



Federal Communications Commission
Washington, D.C. 20554

July 1, 2011

Barbara S. Esbin, Esq.
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Washington, DC 20036

Re: Motion to Accept Filing as Timely
Filed in MB Docket No. 10-71

Dear Ms. Esbin:

The Office of the Secretary has received your request for acceptance of the document filed by Cinnamon Mueller on behalf of the American Cable Association in the above-referenced proceeding as timely filed, due to operational issues associated with the Commission's Electronic Comment Filing System.

In accordance with 47 C.F.R. Section 0.231(i), I have reviewed your request and your assertions. After considering the relevant arguments, I have determined that this filing will be accepted as timely filed on Monday, June 27, 2011. If we can be of further assistance, please contact the Office of the Secretary.

Sincerely,

A handwritten signature in cursive script that reads "Marlene H. Dortch".

Marlene H. Dortch
Secretary

MHD/gt

cc: Media Bureau (Policy Division)

FILED/ACCEPTED

JUN 29 2011

Federal Communications Commission
Office of the Secretary

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

In the Matter of)	
)	
Amendment of the Commission's)	MB Docket No. 10-71
Rules Related to Retransmission)	
Consent)	
)	
To: Marlene H. Dortch)	
Secretary)	
Federal Communications Commission)	
)	

MOTION TO ACCEPT FILING AS TIMELY

The American Cable Association ("ACA") files this Motion to accept its Reply Comments in response to the Commission's retransmission consent Notice of Proposed Rulemaking as timely filed.¹

Reply Comments in the above-referenced proceeding were due on or before June 27, 2011.² On June 27, 2011, Counsel for ACA began transmitting ACA's Reply Comments through the Commission's Electronic Comment Filing System ("ECFS") shortly before midnight Eastern Standard Time.³ Due to the length of the filing (107 pages), ECFS did not complete the processing of ACA's Reply Comments until exactly 12:00 a.m. on June 28, 2011. As a result, ECFS generated an official filing date of June

¹ *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011) ("NPRM").

² See *Media Bureau Announces Notice of Proposed Rulemaking in the Matter of Amendment of the Commission's Rules Related to Retransmission Consent* Published in *Federal Register* March 28, 2011, Public Notice, 26 FCC Rcd 4922 (2011) ("Reply Comments must be submitted no later than June 27, 2011.").

³ The ECFS filing confirmation is attached hereto as Attachment 1 ("Attachment 1") (bottom line showing that the filing had been accepted by ECFS on June 27, 2011).

28, 2011 for ACA's Reply Comments.⁴

It therefore appears that only a few seconds of server processing time caused ACA's filing to cross the line from being timely filed on the Reply Comment filing date to being officially received the following day. Under the circumstances, and in the interest of a full and accurate record in this proceeding, ACA respectfully requests that the Commission treat its Reply Comments as being timely filed.

Respectfully submitted,



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⁴ See *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Reply Comments of the American Cable Association (filed June 28, 2011), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021689979> (last visited June 29, 2011). See also Attachment 1 (showing that the filing had been accepted by ECFS on June 27, 2011 but bearing a confirmation number of 2011628801801).

ATTACHMENT 1

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2011628801801

Proceeding

Name	Subject
10-71	Media Bureau Seeks Comment On A Petition for Rulemaking to Amend The Commission's Rule Governing Retransmission Consent

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Details

Type of Filing: COMMENT

Document(s)

File Name	Custom Description	Size
ACA Retransmission Consent Reply		437
Comments.pdf		KB

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

In the Matter of

Amendment of the Commission's
Rules Related to Retransmission
Consent

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MB Docket No. 10-71

REPLY COMMENTS



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June 27, 2011

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EXECUTIVE SUMMARY

The American Cable Association (“ACA”) submits that the record overwhelmingly supports immediate reform of the Commission’s retransmission consent regulations governing multichannel video programming distributor (“MVPD”) access to local broadcast station signals. The retransmission consent “market” is not working as Congress intended, and the Commission should proceed to reform its regulations to restore balance to retransmission consent negotiations for access to local and distant broadcast station signals. The record shows that broadcast stations and networks are harming MVPDs and their subscribers by anticompetitive, unfair and discriminatory practices that disrupt viewer access to over-the-air broadcast signals delivered by their MVPDs and drive up retransmission consent prices beyond those achievable under competitive market conditions. Again, ACA urges that it is of critical importance that the Commission expeditiously moves forward to reform its retransmission consent regulations so that the new rules can take effect before more than a thousand retransmission consent agreements expire at the end of the year.

