

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Matter of)	
)	
Amendment of the Commission's Rules Related)	MB Docket No. 10-71
To Retransmission Consent)	

COMMENTS OF HUBBARD BROADCASTING, INC.

Hubbard Broadcasting, Inc. (“HBI”), by its attorneys, hereby submits its Comments, in the above-captioned proceeding on retransmission consent, addressing particular points for the FCC’s consideration in reviewing the requirement for good faith negotiations between broadcasters and programming distributors (“MVPDs”). HBI is the parent of the licensees of twelve full power television stations, primarily in small to medium markets, the largest is Minneapolis-St. Paul. HBI is the sole owner and operator of the independent cable/satellite channel, ReelzChannel, which is carried by both satellite and cable operators and fully available in approximately 58 million homes.¹ Since retransmission consent became the law in 1992, HBI has had extensive experience with retransmission consent agreements and with distribution agreements for the above-mentioned independent network.

As a starting point, the FCC should continue to assure that each party in a negotiation for retransmission consent operates in good faith. Additionally, such negotiations should be structured to result in fair compensation for a broadcaster consenting to the carriage of its television signal, with that compensation valued in reasonable relation to the other stations in a given market. The FCC should also assure that market power cannot be used unfairly in these

¹ HBI defines “Independent Network” as a satellite/cable network which is unaffiliated with a national broadcast network and/or a family of established cable networks.

negotiations, especially against small broadcasters, emerging independent networks, or start-up MVPDs.

In conducting negotiations for retransmission consent, both the broadcaster and the MVPD are subject to conducting the bargaining in good faith. To reach an agreement, each party must determine that the terms are fair to them, and to assist in achieving that end in the bargaining process, the good faith requirement was established. In considering the adoption of new provisions on retransmission consent, the FCC must assure that any new provisions do not adversely affect the good faith requirement and that they will indeed improve and clarify the requirement.

The Commission should view its retransmission consent procedures as guidelines for each party engaged in negotiating retransmission consent agreements. For example, if the Commission were to place restrictions on having a third party negotiate a retransmission consent arrangement for a broadcaster, *e.g.*, a network for an affiliate, the Commission should similarly place restrictions on an MVPD conducting its negotiations through a large parent company or trade association. What is good for the goose, really is good for the gander.

The Commission continually recognizes the significance of diversity in programming. and historically much of that diversity has come from independent sources and networks. For example, HBI's ReelzChannel recently significantly demonstrated the diversity that can be delivered by a truly independent programming network by presenting "The Kennedys" mini-series. Though the mini-series was fully produced and ready for air, it was dropped by its original network, and passed over by several other established cable channels because of the controversy that surrounded it. In spite of this, ReelzChannel made the decision to present the mini-series, and while some criticized "The Kennedys" for various reasons without ever seeing

it, ReelzChannel delivered record ratings while permitting the public to watch the programs and reach their own conclusion. Whatever one thought of the mini-series, the entire controversy once again proved the value and importance of having independent programming voices available in the marketplace.

In some comments, the Commission has been asked to address whether a broadcaster has an advantage over the MVPD when the broadcaster is affiliated with a broadcast network or a family of cable networks. Another question raised in some comments is whether a small or new MVPD needs to accept terms less favorable than a large or established MVPD. However, similar problems are encountered by broadcasters and independent networks in these situations. In its experience as a small to medium sized broadcaster that offers an independent network for which MVPD carriage is necessary, HBI has sometimes had to accept considerably less favorable retransmission terms than competitive stations in its markets. Also, small to medium broadcasters who are not affiliated with large broadcast groups have had to accept terms less favorable than other stations in a market. For all involved parties, the Commission should require, under its good faith standards, that parties negotiating a retransmission consent agreement treat separately the value of the television signal(s) on the one hand and cable/satellite networks on the other to be carried on the specific MVPD system or systems in the station's DMA. Again, fairness requires even handedness. What is good for the goose is good for the gander.

In short, HBI urges that the Commission take the utmost care to ensure that television broadcasters and MVPDs continue to allow their shared viewers to benefit from the decision Congress made in the 1992 Cable Act to support stations in maintaining their ability to successfully negotiate compensation for distribution of their signals by MVPDs. Broadcasters

continue to provide essential service to their audiences despite the recent economic downturn. In the same vein, cable and satellite operators are essential sources of news and entertainment in millions of homes across America. Preserving the viability of both programmers and programming distributors are important goals, as is continuing to foster diverse and independent programming voices. The Commission faces a difficult task in balancing these competing interests.

The FCC's rules must assist all small and new entrants in programming and programming distribution, particularly when the small or new entrant is an independent entity, to operate on a "level playing field" as they say in Washington. In continuing its work on retransmission consent, the FCC should take into consideration the views of HBI which are based on actual experience in retransmission consent agreements.

Respectfully submitted,

HUBBARD BROADCASTING, INC.

By: /s/_____

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