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February 17, 2011

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB-204  
Washington, DC 20554

**Re: Petition for Rulemaking to Amend the Commission's Rules Governing  
Retransmission Consent, MB Docket No. 10-71  
Notice of Ex Parte Presentation**

Dear Ms. Dortch:

On February 17, 2011, Thomas Larsen of Mediacom Communications Corporation, Craig Rosenthal of Suddenlink Communications, and the undersigned met with Dave Grimaldi, legal advisor to Commissioner Clyburn. The purpose of the meetings was to discuss the forthcoming Notice of Proposed Rulemaking ("NPRM") to reform the Commission's rules governing retransmission consent.

In the meeting, Mr. Larsen and Mr. Rosenthal briefly described the recent experiences of their companies in negotiating retransmission consent agreements and, in particular, how certain practices engaged in by the "Big Four" networks were driving up retransmission consent costs and otherwise harming consumers. Examples of such practices cited by Mr. Larsen and Mr. Rosenthal included: network affiliation agreements that demand fifty percent or more of an affiliate's retransmission consent consideration (including a share of consideration in the form of advertising buys); reducing the amount of VOD content supplied by a network to a system where the system was promoting such content as an alternative for subscribers who were being denied access to the local affiliate's signal; pressuring a significantly-viewed affiliate not to allow its signal to be carried by a system where the local affiliate was denying the system retransmission consent; and attempting to limit an affiliate's right to grant retransmission consent so that the cable operator would only have carriage rights to the network's programming on a month-to-month basis.

We pointed out that both the legislative history of the 1992 Cable Act and contemporaneous statements by the broadcast industry made clear that retransmission consent was a communications law right in a station's signal, not a copyright law right in the programming and that it was intended to be controlled by and exercised for the benefit of local stations not national networks. Indeed, the Commission's rules expressly require that local stations grant

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retransmission consent for “the entirety of the program schedule” and that to the extent a broadcaster can “bargain away” its retransmission consent rights, it must do so with respect to the retransmission of the entire signal not to the retransmission of individual programs. We urged that the forthcoming NPRM solicit comment on whether network/affiliate practices relating to retransmission consent are in the public interest and, in particular, whether certain practices, such as entering into agreements that are inconsistent with the requirement that retransmission consent apply to the entirety of the signal, should be deemed per se violations of the duty to negotiate in good faith. We also suggested that to the extent a station is allowed to bargain away its retransmission consent rights for local or out-of-market carriage of its signal, the recipient of those rights should be subject to an obligation to negotiate in good faith with MVPDs.

In addition to discussing network/affiliate issues as they relate to retransmission consent, Mr. Larsen and Mr. Rosenthal pointed out that 2011 is an “election” year and that both of their companies have a large number of retransmission consent agreements expiring by year’s end, potentially impacting the vast majority of their subscribers. For that reason, we urged that the NPRM invite comment on a wide range of substantive and procedural changes to the current retransmission consent rules, such as the creation of a cooling off period during which various rules are stayed in order in order to allow competitive negotiations for carriage of a substitute to the local station; an extension of the “no drop during sweeps” period to cover marquee programming occurring outside the sweeps period; and changing the election period and “synching up” retransmission consent contract expiration dates.

Finally, we urged that the notice not foreclose the adoption of dispute resolution and interim relief measures as part of a comprehensive set of reforms. While adoption of meaningful substantive and procedural reforms can minimize the number of situations in which retransmission consent disputes end in an impasse, some means of protecting consumers, particularly where a party has been found to have acted in bad faith, are necessary in order to protect the public interest and carry out Congress’ intent with respect to retransmission consent.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Seth A. Davidson

cc: Dave Grimaldi  
213335