Accordingly, and without further delay, the Commission should focus its efforts on the three reforms of primary interest to smaller MVPDs: (i) prohibit coordinated negotiation of retransmission consent by separately owned broadcast stations in a single designated market area (“DMA”); (ii) prohibit third-party interference with the exercise of retransmission consent for out-of-market carriage; and (iii) investigate and eliminate unfair price discrimination against smaller MVPDs. In addition, the Commission should permit, but not require, small and medium-sized MVPDs to

participate in non-binding mediation where negotiations have reached an impasse. These reforms will achieve the goals of this rulemaking by making retransmission consent negotiations run more smoothly, providing greater certainty to the negotiating parties on permissible and non-permissible practices, and helping protect consumers from the loss of access to valued programming and being subject to supra-competitive prices inconsistent with competitive marketplace conditions.

Prohibit Coordinated Negotiations by Separately Owned Broadcast Stations in a Single Market. ACA has provided ample evidence demonstrating that a significant problem with the current retransmission consent regime is that in at least 33 local markets, at least one pair of broadcast stations each affiliated with “Big 4” broadcast networks (ABC, CBS, NBC and Fox) engages in coordinated negotiations even though the stations are separately owned. This practice harms MVPDs and consumers by increasing the disruption caused by negotiating breakdowns and by driving prices significantly higher than otherwise achievable. The prevalence of this practice supports remedial relief through a *per se* prohibition on coordinated negotiations by separately owned stations in a single market, whether such coordination occurs through a legally binding or non-legally binding agreement.

The record amply supports adoption of ACA’s proposed amendments to the Commission’s good faith rules, and refutes broadcaster claims that Congress intended, and the Commission has previously approved, the practice of coordinated negotiations by non-commonly owned broadcasters in the same market. Nothing in the Communications Act or the Commission’s orders implementing its directives suggest

that either Congress or the Commission intended the retransmission consent rules to permit collusive behavior. Nor does the existence of potential antitrust remedies suggest the lack of need for the Commission to ban this practice.

Contrary to the claims of some broadcasters, the fact that duopolies have been permitted by the Commission in the past, allowing commonly owned stations in the same market to negotiate retransmission consent together, should not be a deciding factor in concluding that coordinated negotiations among non-commonly owned stations in the same market should be permitted. Unlike license transfers, in which the Commission performs a public interest review to assess the harms of the transaction, no such review occurs prior to permitting separately owned broadcasters in the same market coming together to coordinate their negotiations. The public interest review that is conducted considers the impact on diversity, localism, and competition. It would not be arbitrary for the Commission to permit broadcasters to form duopolies after conducting a public interest review that assesses all three factors, yet prohibiting separately owned broadcasters in the same market from coordinating retransmission consent after finding that such behavior causes public interest harms. Lastly, the fact that the Commission has not assessed the impact of coordinated retransmission consent negotiations when reviewing duopolies in the past does not suggest either that the Commission approves of such practices or that it cannot now alter its good faith negotiation standards to prohibit the practice.

It is therefore completely appropriate for the Commission to address coordinated negotiations by separately owned broadcasters in the same market through a

prophylactic *per se* prohibition. Congress delegated authority to the Commission to address such matters. Congress specifically delegated to the Commission authority to “govern the exercise by television broadcast stations of the right to grant retransmission consent” under Section 325(b)(3)(A), and later delegated to it the authority to prescribe regulations implementing the good faith negotiating obligation. Congress’ good faith rules are explicit that broadcasters may seek different prices, terms and conditions from different MVPDs, *but only* to the extent such differences are consistent with competitive marketplace conditions. Moreover, the Commission has found that, “any effort to stifle competition through the negotiating process would not meet the good faith negotiation requirement;” listing among the examples of bargaining proposals presumptively *not* consistent with competitive marketplace considerations: “Proposals that result from agreements not to compete or to fix prices.” Coordinated negotiations between separately owned broadcasters in the same market are collusive pacts that result in prices, terms and conditions inconsistent with competitive marketplace conditions, and the Commission has the legal authority to deem this practice a violation of the good faith rules.

Broadcaster claims that coordinated negotiations result in significant cost savings are incorrect, and prohibiting such coordination will not disturb the other operational efficiencies achievable under sharing agreements. Moreover, bargaining imbalances in some markets do not justify permitting collusive agreements in all markets.

