Mediacom

Joseph E. Young,
Senior Vice President, General Counsel & Secretary

July 19, 2013

VIA ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Comments—MB Docket No. 10-71

Dear Ms. Dortch:

The fabulously wealthy have long been a staple of broadcast television shows. One example from the 1960s is Jed Clampett of *The Beverly Hillbillies*, who, with a net worth of $9.8 billion, ranks 4th on the *Forbes Fictional 15* list of the wealthiest fictional characters.[1] More recently, there is Jo Bennet, owner of the company featured in the series *The Office*, who, at an even $1.0 billion, comes in at last on the *Forbes* list. Of course, these moguls are fictional,[2] and no living person was defrauded, exploited or bamboozled in the accumulation of their fantasy fortunes.

Not all of the wealth created by broadcast television is imaginary, however, nor is its accumulation always benign. Some broadcast station owners are getting rich or richer because billions of dollars are being removed from the pockets of ordinary consumers who are not receiving any commensurate new or additional value in exchange. We are, of course, referring to the retransmission consent fees ultimately being paid by tens of millions of households for no reason other than the fact that they choose to receive programs freely available over-the-air through a cable or satellite dish rather than an antenna.

In their public statements, broadcast interests often claim that consumers benefit from retransmission consent because the fees collected pay for more and better locally originated programming. In reality, as R. Stanton Dodge, Dish Network Corp.'s Executive Vice President and General Counsel, pointed out during the recent "State of Video" hearing before a subcommittee of the Senate Commerce Committee, retransmission consent fees usually wind up

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[1] See http://www.forbes.com/special-report/2012/fictional-15-12/fictional-15.html. Although Mr. Clampett has remained at or near the top of the annual *Forbes* list for many years, some famous television characters from earlier days, like JR Ewing of *Dallas* or Thurston Howell III of *Gilligan's Island*, have lost their positions in the top ranks to more recent creations. *See, e.g.,* http://www.forbes.com/2002/09/13/400fictional_print.html

[2] In fact, four of the top fifteen are not even fictional people, but are, instead, cartoon characters. Those four are Charles Montgomery Burns (the nuclear power plant mogul from *The Simpsons*); Flintheart Glomgold (a rival of Donald Duck's wealthy Uncle Scrooge); Richie Rich (featured in comic books since the 1950s); and Mr. Monopoly, the character in top hat and tails who symbolizes Hasbro's *Monopoly* game.

in the coffers of the corporate parents of stations, rather than being available to those stations to fund local production.

Today, many broadcast stations are owned by the big-four networks or other large multiple-station groups. The retransmission consent deals we have concluded for those stations over the years have been negotiated by officers or agents of the corporate parents. Local station management is never present, and there is scarcely ever a mention by the parent's negotiators of the needs or interests of the local stations.

Similarly, once a deal is reached, we are required to send monthly checks for retransmission consent fees directly to the corporate parent, not to any of the local stations. While we do not know how the money is spent in every instance, it is clear that, in at least some prominent cases, it is used by the parent company to pay huge executive salaries, fund dividends and stock repurchases or acquire and support unrelated businesses, rather than constituting a "second revenue stream" that stations can tap into for local production, as some broadcast interests claim.

As an example, during 2011 and the prior two years, one corporate owner of multiple stations collected an estimated[3] $250 million in retransmission-consent-related payments. During that same period, it:

- paid over $290 million in compensation to its five most highly compensated officers, including over $170 million to its Chief Executive Officer, and more than $50 million to another officer;
- distributed over $600 million in dividends to its stockholders; and
- spent over $1 billion to repurchase shares of its own stock.

Another example is a different multiple-station owner that, during one period, took in over $150 million in retransmission consent payments while paying out over $160 million in dividends. In the same vein, several companies have recently announced station acquisition deals with a combined cost of billions of dollars, an amount that is substantially more than the acquiring companies have collected as retransmission consent fees over the past few years.[4]

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[3] For the first several years after cash retransmission consent payments became common, publicly traded companies that own broadcast television stations routinely disclosed the amount of their quarterly and annual retransmission consent revenues in their earnings releases and SEC reports. Many, if not most, of them now lump their retransmission consent revenues in with revenues from other sources, so that it is impossible to determine the amount of retransmission consent fees earned in any given period. *See* Mike Farrell, *Stations Score Retrans Fees*, Multichannel News, March 23, 2010, at htpp://www.multichannel.com/content/stations-score-retrans-fees. No doubt, that decision is motivated to a large degree by the desire to deflect criticism about the cost of retransmission consent to consumers.

[4] We do not intend to take a position in the debate over whether executive compensation levels or returns to investors in general or in specific industries are too high, nor do we mean to imply that the payments to executives and investors by station owners are not justified under some principle or another. Our point is only that the amount spent by broadcast station owners for these purposes is not only very large, but also far in excess of the retransmission consent revenues collected, facts that, in our view, call into question important economic rationales offered by broadcast interests in defense of retransmission consent.

