



December 9, 2011

VIA ECFS

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

Re: *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71; *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules*, MB Docket No. 09-182

Dear Ms. Dortch:

Charter Communications, Inc. (“Charter”) hereby responds to the Ex Parte Notice recently filed by the National Association of Broadcasters in these proceedings.¹ NAB argues that the retransmission consent concerns raised by the American Television Alliance and other MVPDs should not be considered in the pending review of the Commission’s broadcast ownership rules in MB Docket No. 09-182. In fact, the opposite is true. Any examination of the Commission’s broadcast ownership rules that fails to consider their impact on retransmission consent fees would be a disservice to the vast majority of American households who are now facing rapidly escalating retransmission consent costs.

There is no dispute that the nation’s broadcasters are demanding dramatic increases in retransmission consent fees (despite the modest level of overall inflation and the challenging economic times faced by American consumers). Nor is there any dispute that these dramatic increases are influenced by the demands of broadcast networks and by the demands of broadcast entities representing multiple stations within the same television market. The Commission admittedly should not address every problem associated with retransmission consent in the context of its broadcast ownership proceeding, but MB Docket No. 09-182 is surely the appropriate proceeding to address the problem of broadcast licensees surrendering their independent control over retransmission consent to third parties.

In the current video marketplace, the exercise of retransmission consent is fundamental to a licensee’s public interest responsibility. A decision to grant or deny retransmission consent determines

¹ Letter from Erin Dozier, NAB, to Marlene Dortch, MB Docket Nos. 09-182 and 10-71 (Nov. 30, 2011).

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whether a station's programming can be readily accessed by the local television households it is licensed to serve. Accordingly, Charter respectfully requests that the Commission clarify in its broadcast ownership proceeding that broadcast licensees must exercise *de facto* and *de jure* control over retransmission consent and should not surrender that control via any formal or informal arrangement to a third party.

NAB's Ex Parte Notice emphasizes that Shared Services Agreements provide stations with substantial capital cost *savings* that enable those stations to better serve the public.² Assuming *arguendo* that NAB's justification is true, it highlights exactly why "sharing" retransmission consent authority is detrimental to the public interest. Broadcasters do not combine their retransmission consent authority to save negotiation costs; they combine their retransmission consent authority to better leverage their negotiating position and extract higher retransmission consent payments from MVPDs. This is particularly true in the case of stations that otherwise would be competing against each other in the same television market.

Unlike NAB's benign depiction of Shared Services Agreements, combining retransmission consent authority does not benefit the public by appreciably lowering station costs. To the contrary, it harms the public by increasing the retransmission consent fees ultimately shouldered by local MVPD subscribers. Accordingly, each broadcast licensee should be required to independently exercise its retransmission consent authority consistent with its own public interest obligations.

In its own Ex Parte Notice in these proceedings, dated November 18, 2011, Time Warner Cable recommends that the Commission take several specific steps to ensure that broadcast licensees exercise retransmission consent independently. It explains:

In particular, the Commission should make clear that the use of LMAs, JSA, SSAs, or other similar sharing arrangements – whether formal or informal – that enable joint negotiation of retransmission consent confers an attributable interest upon the negotiating broadcaster. Likewise, the Commission should clarify that the local television ownership rule prohibits the ownership, operation or control of multiple television signals in a single DMA unless a valid exception exists. The Commission also should find that a network's veto or approval right over an independent affiliate's retransmission consent agreements amount to a *de facto* transfer of control of the station's license in violation of Section 310(d) of the Act and the Station's public interest obligations under Section 309."³

Charter supports Time Warner Cable's recommendations and urges prompt Commission action consistent with these recommendations in MB Docket No. 09-182.

² *Id.* at 1-2.

³ Letter from Matthew Brill, Counsel to Time Warner Cable, to Marlene Dortch, MB Docket Nos. 09-182 and 10-71, pp. 2-3 (Nov. 18, 2011).

Please contact the undersigned with any questions.

Sincerely,

s / Christin McMeley

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