ACA calls for the Commission to go beyond the NPRM's proposal to prohibit a station from granting another station or station group the right to negotiate or the power

to approve its retransmission consent agreement when the stations are not commonly owned to target four harmful coordinated negotiation tactics:

- (a) delegation of the responsibility to negotiate or approve retransmission consent agreements by one broadcaster to another separately-owned broadcaster in the same DMA;
- (b) delegation of the responsibility to negotiate or approve retransmission consent agreements by two separately-owned broadcasters in the same DMA to a common third party;
- (c) any informal or formal agreement between separately-owned broadcasters in the same DMA or their representatives that agreement by one of the broadcasters to enter into a retransmission consent agreement with an MVPD would be contingent upon whether the other broadcaster was able to negotiate a satisfactory retransmission consent agreement with the MVPD; and
- (d) any discussions or exchanges of information between separately-owned broadcasters in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, the potential terms of future retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.

Prohibit Third Party Interference with Retransmission Consent. The record fully supports immediate Commission action to prohibit a broadcast station from: (i) allowing the network, which with it is affiliated, a say over its right to grant out-of-market retransmission consent to an MVPD; and (ii) conditioning retransmission consent on an MVPD's agreement not to carry distant stations. Each form of "third-party" interference disrupts the ability of MVPDs to serve consumers and should be prohibited under the good faith rules.

Congress and the Commission have long supported out-of-market carriage of broadcast signals by cable operators throughout the development of the relevant

broadcast signal carriage and copyright rules: broadcast programming exclusivity and copyright compulsory license, and later, retransmission consent and the good faith negotiating obligation. As ACA has explained, there is already in place a complicated and carefully balanced legal structure that limits the ability of an MVPD to carry out-of-market signals and protects broadcast exclusivity.

Network-imposed limitations on an affiliated station's ability, or disincentives to its willingness, to grant retransmission consent to an out-of-market MVPD end-run this balance by effectively extending the zone of network programming exclusivity beyond that permitted under Commission rules by private means. For the same reasons, broadcast station interference with the ability of an MVPD to negotiate retransmission consent rights with an eligible out-of-market station is equally unacceptable. Each form of third-party interference compromises this delicately balanced legal structure, disserves the public interest, and unfairly penalizes MVPDs. Both forms of third-party interference should be prohibited outright under the good faith negotiating requirement.

Network Interference. It should be obvious: a local station cannot plausibly be considered to be engaging in good faith negotiations with an MVPD to reach a mutually agreeable price, or set of terms and conditions, when the station has previously alienated its right to grant consent to its affiliated network, or has agreed to limitations demanded by its affiliated network on its ability to grant out-of-market retransmission consent. These behaviors harm MVPDs, harm their subscribers, and are flatly contrary to the goals of Congress and the Commission in ensuring the availability of broadcast television service delivered by MVPDs, and particularly the right of MVPDs to good faith

negotiations for the right to retransmit distant signals to consumers.

The record conclusively supports adoption of a *per se* prohibition on broadcast network interference with an affiliated station's right to negotiate retransmission consent for out-of-market carriage. However, the Commission's proposed rule, confined to network "approval" provisions, does not go far enough to address the extent of network interference with the retransmission consent negotiating process experienced by MVPDs. The Commission must prohibit network interference whether that interference is in the form of a network affiliation agreement giving the network "approval," "consent" or "veto" power on an affiliate's right to grant retransmission consent rights to an out-of-market MVPD, or other restraints or disincentives that would lead to the station negotiating retransmission consent for out-of-market carriage any differently than it negotiates with an MVPD for in-market carriage.

Consistent with its analysis of the means of carrying out coordinated negotiations, ACA also submits that the Commission should prohibit both legally binding and non-legally binding agreements that interfere with the ability of a broadcast station to enter into good faith negotiations for retransmission consent for out-of-market signals. To the extent there are legally binding network-affiliate agreements currently in place that would interfere with a broadcast station granting retransmission consent for out-of-market carriage, it should abrogate those provisions.

The Commission can accomplish these ends by either: (i) adopting the rule proposed in the NPRM as amended in accordance with ACA's recommendations to prohibit both legally-binding and non-legally binding network-affiliate agreements that

have the effect of limiting the ability of a station to grant in-market or out-of-market retransmission consent to any MVPDs; or (ii) re-interpreting the scope of the prohibition in Section 76.65(b)(vi) on agreements preventing a broadcaster from granting retransmission consent to an MVPD and 76.65(i) on refusal to negotiate to accomplish this same end; or (iii) doing both.

