Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF SUREWEST COMMUNICATIONS

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SureWest Communications ("SureWest") hereby files these Reply Comments in response to the Commission's Notice of Proposed Rulemaking, 26 FCC Rcd 2718, released March 3, 2011, in the above-captioned proceeding ("*NPRM*").

I. Introduction and Summary.

Many commenters in this proceeding agree that the retransmission consent ("RC") regulatory framework, along with the Commission's network non-duplication and syndicated exclusivity rules, have combined with changing market conditions to produce a supra-competitive advantage to broadcasters in negotiations for RC—all to the harm of consumers. These commenters point out a number of ways in which artificially-created RC leverage is being abused. Of particular concern to smaller MVPDs like SureWest is the growing practice of extracting disproportionately large fees and other concessions from smaller MVPDs, who often lack the information and leverage that enable larger MVPDs to more successfully resist broadcaster demands.

The Commission has a clear responsibility to restore competitive balance to the retransmission consent process and protect consumers from rapidly increasing rates and sudden loss of programming. To do so, it should require mandatory arbitration and interim carriage as safety mechanisms for when negotiations break down (as happens more and more frequently). Furthermore, it should actively prevent unjustified price discrimination against smaller MVPDs by making consistent RC pricing within a geographic market a presumed requirement under the good faith standards, and enhancing enforcement by requiring transparency of RC rates and conditions. In addition, networks should be excluded from RC negotiations, and mandatory tying of RC consent and carriage of other channels should be prohibited. Ultimately, to provide true market balance, the exclusivity rules themselves must be eliminated or reformed, to give MVPDs freedom to seek alternative arrangements if a broadcaster's demands are unreasonable or violate the good faith requirement.

II. There Is No "Free Market" in Retransmission Consent.

SureWest would like to briefly address a theme running throughout comments filed by broadcasters and networks: namely, that there exists a "free market" for retransmission consent that should be protected against government intervention (incongruously, by the preservation of government rules).[1] Many commenters, including SureWest, demonstrated that there is no such "free market." As Time Warner Cable ("TWC") observes, the carriage of TV stations is in fact subject to a multi-faceted regulatory regime that artificially shifts the leverage against MVPDs, actually *preventing* market-based outcomes.[2] SureWest agrees with TWC and others that "retransmission consent is the *product* of government intervention, not something to be shielded from

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[1] *See, e.g.*, Fox Comments at 3; Named State Broadcasters Associations Comments at 11.

[2] Time Warner Cable Comments at 5-19 ("TWC Comments").

such intervention."[3] Therefore, because of its role in creating this artificial regulatory ecosystem, the Commission has an obligation to update and adjust its rules as the ecosystem evolves.

III. Comments Demonstrate a Significant Concern About Price Discrimination Against Smaller MVPDs.

In its initial comments, SureWest discussed the increasing prevalence and harmful effects on competition and consumers of price discrimination: namely, broadcasters demanding, and receiving, greater per-subscriber compensation from small MVPDs than from otherwise similarly-situated larger MVPDs.[4] On this issue, the comments of the American Cable Association ("ACA") in particular make an extensive, well-documented showing as to the existence of and reasons behind price discrimination against smaller MVPDs. ACA demonstrates that smaller MVPDs are charged retransmission consent fees that are *more than double* that charged to larger MVPDs, for the same stations.[5] This practice is not justified based on cost; rather, it is

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[3] *See* TWC Comments at 6.

[4] SureWest Comments at 12.

[5] ACA Comments at 76-84. In its initial Comments, the National Association of Broadcasters ("NAB") attempts to show that RC fees are insignificant in comparison to overall MVPD programming expenses and revenues, and further, that there is no discrimination in RC fees demanded from small vs. large MVPDs. NAB Comments at 41-47, 49-51. While significant questions and issues appear to exist regarding NAB's methodology, even if one were to accept it, comparison of NAB's national average figures with those of SureWest provide further evidence of price discrimination against small MVPDs. For example, NAB asserts that average RC fees per cable subscriber per month were $0.86 in 2010 or approximately 3% of the total programming costs. Comments at 46. In comparison, SureWest's Kansas systems RC fees per cable subscriber per month was $2.06 in 2010, which is 240% higher than the figure provided by NAB, and would represent 7% of the total programming fees (compared to the 3% figure provided by NAB). As shown in our initial Comments (at page 5), the rate of increase for RC fees paid by SureWest has grown radically in the last three years (increases of 229% in California and 1,428% in Kansas), and without remedies suggested by SureWest and others in this proceeding, it is anticipated that RC fees demanded by broadcasters from small MVPDs will continue to grow at a rapid pace. (Note continues on next page)

the direct result of the bargaining power differential between large and small MVPDs.[6] The consequence is a disparity in how much viewers pay for the same programming, with subscribers of smaller MVPDs, generally in rural markets, being most vulnerable.[7] These conclusions are supported by the American Public Power Association ("APPA") and OPASTCO, ITTA *et al.* ("OPASTCO").

