



NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The Voice of Rural Telecommunications

www.ntca.org

February 7, 2012

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

Ex Parte Notice

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

Dear Ms. Dortch:

On Monday, February 6, 2012, the undersigned, of the National Telecommunications Cooperative Association, together with Steve Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies, Micah Caldwell of the Independent Telephone and Telecommunications Alliance, Eric Keber of the Western Telecommunications Alliance and John E. Benedict of CenturyLink,¹ met with William Lake, Nancy Murphy, Michelle Carey and Diana Sokolow of the Media Bureau to discuss the above-captioned docket.

The group discussed difficulties with the current rules governing retransmission consent and asserted that the Federal Communications Commission has authority under the Cable Act of 1992 to reform the process. The group pointed out that section 706 of the Telecommunications Act of 1996 also provides the Commission ancillary authority to address the issue, as well as the responsibility to reduce barriers to broadband investment, including the outdated retransmission consent regime.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. The materials provided to staff during the second meeting referenced

¹ The group also represented the concurring views of the Rural Independent Competitive Alliance (RICA).

Ms. Marlene H. Dortch

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in this letter are provided herewith. If you have any questions, please do not hesitate to contact me at (703) 351-2012 or sfravel@ntca.org.

Sincerely,

/s/ Steven L. Fravel

Steven L. Fravel

Emerging Technologies Manager

Enclosures:

cc: William Lake
Nancy Murphy
Michelle Carey
Diana Sokolow

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The National Telecommunications Cooperative Association
The Organization for the Promotion and Advancement of Small
Telecommunications Companies
The Independent Telephone and Telecommunications Alliance
The Western Telecommunications Alliance
Rural Independent Competitive Alliance

MB Docket No. 10-71

Ex Parte Presentation February 6, 2012

Retransmission Consent Update

- I. To Review: The FCC has the authority and the responsibility to reform retransmission consent; under ancillary authority found in Section 706 of the Telecommunications Act of 1996.
- A. We have said: Access to television programming is a broadband issue.
 - 1. RLECs offering video with DSL report 24% higher broadband adoption rates.
 - 2. RLECs invest in stable, higher capacity, longer reach broadband networks to comply with broadband availability policy.
 - a. RLECs apply for RUS Loans
 - b. RLECs apply for Broadband Stimulus Grants and Loans
 - B. We have noted: The FCC has recognized the intrinsic link between providers' ability to offer video and to invest in broadband infrastructure.
 - a. Local Franchise Order, MB Docket No. 05-311, ¶ 51 (2007)
 - b. MDU Order, MB Docket No. 07-189, ¶ 47.
 - C. The FCC has cited: 706 Precedent in previous orders
 - 1. FCC found that steps to improve access to content and enhance video competition would lower barriers to broadband investment.
 - 2. Such measures are authorized by both the 1992 Cable Act and Section 706 of the 1996 Act (LFA Order, ¶52, ¶62, MDU Order, ¶46, ¶52).
 - 3. We have noted: The FCC precedents (1 & 2) existed prior to the FCC finding that broadband deployment was "not reasonable and timely."
 - 4. We also noted: Because the FCC had determined that deployment is not reasonable and timely, the Commission is required by Section 706 to reduce barriers to investment.
 - 5. We have pointed out: As lack of access to programming is a significant barrier to investment, the FCC has the responsibility to lower it.
- II. To review: A profound lack of action leading to reduced, not enhanced, consumer choice continues to affect small rural telephone companies that deploy video.
- A. We have noted that: Small & medium sized MVPDs are being forced out of the video market, impeding the Cable Act and Section 706 goals:
 - 1. Competition
 - 2. Consumer choice
 - 3. Opportunity for increased broadband adoption and investment.
 - B. NCTC reports 28 market exits since 2010. (NCTC ex parte, Sept 28, 2011)
 - C. NTCA notes three association member market exits from the state of Georgia alone in 2011.
 - D. The American Television Alliance calls attention to nearly 40 broadcast station blackouts for MVPDs in calendar 2011.
<http://www.americantelevisionalliance.org/press-releases/broadcasters-begin->

[2012-with-a-bang-giving-viewers-the-blackout-blues-across-america-latest-retrans-outrages-in-boston-and-miami/](#)