Broadcast station interference. Consistent with its analysis of network interference, the Commission should find that it is inconsistent with any plausible conception of “good faith” for a broadcast station to interfere with the right of an MVPD to negotiate a mutually agreeable arrangement with a “distant” signal to satisfy its subscriber needs and desires. The record is devoid of any support for this practice. Accordingly, the Commission should flatly prohibit as a *per se* violation of the good faith obligation any request or requirement by a broadcast station that an MVPD refrain from carrying a distant broadcast station signal. The Commission should ensure that this prohibition applies to all forms of broadcast station interference with the right of an MVPD to negotiate carriage of any out-of-market station, whether embodied in a legally binding or non-legally binding agreement of the parties. Moreover, it should immediately abrogate all provisions in existing retransmission consent agreements that would prohibit an MVPD from carrying a distant broadcast station signal.

To achieve these ends, the Commission can either interpret its current good faith standards more broadly, or adopt the prohibition proposed in the NPRM, or do both. The current Section 76.65(b)(vi) prohibition against execution of an agreement not to enter into a retransmission consent agreement with any other station or MVPD can be

easily interpreted more expansively to preclude a broadcast station from executing an agreement prohibiting an MVPD from carrying an out-of-market station that might otherwise be available to consumers as a partial substitute for the in-market station's programming. In the alternative, or in addition, the Commission can add an explicit prohibition on broadcast station practices that interfere with the ability of an MVPD to carry a distant significantly viewed station in the local broadcaster's market.

Investigate and Eliminate Price Discrimination Against Smaller MVPDs.

The record amply supports ACA's long-standing position that smaller MVPDs are the victims of widespread retransmission consent price discrimination, and that this discrimination ultimately leads to consumer harm and the depletion of valuable resources that could otherwise be used to deploy other advanced services and fund additional broadband deployment.

As ACA has documented in this proceeding, small and medium-sized operators pay, on average, double the retransmission consent fees of larger operators. The ultimate harm falls on their customers, who pay increased cable rates when operators pass along a portion of the resulting and discriminatory retransmission consent price hikes.

The time has come to investigate and address unfair price discrimination against smaller providers and to take appropriate action to remedy this unfair and costly practice. ACA is confident that the Commission's will find, at the conclusion of its investigation, that retransmission consent price discrimination against smaller MVPDs is widespread, unjustified, unfair and contrary to the public interest.

In closing, the status quo is untenable, the Commission is fully authorized to take remedial actions, and it must reform its retransmission consent rules before commencement of the upcoming retransmission consent negotiating cycle.

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

In the Matter of

Amendment of the Commission's
Rules Related to Retransmission
Consent

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MB Docket No. 10-71

REPLY COMMENTS



I. INTRODUCTION.

The record overwhelmingly supports ACA's call for immediate reform of the Commission's retransmission consent regulations governing multichannel video programming distributor ("MVPD") access to local television broadcast station signals. The retransmission consent "market" is not working as Congress intended and the Commission should proceed to reform its regulations to restore balance to retransmission consent negotiations for access to local and distant broadcast station signals. In short, the record shows that broadcast stations and networks are harming MVPDs and their subscribers through anticompetitive, unfair and discriminatory practices that disrupt viewer access to over-the-air broadcast signals delivered by their MVPDs and drive up retransmission consent prices beyond those achievable under competitive market conditions.

The broadcast stations and the networks defend their practices in terms of efficiency gains and "localism" but their claims are either misleading, unresponsive, or unavailing. The status quo is untenable, the Commission is fully authorized to take remedial actions, and it must reform its retransmission consent rules before commencement of the upcoming retransmission consent election and negotiating cycle.

Accordingly, and without further delay, the Commission should focus its efforts on the three reforms of primary interest to smaller MVPDs and take the following actions: (i) prohibit coordinated negotiation of retransmission consent by separately owned broadcast stations in a single designated market area ("DMA"); (ii) prohibit third-party interference with the exercise of retransmission consent for out-of-market carriage; and (iii) investigate and eliminate unfair price discrimination against smaller MVPDs. In addition, the Commission should not force small and medium-sized cable operators to participate in non-binding mediation where negotiations have reached an impasse.