IV. Transparency, in Conjunction with a Good Faith Presumption, is Essential to Combat Price Discrimination.

Transparency. SureWest continues to believe that the most effective way to ensure that broadcasters do not discriminate in price to MVPDs is for the Commission to require *transparency* in RC agreements.[8] Access to information is not only a valuable tool in and of itself for smaller MVPDs negotiating RC pricing and terms, it would be essential to enforce any action the Commission takes to combat price discrimination. Enough basic information should be available, either in station public inspection files or websites, for the public, the Commission, and MVPDs to expose and prevent price discrimination and the resulting harm it causes. Cablevision Systems Corporation, for example, proposes that each broadcast station be required to disclose the RC carriage rates between itself and each MVPD in a given market on a per-subscriber basis.[9] To the extent that legitimate business concerns arise from such disclosures, one alternative

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(Cont'd) RC fees are a significant cost driver in an extremely competitive environment and will continue to skew the competitive balance against smaller MVPDs, unnecessarily raise rates for consumers, and may reduce competition and consumer choice of providers unless good faith negotiation standards are revised to require non-discriminatory pricing.

[6] ACA Comments at viii, ix.

[7] ACA Comments at 85.

[8] SureWest Comments at 13.

[9] Cablevision Comments at 10-11.

might be to give an MVPD access to terms and pricing information at the outset of RC negotiations on a confidential basis. Implementation of these requirements is well within the Commission's authority to govern the exercise by television broadcast stations of the right to grant retransmission consent.[10]

***Good Faith Presumption*.** SureWest's initial comments argue that the Commission's good faith negotiation standards should include a strong presumption that the per-subscriber rate paid to a broadcaster should be the same for every MVPD in a market that enters into an RC agreement with that same broadcaster. Demand for a higher rate should shift the burden onto the broadcaster to show that the higher rate is cost-based or otherwise not improperly discriminatory.

SureWest recognizes that in 2000, the Commission chose not to declare retransmission consent price discrimination to be a *per se* violation of the good faith negotiation standards.[11] Nevertheless, the Commission left open the possibility that individual competitive market place dynamics could result in price discrimination being a "totality of the circumstances" violation of the good faith standards.[12] Moreover, the Commission stated that "[p]roposals involving compensation or carriage terms that

[10] *See* ACA Comments at 91 (citing 47 U.S.C. § 325(b)(3)(A)).

[11] *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999*, First Report and Order, 15 FCC Rcd 5445, 5469 (2000).

[12] *Id.* at para. 57. Although SureWest asserts that discriminatory rates should be a *per se* violation of the good faith negotiation standards, some commenters have suggested in the current proceeding that the Commission address price discrimination as part of the good faith "totality of the circumstances" standard. OPASTCO Comments at 18.

result from an exercise of market power by a broadcast station" would constitute a violation of the good faith standards.[13]

The Commission's policy choice in 2000 not to make price discrimination a *per se* violation was based on its evaluation of the general "competitive marketplace" for RC negotiations at that time.[14] However, the record in the current proceeding makes it clear that the market dynamics have significantly changed in the intervening 11 years, and as a general matter, broadcast stations (at least Big Four affiliates) now have significant market power over MVPDs in RC negotiations.[15] This change in circumstances undercuts the rationale of the Commission's choice in 2000, and accordingly that choice should no longer be determinative. Rather, the Commission should recognize the market power now possessed by broadcast stations, and rule that it is a *per se* violation of the good faith standards for a station to demand RC compensation from one MVPD that is greater than that obtained from another MVPD in the same geographic market (unless the difference is demonstrably based on out-of-pocket cost differences).[16]

The Commission clearly has the statutory authority to implement these transparency and non-discrimination requirements, given the impact that such remedies will have on minimizing fees paid by subscribers. Section 325(b)(3)(A) of the

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13 *Id*. at para. 58.

14 *Id*. at page 5469.

15 *See, e.g.*, Comments of ACA at 82-84 and citations therein.