- E. We note that: The situation among small rural and some larger MVPDs is contrary to the Cable Act and Section 706.
- III. To review: “Good Faith” Requirements
- A. We have noted: The following should be considered per se violations of the requirement to negotiate in Good Faith:
 - 1. A broadcaster entering an agreement granting retransmission consent approval rights to its affiliate network.
 - 2. Stations not commonly owned negotiating and/or approving agreements for station in the same DMA under the guise of a “shared services agreement, or management services agreement.”
 - 3. The refusal of either party in a retransmission negotiation to offer *bona fide* proposals on important issues.
 - 4. The refusal of either party in a retransmission consent negotiation to agree to non-binding mediation in the event of an impasse.
 - 5. Either party engaging in behaviors designed to manipulate the expiration of retransmission consent agreements to coincide with “must have” broadcasts.
 - 6. Attempts by parties to deny customers access to significantly viewed out-of-market signals.
 - 7. Engaging in practices that unfairly advantage the broadcaster to the detriment of the end-user, such as:
 - a. forced tying
 - b. multicast tying
 - c. broadband tying
 - d. the inclusion of mandatory non-disclosure provisions
 - e. “pay-ahead” requirements,
 - f. payment increases tied to local market speculation
 - g. payments rooted in network reverse compensation formulas
 - B. We have recommended: in addition to fines, violations of Good Faith should be considered when broadcast license renewals are considered.
 - C. We recommend: Broadcasters support and service in the public interest must include broadband adoption.
 - D. We have noted: The “totality of circumstances” standard should clarify that non-market price discrimination against small and medium MVPDs constitutes a “good faith” violation.
- IV. We have noted gross inequities in the negotiation process:
- A. The current rules allow one party to withhold necessary content with impunity.
 - B. Broadcasters have no incentive to negotiate with MVPDs.
 - C.. We have recommended: A standstill provision to insert market forces and provide incentive to negotiate.
 - D. Small and mid-sized MVPDs cannot gauge market value due to mandatory non-disclosure provisions, leading to price discrimination.

- E. We recommended: A “most favored nation” rule permitting access to the same rates and conditions as large MVPDs, evening the playing field and enabling more competition in the video marketplace.
- V. We have noted that the current regime is antiquated and counter productive to both the Cable Act and to Section 706.
- VI. We reiterate that the FCC must act in the best interest of both the broadcasters who have been granted special status and unlimited power while the small and mid-sized MVPDs have no leverage and no means to bargain equitably.

NTCA, OPASTCO, WTA, ITTA, RICA ex parte notes Feb. 6, 2012.

Complaint List:

1. Sinclair Broadcast Group – Negotiating on behalf of same DMA “competing stations” }
Partner Communications Cooperative
2. Sinclair, warning letter recipients to accept the letter offer, or risk increases during any }
negotiation period after the deadline published in the letter. } *Partner Communications Cooperative*
3. Sinclair - Acceptance of all stations fees must be tied to the same letter offer, or no agreement will be considered valid. } *Partner Communications Cooperative*
4. Sinclair - Repeatedly requires the highest rates in the DMA despite representing the least watched stations in the market. } *Partner Communications Cooperative, Monroe Telephone Company,*
5. Station requiring a retransmission fee “pay ahead” schedule that ties three months fees to single payments. } *Central Scott Telephone Company*
6. Letter from WHO requesting acceptance via letter dated October 1 by return post or e-mail and no offer to negotiate prior to the deadline (October 31). } *Partner Communications Cooperative*
7. Grant Broadcasting - Annual increases of 20, 50, and 300% over the retransmission term. } *Central Scott Telephone Company*
8. WHO - Digital multicast channel tying. } *Partner Communications Cooperative*
9. Refusal to negotiate in person or via telephone. Requiring all negotiations to proceed via e-mail. } *Canby Telephone Cooperative*
10. Refusal to honor counter offers that reflect true market conditions. } *Canby Telephone Cooperative*
11. Sinclair – 127% increase from 2011 to 2012. } *HTC*
12. Fairchild – Demand for 169% increase in rate. Jumping from \$0.40 to \$1.00 } *Canby Telephone Cooperative*