II. THE RECORD DEMONSTRATES THAT COORDINATED RETRANSMISSION CONSENT NEGOTIATIONS BY SEPARATELY OWNED BROADCASTERS IN THE SAME MARKET ARE PREVALENT, MAGNIFY THE DISRUPTION CAUSED BY IMPASSES, DRIVE UP PRICES, AND SHOULD BE PROHIBITED AS *PER SE* VIOLATIONS OF THE GOOD FAITH OBLIGATION.

ACA has provided ample evidence demonstrating that a significant problem with the current retransmission consent regime is that in at least 33 local markets, at least one pair of broadcast stations affiliated with "Big 4" broadcast networks (ABC, CBS, NBC and Fox) engages in coordinated negotiations even though the stations are

separately owned.¹ This practice harms MVPDs and consumers by increasing the disruption caused by negotiating breakdowns and by driving prices significantly higher than otherwise achievable. The prevalence of this practice supports remedial relief through a *per se* prohibition on coordinated negotiations by separately owned stations in a single market, whether such coordination occurs through a legally binding or non-legally binding agreement. The record amply supports adoption of ACA's proposed amendments to the Commission's good faith rules, and refutes broadcaster claims that there is no legal or public policy basis to ban coordinated negotiations by non-commonly owned broadcasters in the same market.²

¹ While ACA has focused its research and analysis on coordinated negotiations involving "Big 4" broadcast network affiliates, coordinated negotiations also occur with "Big 4" affiliates and independent network affiliate stations negotiating together. See, e.g., *ACME Television Licenses of Ohio, LLC, Assignor, and WBDT Television, LLC, Assignee, For Consent to Assignment of Broadcast Station License of WBDT, Springfield, OH*, Petition to Deny, File No. BALCDT-20100917AAT, at 6 (filed Oct. 22, 2010) (explaining that a joint sales agreement between two owners of competing stations in the Dayton, OH DMA had "consolidate[d] negotiating authority into the hands of a single entity" and "effectively eliminated competition between [the stations] in the retransmission consent context"); see also, *ACME Television Licenses of Wisconsin, LLC, Assignor, and LIN of Wisconsin, LLC, Assignee, For Consent to Assignment of Broadcast Station License of WCWF, Suring, WI*, Petition to Deny, File No. BALCDT-20100917AAF, at 11 (filed Oct. 22, 2010).

² See, e.g., *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Cablevision Systems Comments at 20-21 (filed May 26, 2011) ("Cablevision Comments") ("By declaring this practice [of joint negotiations] inconsistent with good faith negotiations, the Commission would place the MVPD and the local broadcaster on more equal footing and so more likely to negotiate fair and reasonable terms that truly benefit the consumers in that market."); *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, The Organization for the Promotion and Advancement of Small Telecommunications Companies; The National Telecommunications Cooperative Association; The Independent Telephone and Telecommunications Alliance; The Western Telecommunications Alliance; and The Rural Independent Competitive Alliance Comments at 11-12 (filed May 27, 2011) ("Rural MVPD Group Comments") ("Broadcasters have more than ample leverage in the negotiating process. The creation of a collective body that increases this leverage to the detriment of small MVPDs and their consumers should constitute a *per se* violation of the good faith rule."); *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, CenturyLink Comments at 6 (filed May 27, 2011) ("CenturyLink Comments") ("An MVPD negotiating on the other side of a coordinated control arrangement is now in the

NAB and broadcaster commenters raise several specific objections to the Commission's proposed prohibition of coordinated negotiations. They argue that: (i) Commission rules permit coordinated negotiations and that in establishing the retransmission consent system, Congress intended for parties to choose how to negotiate, subject to antitrust standards acting as safeguards against anti-competitive behavior;³ (ii) no credible evidence has been provided to suggest that coordinated negotiations result in delays or other complications warranting Commission intervention;⁴ rather these negotiations occur in a competitive marketplace where MVPDs wield significant leverage at the bargaining table;⁵ (iii) coordinated negotiations

even more difficult position of potentially losing key programming in multiple markets or on multiple stations in the same market if an agreement is not reached. A new entrant MVPD facing this onerous situation may simply be unable to enter or sustain its recent entry in one or more local markets.”); *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, The American Public Power Association; the Iowa Municipal Electric Association; Braintree Electric Light Department (MA); Chelan County Public Utility District (WA); Greenville Electric Utility System (TX); City of Glasgow, KY; Lafayette Utilities System (LA); Muscatine Power and Water (IA); Scottsboro Electric Powerboard (AL); South Georgia Governmental Services Authority; and Spencer Municipal Utilities (IA) Comments at 22 (filed May 27, 2011) (“APPA Group Comments”) (“As the Commission notes, when a station relinquishes its responsibility to negotiate its own retransmission consent, there may be delays to the negotiation process, and negotiations may become unnecessarily complicated if an MVPD is forced to negotiate with multiple parties with divergent interests, potentially including interests that extend beyond a single local market. More important, allowing unaffiliated broadcasters to band together enables them to abuse their market dominance and exacerbates the negative impact on consumers.”).