16 Some broadcasters have suggested that the differences in RC compensation demanded from large and small MVPDs are based on economies of scale. *See, e.g.,* Comments of NAB at pages 50-51. This is clearly invalid as there are no "scale" cost savings for broadcasters in this situation: the cost to a broadcaster of transmitting its signal to an MVPD's headend (either over-the-air or by fiber) is identical regardless of whether that MVPD subsequently retransmits the signal to one subscriber, or to one million subscribers.

Communications Act provides the Commission with extensive authority to "govern the exercise by television broadcast stations of the right to grant retransmission consent." It also directs the Commission to consider "the impact that the grant of retransmission consent by televisions stations may have on the rates for the basic service tier" and to "ensure that rates for the basic service tier are reasonable." Cablevision points out that this provision creates an affirmative obligation for the FCC to modify its RC rules as necessary to protect consumers from higher subscription fees resulting from increased RC rates.[17] Further authority can be found in Section 325(b)(3)(C) of the Act, which requires that RC terms and conditions to be based on "competitive marketplace considerations."[18] As demonstrated by ACA and elsewhere in the record, price discrimination between large and small MVPDs is not based on *competitive* marketplace conditions and thus the remedies proposed herein are certainly authorized under the Act.

V. Networks Should Be Prohibited From Negotiating on Behalf of Their Affiliates.

In the initial round of comments, SureWest noted that broadcast networks are increasingly negotiating RC agreements on behalf of their affiliates, further unbalancing RC negotiations.[19] The record supports a prohibition against national broadcast networks from negotiating on behalf of their local affiliate stations. This practice enables

[17] Cablevision Comments at 18.

[18] TWC Comments at 39-40; Cablevision Comments at 17-19.

[19] SureWest Comments at 8, n. 13.

a form of price fixing that frustrates, rather than furthers, the competitive market.[20] Furthermore, this increasingly common practice leads to greater demands for “tying” must-have broadcast channels to less popular affiliated cable channels (as discussed in more detail below).[21] Interference by Big Four networks (and collusion among competing stations) impedes negotiation and prevents efficient market-based outcomes.[22] Therefore, each station should be required to negotiate its own RC agreements, and the Commission should prohibit direct or indirect involvement of networks (or non-commonly-owned stations) in the RC process.[23] If the Commission declines to impose a blanket prohibition on network participation, however, it should at least take into account the huge negotiating imbalance between networks and small MVPDs by allowing MVPDs to negotiate (and arbitrate) jointly against the networks.[24]

In addition to current competitive harms resulting from network participation in RC negotiations, Commenters point out that the original purpose of the RC regime was to protect “the economic viability of free local broadcast television and its ability to originate quality local programming.[25] Yet the comments show that localism is in decline: many broadcast stations are cutting back on local news and reporting and

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[20] ACA Comments at 25. One key advantage for national networks is access to information on RC terms and pricing across other markets that MVPDs (particularly small MVPDs) lack.

[21] TWC Comments at 32-33; Discovery Channel Comments at 8.

[22] TWC Comments at 33-37.

[23] APPA Comments at 21-23.

[24] SureWest Comments at 8, n. 13.

[25] APPA Comments at 4 (citing § 2(a)(16) of the Cable Act of 1992).

consolidating operations with competing stations.[26] Furthermore, even some broadcasters concede that "retransmission consent was *never* intended as a national network gravy train, transferring billions from local consumers to the national networks."[27] Ironically, as a public interest group has noted, "[b]ecause networks attempt to siphon off portions of retransmission consent revenue away from local affiliates, their participation can end up actually harming local broadcasting."[28]

SureWest also concurs with TWC's argument that broadcasters and networks are improperly using the retransmission consent process to garner a form of copyright licensing fee in addition to the compulsory statutory copyright payments—in other words, creating a shadow, duplicative copyright regime.[29] This shadow copyright strategy is made explicit each time a broadcaster or network insists that retransmission consent fees should be equivalent to licensing fees paid to non-broadcast cable channels. Yet the retransmission consent right is not a copyright. TWC points out that "in establishing retransmission consent, Congress created an artificial new property right in local broadcast signals that is distinct from copyright and simply would not exist in a market-based regime."[30] Thus, exponentially greater RC fees cannot be justified as a form of content licensing. Rather, they are merely an improper effort to cash in on

[26] SureWest Comments at 15-16; TWC Comments at 26.

[27] Block Communications Comments at 9 (emphasis in original).

[28] Public Knowledge Comments at 7.