Simple math tells us that all of this leaves nothing from retransmission consent revenues for investment in local programming. The fact that broadcasters spend far more on executive salaries, dividends, stock buybacks and acquisitions than they collect in retransmission consent fees belies the claim by station owners that poor, struggling local stations would go out of business or have to cut production budgets without retransmission consent money. Broadcaster claims that consumers should pay ever-increasing subscription fees to ensure the survival of supposedly financially strapped or endangered stations even as the stations' owners and officers are personally pocketing millions that could be used to support them are simply not credible.

Given how retransmission consent fees are really spent, it is no wonder that broadcasters vociferously proclaim that the so-called "marketplace" for retransmission consent is working just fine—from the perspective of the corporate parent's executives and stockholders, retransmission consent is truly a most wonderful invention. Broadcasters readily admit that when speaking to investors and security analysts, rather than the public or government officials. For example, in a conference call with analysts, the CEO of one publicly traded company crowed about the amount of retransmission consent money it expected to collect for the year and predicted that it would receive multiples of that number in future years. In contrast to the broadcasters' claim when addressing the FCC or Congress that retransmission consent fees are spent on local stations and locally produced programming, in front of this audience the company's CEO openly boasted that the hundreds of millions in expected retransmission consent fees would "fall to the corporate bottom line."

Another top executive of the corporate owner of a group of broadcast stations bragged at a conference sponsored by an investment bank that retransmission fees are all "revenue and profit" for the parent company and "significantly accretive to our margin" because "there is no cost against it"—meaning that retransmission consent dollars are not spent on local stations or programming and are simply incremental profit for the parent.

The broadcasters' practices are completely contrary to congressional intent. The legislative history makes clear that Congress created retransmission consent for the benefit of local stations, not an ultimate corporate parent or its executives and stockholders, and expected negotiations to be conducted and controlled primarily by those same local stations.

Ironically, although retransmission consent was intended to advance the cause of localism, it has had the opposite effect. As one commentator has observed, "[t]he main unexpected consequence of retransmission consent has been the domination of local interests by the interests of the networks and multiple station owners."[5] Indeed, the availability of retransmission consent money that "fall[s] straight to the bottom line" with "no cost against it" has triggered the recent explosion of station acquisitions, which will result in the program schedules of even more stations becoming controlled by the corporate headquarters of an ever-shrinking number of big companies.

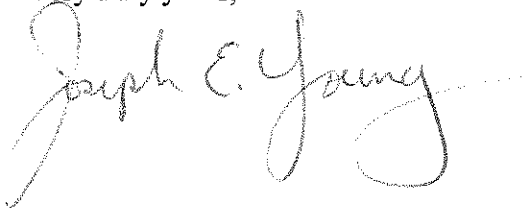
We hope that the Commission will keep these points in mind when evaluating claims by broadcast interests that retransmission consent money is needed or used to maintain or increase

[5]Charles Lubinsky, *Reconsidering Retransmission Consent: An Examination of the Retransmission Consent Provision (47 U.S.C §325(b)) of the 1992 Cable Act*, 49 Fed. Comm. L.J. 99, 163 (1996).

the amount or quality of local programming or to otherwise further localism. Even more important, in considering applications associated with pending acquisitions of broadcast television stations, the Commission should take into account the fact that some of those transactions will result in higher retransmission consent fees that will ultimately be borne by consumers—indeed, press reports indicate that gaining the leverage to extract greater retransmission consent revenues is a primary motivation for the acquisitions. Another result will be the further subversion of local interests to the interests and ambitions of distant corporate owners, as well as a reduction in the number of independent voices and consumer choices as local news programs are further homogenized in the interests of maximizing the parent company's profits.

Finally, we are cognizant of the Commission's view that its authority in the realm of retransmission consent is severely limited. We have previously filed comments explaining why we disagree with that conclusion, but even if Commission's position is correct, that does not mean that it is powerless to protect consumers and ensure that Congressional intent is honored. The Commission undoubtedly has broad authority over licenses of broadcast spectrum and to define the public service obligations of licensees under provisions of the law that are independent of and unaffected by Section 325(b) of the Communications Act.

Using that authority, the Commission could, for example, condition license renewal upon an agreement by the licensee that, before withholding retransmission consent from any MVPD willing to submit deadlocked negotiations to binding arbitration and to pay the awarded rate retroactively, the licensee would have to ensure that its station's signal is available off-air to the vast majority of households in the DMA, without any expense beyond the cost of an affordable antenna. Similarly, it could require, as part of the licensee's public service obligations or a condition to renewal that at least 95% of retransmission consent fees attributable to any station be spent on expanding or enhancing locally originated and locally oriented programming. While measures such as these would not solve the fundamental problems with the retransmission consent system as it has developed under the Commission' interpretation of the law, they would make the system more in tune with Congressional intent.

Thank you for you for your consideration.

Very truly yours,