³ See *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, National Association of Broadcasters Comments at 23 (filed May 27, 2011) (“NAB Comments”); *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Sinclair Broadcast Group, Inc. Comments at 22-25 (filed May 27, 2011) (“Sinclair Comments”).

⁴ NAB Comments at 25-26; Sinclair Comments at 24; *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Comments of Nexstar Broadcasting, Inc. (filed May 27, 2011) at 21 (“Nexstar Comments”).

⁵ NAB Comments at 23, 28-32; *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Joint Comments of

serve the public interest by increasing efficiencies in the negotiating process;⁶ and (iv) it would be arbitrary, capricious and contrary to public policy to prohibit broadcasters from coordinated negotiations while expressly permitting small MVPDs to negotiate as a group.⁷ We deconstruct each of these arguments in the following sections.

A. Nothing in the Communications Act Suggests that Either Congress or the Commission Intended the Retransmission Consent Rules to Permit Collusive Behavior

In establishing retransmission consent, Congress intended to create a “marketplace for the disposition of rights to retransmit broadcast signals,” and later amended the rules to provide the requirement that negotiations be conducted in good faith.⁸ The good faith rules provide that broadcasters may seek different prices, terms and conditions from different MVPDs, *but only* to the extent such differences are

Barrington Broadcasting Group, LLC, Bonten Media Group, LLC, Dispatch Broadcast Group, Gannett Co., Inc., Newport Television, LLC, Post-Newsweek Stations, Inc., and Raycom Media, Inc. at 21 (filed May 27, 2011) (“Joint Broadcaster Comments”).

⁶ NAB Comments at 27-29; *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, The CBS Television Network Affiliates Association Comments at 19-20; (filed May 27, 2011) (“CBS Affiliates Comments”); Sinclair Comments at 23; Nexstar Comments at 20-21; Joint Broadcasters Comments at 20-21; *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Belo Corporation Comments at 23. (filed May 27, 2011) (“Belo Comments”).

⁷ NAB Comments at 33; Belo Comments at 23; *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Hubbard Broadcasting, Inc. Comments at 2. (filed May 27, 2011) (“Hubbard Comments”).

⁸ Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong. 1st Sess. (1991) at 36; Satellite Home Viewer Improvement Act of 1999, P.L. 106-113, Div. B, § 1000(a)(9), § 1009, 113 Stat. 1536, 1501A-521 (Nov. 29, 1999) (“SHVIA”); The Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, § 207, 118 Stat. 2809, 3393 (2004) (“SHVERA”).

consistent with competitive marketplace conditions.⁹ As ACA has shown in its Comments, coordinated retransmission consent negotiations among competing local broadcast stations in the same market are not consistent with competitive marketplace conditions; rather, they thwart competition and are tantamount to collusion among sellers to fix prices.¹⁰ Time Warner notes additionally that the “Commission’s overly permissive approach regarding dubious sharing agreements has facilitated collusive negotiations, and if the Commission is going to continue allowing such arrangements at all (deeming the station’s influence insufficient to constitute an unauthorized transfer of control), it at least should take corrective action to prevent anticompetitive effects.”¹¹

NAB argues that the Commission should refrain from adopting its proposed rule prohibiting coordinated negotiations for the following reasons: (i) it would be inconsistent with congressional intent that coordinated negotiations be permitted; and (ii) the prohibition would constitute impermissible direct Commission interference with the outcome of retransmission consent negotiations and would improperly reverse a prior Commission conclusion that coordinated negotiations are consistent with marketplace conditions.¹² In sum, NAB claims that Congress never intended to prohibit coordinated

⁹ 47 U.S.C. § 325(b)(3)(C)(ii).

¹⁰ *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, American Cable Association Comments at 25 (filed May 27, 2011) (“ACA Comments”).

¹¹ *In the Matter of Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, MB Docket No. 10-71, Comments of Time Warner Cable Inc. at 35 (filed May 27, 2011) (“Time Warner Comments”).

¹² NAB Comments at 24-25.