[29] TWC Comments at 6.

[30] TWC Comments at 3. Accordingly, to the extent that RC fees are actually imposed by networks rather than broadcasters, they are "seeking to monetize a right they do not possess." *Id.* at 17.

broadcasters' new supra-competitive bargaining position, while MVPDs are unable to "take their business elsewhere" due to regulatory restrictions.

The Commission certainly has the statutory authority under Sections 325(b)(3)(C) and 325(b)(3)(A) of the Act to prohibit networks from negotiating RC agreements on behalf of their affiliates, in light of the evidence that such network participation impedes RC negotiations and leads to higher rates paid by subscribers. More broadly, because network participation in RC negotiations can limit the ability of the affiliates to fund local programming, the Commission has authority to address the issue under its public interest mandate in Section 309(a) of the Act.[31]

VI. There is Support in the Record for Mandatory Arbitration and Interim Carriage Rights.

In its initial Comments, SureWest urged the Commission not to summarily dismiss the proposals for mandatory arbitration and interim carriage rights set forth in the original petition for rulemaking in this proceeding.[32] Indeed, the record shows that mandatory arbitration and interim carriage would serve the public interest and that the Commission has the jurisdiction to mandate them. Commenters also point out that while Section 325 prohibits an MVPD from carrying a station without consent, it does not restrict the Commission itself from ordering mandatory arbitration or interim carriage.[33]

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31 *See* Comments of Mediacom Communications Corp. et. al. at page 14, n. 34. *See also* Comments of DIRECTV, Inc. at 15-16 (network negotiation of RC agreements for affiliates may constitute a transfer of control inconsistent with the provisions of Section 310(d) of the Act).

32 SureWest Comments at 6-8.

33 *See* Public Knowledge Comments at 4-6; AT&T Comments at 13-15; *See also* ACA Comments at 71-76.

Alternatively, the Commission may find that omitting interim carriage from an RC agreement constitutes a violation of the good faith requirement.[34]

At page 7 of its initial Comments, SureWest noted that while the *NPRM* suggests that requiring mandatory arbitration would be inconsistent with certain provisions of the Administrative Dispute Resolution Act ("ADRA"), the Commission has apparently misread the import of those provisions: the ADRA can be fairly read to apply only to arbitrations where the government agency is itself a party, to prevent excessive government leverage against private parties. In contrast, SureWest is suggesting here that arbitration be mandated where there is an impasse between two private parties -- the broadcaster and the MVPD, and that the arbitration be done by an independent commercial arbitrator. In their initial Comments, Public Knowledge and TWC also establish that the ADRA is no impediment to mandatory arbitration that is subject to *de novo* review by the Commission.[35]

Some networks, such as Fox and CBS, argue that mandatory dispute resolution is generally ineffective and would cause delay. These assertions ignore the fact that mandatory dispute resolution would only be brought in when the negotiations have already failed and delay has already occurred. They also contradict Congressional findings in the ADRA that "alternative means of dispute resolution have been used in the private sector for many year and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious . . . lead[ing] to more

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34 AT&T Comments at 15-16.

35 *See* Public Knowledge Comments at 5-6; TWC Comments at 43-44.

creative, efficient, and sensible outcomes."[36] In fact, DISH Network, which has extensive negotiation experience, reports that "while 'baseball-style' mandatory arbitration yields the best results, the mere presence of an independent third party in a negotiation tends to inspire a greater degree of rationality and less posturing by the parties."[37]

The record shows that the Commission has the statutory authority to require mandatory arbitration and interim carriage rights. The United States Telecom Association ("USTelecom") specifically addresses the issue of interim carriage in some depth, demonstrating that the broad authority of Section 325(b)(3)(A) permits the Commission to create a "standstill mechanism" to carry out its mandate of ensuring that rates for the basic service tier are reasonable.[38] A "standstill mechanism," according to OPASTCO, would level the playing field and "promote an environment in which good faith negotiations between parties could occur."[39]

Cablevision points out that the Commission's broad authority under Section 325(b)(3)(A) dovetails with the its authority to ensure that broadcasters operate "in accordance with the public interest, convenience, and necessity" under Section 309(a) as well as the good faith requirement of Section 325(b)(3)(C), which requires terms and conditions to be based on competitive marketplace considerations.[40] These provisions,

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[36] Administrative Dispute Resolution Act of 1996, Pub. L. No. 101-552 (1996), Section 2.

[37] DISH Network Comments at 21.

