

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

In the Matter of:)	
)	
Amendment of the Commission's Rules)	
Governing)	MB Docket No. 10-71
Retransmission Consent)	
)	

COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter” or the “Company”) hereby submits these brief Comments in the above-captioned proceeding. Charter participated in the joint Petition for Rulemaking that triggered this proceeding and submitted Reply Comments approximately one year ago in response to the Commission’s inquiry as to whether it should proceed with a formal rulemaking. Charter applauds the Commission for issuing the Notice of Proposed Rulemaking (“NPRM”), but it urges the Commission to take a more expansive view of both the underlying retransmission consent problem and its own regulatory authority to address that problem.

The existing NPRM focuses almost exclusively upon viewer disruption associated with the current retransmission consent process. Charter shares the Commission’s concern regarding actual viewer disruption, but it also believes that retransmission consent reform must extend beyond that issue. Charter is particularly troubled by escalating retransmission consent fees that are fueled by recent changes in the video marketplace. Charter urges the Commission to exercise its authority under Section 325(b)(1)(A) of the Communications Act and impose meaningful restraints on rapidly increasing retransmission consent fees. A failure to do so will lead to increasing rate burdens on MVPD consumers.

I. MEANINGFUL RETRANSMISSION CONSENT REFORM REQUIRES CAREFUL CONSIDERATION OF RAPIDLY INCREASING RETRANSMISSION CONSENT FEES.

Section I.D. of the NPRM is entitled, “Consumer Impact.” Significantly, the section is limited to just two paragraphs discussing “the consumer harm caused by retransmission negotiation impasses and near impasses.”¹ The section addresses the issue of viewer *disruption*, but it says nothing whatsoever about viewer *costs*. Having failed to directly consider escalating retransmission consent fees, the NPRM necessarily fails to address the true “consumer impact” of the current retransmission consent process. Charter respectfully submits that the consumer impact of retransmission consent is not limited to those MVPD subscribers experiencing a service disruption. In fact, rapidly increasing retransmission consent fees adversely impact every MVPD consumer across the country, regardless of whether they have experienced a threatened or actual service disruption.

There is no dispute in this proceeding that retransmission consent fees are increasing rapidly. Indeed, the Reply Comments Charter filed last year highlighted submissions from various *broadcast* groups warning that retransmission consent fees are likely to increase even more dramatically in the future. Charter noted, for example, that the “Broadcaster Association” argued in favor of “retransmission consent fees of as much of \$3.50 per subscriber per month for each station affiliated with a Big 4 Network.”² Similarly, the “Local Television Broadcasters” ominously concluded, “Rates for retransmission consent have been depressed below fair market

¹ NPRM at ¶¶ 15-16.

² See Charter Reply Comments at 2, MB Docket No. 10-71, filed June 3, 2010. The Broadcaster Association group included NAB, as well as the national affiliate associations of ABC, CBS, FBC, and NBC.

value in the past, and are only beginning to move towards fair.”³ It is alarming that none of these warnings, nor any of the public statements made by broadcasters since that time about their plans to further increase retransmission consent revenue, are referenced in the NPRM.

Charter’s own experience with retransmission consent confirms the rapid escalation in retransmission consent fees. Charter renewed one retransmission consent agreement with a major broadcast group in 2010, in which the prior monthly subscriber fee increased by an astounding 115 percent. That same retransmission consent agreement includes significant annual rate increases over its three year term. Charter has experienced similar rate increases with other broadcast groups. In one case, the renewal rate for 2011 increased by 96 percent, and in another case it increased by 87 percent. Both of these retransmission consent agreements include substantial annual rate increases, with that annual increase being as high as 24 percent. Increases of this magnitude bear no resemblance to the overall rate of inflation and translate to a significant cost increase for Charter’s customers. Given the magnitude of these increases, the Commission is compelled to exercise its regulatory authority over retransmission consent fees to protect the nation’s MVPD consumers.

II. CONGRESS EXPRESSLY INSTRUCTED THE COMMISSION TO REGULATE RETRANSMISSION CONSENT FEES FOR THE BENEFIT OF MVPD CONSUMERS.

The NPRM’s silence regarding escalating retransmission consent fees is particularly surprising in light of the instructions Congress provided to the Commission in Section 325(b)(3)(A) of the Communications Act. That provision expressly requires the Commission to consider the rate implications of retransmission consent and to prescribe regulations to ensure that retransmission consent fees do not lead to unreasonable increases in basic service rates.

³ *See id.* The Local Television Broadcaster group included Barrington Broadcasting Group, Bonten Media Group, Dispatch Broadcast Group, Gannett Co., Newport Television, Post-Newsweek Stations, Raycom Media, and Weigel Broadcasting Company.

Section 325(b)(3)(A) states:

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.⁴

It is difficult to imagine a more direct expression of regulatory authority.

