDs own programming networks that compete with broadcast stations for advertising dollars, viewers, and compensation from other MVPDs. How does vertical integration of the MVPD distribution platform and programming networks impact retransmission consent? Does vertical integration impact MVPD incentives to fairly negotiate? Does it create an incentive to discriminate against broadcasters during retransmission consent negotiations? Does less compensation for carriage of broadcast signals translate into higher fees for MVPDs' vertically integrated programming networks?
6. The network nonduplication and syndicated exclusivity rules do not establish exclusive rights; rather, they establish an enforcement mechanism for rights privately negotiated. Indeed, in some ways, the rules are more limited in scope than what may be privately negotiated, because they recognize exclusivity only within a specified geographic area and contain exceptions for significantly viewed signals. Further, exclusive retransmission consent agreements are prohibited. How should this affect our analysis of proposals to modify these rules? How are nonduplication

and syndicated exclusivity different from the exclusive rights or other arrangements enjoyed by other programmers and/or MVPDs (e.g., DIRECTV's NFL Sunday Ticket)? Should the Commission examine other exclusive arrangements as well?

7. Although information about television broadcast station ownership and operations is readily available from FCC electronic databases, there is a comparative dearth of information about MVPD ownership, operations and geographic coverage. If stations are unable to learn relevant details about MVPD operations in their markets, they may face difficulties making timely must carry/retransmission consent elections. To ensure that broadcasters can comply with their statutory obligation to make a carriage election, should we require MVPDs to periodically file data on their ownership (including a mailing address for the receipt of election notices), operation, and geographic coverage? Would this promote efficiency in negotiations and help avoid delay in starting the negotiation process?