[38] USTelecom Comments at 20-22 (referring to a similar mechanism recently adopted in the program access rules).

[39] OPASTCO Comments at 23-24.

[40] Cablevision Comments at 17-19.

combined with the Commission's ancillary authority under Sections 303(r) and 154(i), clearly provide ample authority to impose mandatory arbitration and interim carriage requirements.[41]

Some broadcasters object that because Section 325 precludes MVPDs from retransmitting the signal of a broadcast station without the consent of the broadcaster, it also prohibits the Commission from imposing mandatory arbitration or interim carriage.[42] TWC rebuts this argument by arguing that the consent requirement of Section 325 would not prevent the Commission from setting terms and conditions on retransmission consent *once agreed to*, thus allowing broadcasters the possibility of either opting out or consenting subject to pricing and other terms.[43] SureWest supports such a solution provided that the non-duplication and syndicated exclusivity rules ("Exclusivity Rules") are revised to allow carriage of another broadcast signal if a broadcaster, after negotiation, ultimately chooses to refuse carriage.

VII. The Record Supports Elimination or Modification of the Exclusivity Rules.

Numerous commenters, including SureWest, argue that the Commission should do away with the Exclusivity Rules.[44] Eliminating these Rules would give MVPDs recourse to another station if a broadcaster makes unreasonable or extortionate

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[41] TWC also observes that in an analogous context, the Commission relied on its broad Title III authority to adopt a "baseball" style dispute-resolution mechanism conducted by Commission staff to resolve roaming disputes. TWC Comments at 40-41.

[42] *See, e.g.*, Fox Comments at 4-7.

[43] TWC Comments at 44.

[44] SureWest Comments at 14-16.

demands, thus providing a "critical safety valve" in RC negotiations.[45] Verizon states that elimination of the Exclusivity Rules would reduce the likelihood of consumer harm from loss of programming and increased prices.[46] OPASTCO adds that elimination would reduce the market power of broadcasters and networks to engage in forced tying, thus enabling MVPDs to craft more affordable tiers that are better attuned to the desires of their subscribers.[47]

Several commenters point out that eliminating the Exclusivity Rules is only the first step to restoring market balance. TWC and APPA argue that to be effective, the Commission must go one step further and affirmatively ban exclusivity agreements, including abrogating existing contracts.[48]

DISH Network proposes waiving enforcement of the Exclusivity Rules during any impasse in negotiations that results in the station withdrawing retransmission consent.[49] Starz notes that there is little public benefit in prohibiting carriage of distant signals when the local station has refused to provide retransmission consent, and adds that such a waiver should be extended indefinitely if consent is never granted.[50] SureWest supports elimination of the Exclusivity Rules, but agrees with APPA that a reasonable

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[45] APPA Comments at 18; AT&T Comments at 16.

[46] Verizon Comments at 12; APPA Comments at 20. The comments also show that the Commission has the authority to abrogate affiliation terms that require network approval of retransmission consent. *See* ACA Comments at 62-66 (citing, *inter alia*, the Commission's abrogation of MDU exclusivity clauses).

[47] OPASTCO Comments at 23.

[48] TWC Comments at 23-25.

[49] DISH Network Comments at 27.

[50] Starz Comments at 9-10.

compromise might be only enforcing those Rules where the station is carried by the MVPD against which it seeks enforcement.[51]

Elimination of the Exclusivity Rules would not result in a wholesale abandonment of local stations, observes AT&T, since viewers generally prefer local content, thus providing a "market-based backstop."[52] SureWest agrees that MVPDs aren't likely to seek to carry a distant station unless they are forced to do so.

VIII. The Commission Should Declare That Mandatory Tying Arrangements Violate the Good Faith Standard.

SureWest points out in its initial comments that MVPDs should be able to pay a basic per-subscriber RC rate without being forced to accept any tie-ins requiring carriage of affiliated cable channels.[53] This practice unnecessarily generates significant costs for MVPDs, resulting in otherwise unnecessary increases in subscriber rates. Several commenters note that this problem is linked to increased network participation in RC negotiations, which encourages demands for tying RC for "must have" broadcast channels to carriage of less popular affiliated cable channels, to the point of crowding the basic tier, reducing programming diversity by squeezing out independent channels, and raising prices for subscribers.[54] OPASTCO lists various sort of tying arrangements, the demand for any of which should constitute a violation of the good faith standard:

-multicast over-the-air digital TV channels

-affiliated cable channels

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51 APPA Comments at 20.