When the Commission first considered Section 325(b)(3)(A) in 1993, it did not question its clear authority to limit retransmission consent fees. It deferred to the marketplace at that time (rather than adopting fee restrictions), because there was no evidence in the record of retransmission consent fees having an inflationary impact on basic service rates.⁵ The Commission's forbearance might have been a sensible approach in 1993, but intervening developments have transformed the video marketplace and left MVPD consumers vulnerable to, and virtually defenseless against, rapidly increasing retransmission consent fees.

It is now abundantly clear that major broadcast networks have considerable leverage in retransmission consent negotiations with MVPDs. In the current marketplace, there is typically a single "monopoly" provider of each broadcast network's programming,⁶ but there are multiple competing MVPDs. This imbalance necessary fuels an increase in retransmission consent fees as broadcasters play one MVPD against another in a consumer funded game of "chicken." Any MVPD refusing to accede to increasing retransmission consent fees risks costly customer

⁴ 47 U.S.C. § 325(b)(3)(A).

⁵ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, 8 FCC Rcd. 2965 at ¶ 178 (1993).

⁶ This condition exists, at least in part, due to the Commission's "program exclusivity" rules, which the Commission addresses in the latter part of the NPRM.

defections – as customers seeking popular network programming may decide to switch their *entire* subscription to a competitor that is still offering the network programming.

Confronted with this risk scenario, MVPDs are likely to surrender to the broadcasters' retransmission consent demands. In the end, MVPD consumers lose – as they are the ones who bear the burden of the market imbalance and ultimately pay the increased retransmission consent fees. This unfortunate “anti-consumer” result is, of course, precisely what Congress was trying to avoid in giving the Commission regulatory authority in Section 325(b)(3)(A).

Charter appreciates that a similar economic analysis could be applied to popular cable networks. The simple truth, however, is that the affiliation process applicable to cable networks operates under a different legal framework than does the retransmission consent process applicable to broadcast networks. When Congress created retransmission consent, it expressly charged the Commission with responsibility to avoid adverse subscriber rate increases stemming from this new broadcast privilege. It provided no similar charge with regard to the pricing of cable networks. In short, the Commission has a unique obligation with regard to the exercise of retransmission consent to ensure that it does not adversely impact the consumer rates.⁷

III. THE COMMISSION SHOULD ENSURE THAT THIS RULEMAKING LEADS TO MEANINGFUL RESTRAINTS ON INFLATIONARY RETRANSMISSION CONSENT DEMANDS.

Charter welcomes Commission efforts to strengthen the existing “good faith negotiation” standards as proposed in the NPRM. The Commission must recognize, however, that minor procedural tinkering with those standards will do little to correct the current market imbalance or to protect consumers against skyrocketing retransmission consent rates. Meaningful

⁷ Significantly, broadcasters currently enjoy a host of special regulatory protections (*e.g.*, “must carry” and “program exclusivity”) not available to cable networks. To the extent broadcasters enjoy special regulatory protections, logic dictates that they be subject to special regulatory restraints as well – including the rate restraint set forth in Section 325(b)(3)(A) of the Communications Act.

retransmission consent requires the Commission to impose serious restraints on broadcasters' exercise of retransmission consent.

The suggestion in the NPRM that the Commission lacks authority to impose mandatory arbitration or interim carriage reflects a surprising regulatory timidity. The Commission's apparent reluctance to intercede to protect MVPD consumers runs counter to the Commission's expansive regulatory assertion in other areas, where its jurisdictional authority is far more precarious.⁸

Charter is particularly concerned that the NPRM sidesteps the issue of escalating retransmission consent fees but spends two pages discussing possible changes to the subscriber notification requirements. There is nothing in the record suggesting widespread notification violations, and Charter is not aware of MVPD consumers complaining that they had no prior notice of a service disruption attributable to a retransmission consent impasse. Of course, the notification issue is relevant only if the Commission envisions a significant increase in retransmission consent disruptions in the future – a possibility the Commission is presumably trying to minimize in this proceeding. Moreover, as the NPRM itself acknowledges, it is far from clear that heightened notice requirements would actually benefit consumers and may instead simply create more customer confusion. Charter respectfully submits that this issue is a red herring advanced by broadcasters to deflect attention from more meaningful retransmission consent reform.

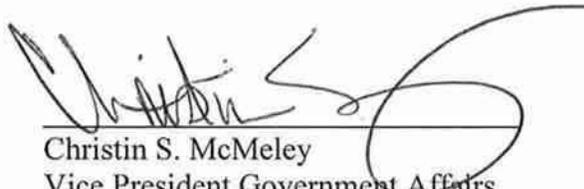
⁸ See e.g., *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd. 20235 (2007), *aff'd sub nom. Nat'l Cable & Telecomm. Ass'n v. FCC*, 567 F3d 659 (D.C. Cir. 2009); *Review of the Commission's Program Access Rules and Examination of Program Tying Arrangements*, 25 FCC Rcd. 746 (2010); and *Preserving the Open Internet Broadband Industry Practices*, 25 FCC Rcd. 17905 (2010).

CONCLUSION

Charter appreciates the Commission initiating the notification proceeding, but respectfully requests that the Commission develop a regulatory regime adequate to curb retransmission consent practices that are adversely impacting MVPD consumers.

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May 27, 2011