



October 3, 2011

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of Ex Parte Communication in MB Docket No. 10-71

Dear Ms. Dortch:

On Thursday, September 29, 2011, Jerianne Timmerman and the undersigned of the National Association of Broadcasters (NAB), met via telephone with Dave Grimaldi of the Office of Commissioner Mignon Clyburn. During the meeting, we discussed the potential impact of changes to the retransmission consent regime on broadcasters' continuing role as the leading providers of local news and information, entertainment, and other innovative content and services.

We stated that the system of retransmission consent established by Congress is premised on market-based negotiations between broadcasters and multichannel video programming distributors (MVPDs) who wish to carry their signals. Congress set forth a circumscribed role for the government in the retransmission consent process – that of adopting rules of the road for good faith negotiations and enforcing those rules. We stated that upending this system for one in which the FCC regulates everything from the amount and type of compensation,¹ to the length of retransmission consent

¹ MVPDs urge the FCC to confer upon them a range of advantages in negotiating retransmission consent compensation, such as the ability to pay the lowest rate paid by any other MVPD in a market. See, e.g., Comments of Cablevision in MB Docket No. 10-71 at 9-10 (May 27, 2011). Others urge the Commission to establish the prices for retransmission consent. See, e.g., Comments of Time Warner Cable in MB Docket No. 10-71 at 43 (May 27, 2011) ("TWC Comments"); Comments of Bright House Networks in MB Docket No. 10-71 at 3 (May 27, 2011). Some MVPDs request that the Commission restrict the types of compensation that can be negotiated in exchange for retransmission consent, chiefly by limiting in-kind compensation in the form of carriage of other programming (such as broadcaster multicast signals). See, e.g., Comments of AT&T in MB Docket No. 10-71 at 18 (May 27, 2011) ("AT&T Comments"); TWC Comments at 33. NAB explained how such price regulation proposals would be unlawful and contrary to the public interest in its reply comments. See Reply Comments of the National Association of Broadcasters in MB Docket No. 10-71 at Sections VI, VII (Jun. 27, 2011) ("NAB Reply Comments").

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agreements,² to mandating arbitration or interim carriage³ would require an act of Congress. We noted that, as the Commission has previously held, such governmental intrusion into retransmission consent negotiations is beyond the scope of the Commission's authority and is contrary to plain language of the statute and Congressional intent.⁴

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Erin L. Dozier
Senior Vice President and Deputy General Counsel
Legal and Regulatory Affairs

cc: Dave Grimaldi

² See, e.g., AT&T Comments at 19; Joint Comments of Mediacom Communications Corporation *et al.* in MB Docket No. 10-71 at 28 (May 27, 2011) ("Joint Comments"). NAB has previously analyzed these proposals and explained why they would be contrary to law. See NAB Reply Comments at 28-29.

³ See, e.g., Comments of SureWest Communications, MB Docket No. 10-71 at 6 (May 27, 2011) (the FCC should adopt mandatory arbitration); TWC Comments at 43; Joint Comments at 29-30 (disagreeing with the Commission's tentative conclusion that it lacks the statutory authority to adopt interim carriage requirements and mandatory dispute resolution); AT&T Comments at 12 (the FCC should provide for interim carriage pending the resolution of retransmission consent negotiations and disputes); TWC Comments at 38 (same). NAB refuted these arguments during the reply phase of this proceeding. See NAB Reply Comments at 24-30. See *also* Comments of NAB in MB Docket No. 10-71 (May 27, 2011) at 17-19 (the FCC correctly concluded that it lacks authority to mandate interim carriage) and 19-22 (the FCC properly held that it lacks the authority to require mandatory arbitration).

⁴ The suggestion that there is any ambiguity regarding the FCC's authority to require interim carriage is particularly baffling. The Act plainly states that no MVPD "shall retransmit the signal of a broadcasting station" except "with the express authority of the originating station." 47 U.S.C. § 325(b)(1)(A). See *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 ¶ 60 (2000) (holding that Section 325(b) of the Act prevents a MVPD "from retransmitting a broadcaster's signal if it has not obtained express retransmission consent"). When interpreting statutory language, the Supreme Court has stated "[we] must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The plain language of the Act is clear: MVPDs do not have any rights to distribute a broadcast signal – even for an interim or short period of time – unless the broadcaster has provided consent to do so. Given this clear statutory directive, the FCC cannot step into the shoes of a broadcaster to grant a MVPD the right to retransmit a station's signal over the broadcaster's objections. In short, the unambiguous language of Section 325(b) puts an end to the question of whether the FCC can mandate interim carriage of a broadcast station's signal.