52 AT&T Comments at 16.

53 SureWest Comments at 13.

54 TWC Comments at 32-33; Discovery Channel Comments at 8.

-affiliated on-line content, charged to MVPDs on a per-sub basis, regardless of whether subscribers view that on-line content[55]

SureWest agrees with APPA that mandatory program tying provisions have nothing to do with the public policy goals underlying Section 325 of the Communications Act or the Commission's RC regime.[56] Accordingly, broadcasters should be banned from mandatory tying of RC to carriage of affiliated programming services or other similar ancillary deals.[57]

The Communications Act authorizes the Commission to take this action. Because mandatory tying results in increased prices for subscribers, the Commission may address it pursuant to the requirement in Section 325(b)(3)(A) that the Commission consider "the impact that the grant of retransmission consent by televisions stations may have on the rates for the basic service tier" and to "ensure that rates for the basic service tier are reasonable."[58]

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55 OPASTCO at 16.

56 APPA Comments at 25.

57 Cablevision Comments at 11. SureWest recognizes that the Ninth Circuit recently upheld a lower court's rejection of antitrust claims that were based on multi-channel bundling by programmers. *Brantley v. NBC Universal, Inc.*, No. 09-56785 (9th Cir., June 3, 2011). Yet the Communications Act authorizes the Commission to consider competition that does not rise to the level of antitrust violations, as evidenced by its broadcast ownership rules, telephone unbundling rules, and other provisions meant to address competition concerns. In the context of cable competition, the Commission recently acted on competitiveness concerns by prohibiting exclusivity agreements between cable operators and owners of multiple dwelling units. *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments*, 22 FCC Rcd 20235 (2007). Competitiveness is, at heart, a public interest concern and thus central to the Commission's mission, regardless of the strictures of antitrust law.

58 *See also,* Cablevision Comments at page 19, note 42 and citations therein, demonstrating that the Commission has previously held that it has the authority to ban tying in RC agreements, though it declined to do so at that time.

IX. Additional Issues: There is No Basic Tier Requirement for RC Stations and No Need for Enhanced Subscriber Notification.

***No RC Basic Tier Requirement*.** An easily-remedied improper bargaining tactic that SureWest and others have encountered is broadcasters' insistence that the Commission rate regulations in Section 623 apply even to non-rate-regulated MVPDs to impose a requirement that RC stations be placed on the basic tier.[59] To SureWest's knowledge, the Commission has not affirmatively ruled on this issue. If the Commission were to clarify, in accordance with the language and statutory purpose of the provision, that the basic tier placement obligation applies only to rate-regulated carriers, it would help to slightly level the playing field in RC negotiations.[60]

***Subscriber Notification Rule*.** SureWest's comments recognize that subscribers need timely and accurate information regarding signal deletion.[61] However, in the RC context any subscriber notification rule would simply exacerbate the current imbalance without actually helping consumers. OPASTCO points out that subscriber notification would be unnecessary, confusing, and disruptive to consumers.[62] It is not lost on either broadcasters or MVPDs that the primary effect would be to threaten MVPDs with the possibility of damaged subscriber relationships and further unbalance RC negotiations.

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[59] SureWest Comments at 18.

[60] *See* TWC Comments at 27-30.

[61] SureWest Comments at 17-18.

[62] OPASTCO Comments at 19-20.

Furthermore, such a rule would disproportionately harm smaller MVPDs, who are in the process of building a subscriber base and goodwill.[63]

X. Conclusion

The comments in the record support SureWest's original contention that MVPDs and their subscribers are paying what is nothing more than a monopoly premium for over-the-air TV programming. The Commission's RC rules have failed to keep pace with significant changes in technologies and market dynamics, and are no longer functioning as intended. The resulting artificial leverage is counter to the purposes of the 1992 Cable Act, and disproportionately harms smaller MVPDs and their subscribers. Accordingly, SureWest requests that the Commission restore balance to retransmission negotiations by providing certain protections to MVPDs and their customers, namely: 1) revising good faith negotiation standards to require non-discriminatory pricing and transparency in RC agreements; 2) eliminating or modifying the Exclusivity Rules to enable fair and effective bargaining; 3) requiring mandatory arbitration when RC negotiations fail and providing interim carriage rights to preserve programming continuity for subscribers during negotiations and arbitration; and 4) clarifying that there is no statutory requirement for stations that elect RC to be placed in a cable operator's

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[63] CenturyLink Comments at 11.

basic tier. The Commission should not, however, modify its subscriber notification rules.

Respectfully submitted,

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