

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

In the Matter of)	
)	
DISH Network L.L.C.)	File No. CSR-8839-C
)	MB Docket No. 13-246
Verified Retransmission Complaint)	
)	
<i>Against</i>)	
)	
Media General, Inc.)	
To: The Secretary's Office		
Attn: The Media Bureau		

ANSWER AND REQUEST FOR SANCTIONS

MEDIA GENERAL, INC.

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November 14, 2013

SUMMARY

Since 1992, no Media General station has ever gone dark as a result of a retransmission consent dispute. Moreover, no MVPD has ever filed a complaint accusing Media General of acting in bad faith. DISH, by contrast, has been responsible for more takedowns over the last three years than any other MVPD. Furthermore, DISH, along with its predecessors and affiliates, has a long history of abusive litigation tactics. DISH's Complaint is just the latest example. As a result, DISH's subscribers in Media General's markets have now been deprived of the important local services that Media General provides for 45 days because DISH refuses to agree to reasonable retransmission consent terms with Media General.

Reaching fair retransmission consent agreements is crucial to Media General's ability to maintain the high level of local service it provides as it faces rising costs and increasing competition. Although refusing consent for carriage to providers like DISH is extremely distasteful, when MVPDs refuse to compensate Media General fairly for carriage of its signals, they endanger the future quality of service to all Media General's customers. That result is unacceptable. In this case, DISH has chosen to manufacture a crisis rather than make the hard compromises necessary to reach a deal. The parties will reach a fair agreement as soon as DISH starts valuing its subscribers' rights and interests as highly as does Media General.

The Complaint is just the latest instance of DISH's irresponsible conduct during its negotiations with Media General. Before Media General's stations went dark on October 1, 2013, DISH repeatedly refused to reduce its supposed offers and counteroffers to writing in a full long-form retransmission consent agreement. When it did reduce its offers to writing, they bore little resemblance to what DISH had offered orally. When the parties convened a last-ditch conference call to try to reach a deal before Media General's stations went dark, DISH hung-up

on Media General's negotiators in a fit of pique following several minutes of their negotiators yelling accusations and generally refusing to allow Media General's negotiators to speak. DISH's refusals to provide a full-mark up of Media General's proposed long-form agreement for many weeks or conduct a civil conference call are prime examples of DISH's unwillingness to bargain seriously toward a deal.

Nevertheless, despite DISH's abusive behavior, the parties have continued to negotiate a new retransmission consent agreement. Throughout this process, Media General has requested nothing more than rates that reflect the marketplace value of Media General's signals and industry standard terms and conditions. After several months of hard negotiations, dozens of emails, and many conference calls at all hours of the day, the parties have substantially narrowed the gap between them on carriage issues and economics. As of today, however, the parties continue to fundamentally disagree over the value of Media General's signals. As the Commission has made clear many times, disagreeing over value is not bad faith.

The Complaint, however, is much worse than a pleading that mistakes hard bargaining for bad faith. It is a frivolous pleading based entirely on knowingly, willfully, and maliciously false accusations that are easily disproven with reference to correspondence authored by DISH's own negotiators.

DISH makes two principle allegations, neither of which has any evidence to back them up. First, DISH claims Media General has unreasonably delayed negotiations by refusing to provide DISH with counter-offers for unreasonably long periods of time – first, between October 1-11, 2013, and second between October 11-18, 2013. The facts shown herein demonstrate that no significant break in negotiations ever occurred during either period and that any delay was caused by DISH's refusal to clarify its own proposals at Media General's request. Negotiations

continued throughout both periods of alleged “unreasonable delay,” and they have continued uninterrupted since DISH filed the Complaint. DISH’s allegations to the contrary are blatant and sanctionable misrepresentations of the facts.

Second, DISH claims that Media General has demanded that DISH re-negotiate its existing retransmission consent agreement covering stations formerly owned by Young Broadcasting. Again, this allegation is patently false. Prior to the Complaint, Media General proposed only that its retransmission consent agreement with DISH include industry-standard provisions that would add to the agreement stations acquired by Media General after execution of its retransmission consent deal with DISH. Such agreements do not require DISH to renegotiate any deal with any third party. More importantly, Media General on several occasions offered DISH three different options for dealing with the television stations owned by Young Broadcasting should the Media General/Young merger close as expected. Two of those options would have no effect on DISH’s existing agreement with Young Broadcasting. DISH’s effort to convert routine negotiations regarding after-acquired stations into a claim that Media General is demanding that DISH re-negotiate a deal with Young Broadcasting is simply another sanctionable misrepresentation.

In support of both of these meritless claims, DISH includes many additional misrepresentations and outright falsehoods. A brief review of the correspondence between Media General and DISH is sufficient to demonstrate that DISH’s claims are entirely without merit and can only have been interposed to gain leverage in its negotiations with Media General and to force Media General to expend substantial time and resources in answering the Complaint. For these reasons, the Complaint is a clear abuse of the Commission’s processes.

The Commission cannot tolerate such abuses and maintain the integrity of the retransmission consent complaint process or, indeed, the retransmission consent negotiating process.

The Commission, therefore, should dismiss the Complaint without further consideration. In addition, the Commission should refer DISH to the Enforcement Bureau for consideration of the appropriate sanctions for DISH's abuse of the Commission's processes and for its misrepresentations to and lack of candor before the Commission. The Commission also should award Media General its reasonable attorney's fees for preparation of the response to DISH's frivolous Complaint. All these sanctions are necessary and proper in preservation of the integrity of Congress's mandated retransmission consent regime.

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ANSWER AND REQUEST FOR SANCTIONS

By its attorneys and pursuant to Sections 76.7(a), 76.7(b)(1) and 76.65(c) of the Commission's rules and Sections 325(b)(3), 154(i), and 303(r) of the Communications Act of 1934, as amended,¹ Media General, Inc. ("Media General"), hereby answers the meritless Verified Carriage Complaint of DISH Network, L.L.C. ("DISH") and requests sanctions because of DISH's egregious misrepresentations and other misconduct in bringing this matter before the Commission.² The Commission should immediately dismiss the Complaint, order DISH to pay all Media General's costs and attorney's fees incurred in responding to the Complaint, and grant such other relief as requested herein as the Commission deems appropriate.³

¹ 47 C.F.R. §§76.7(a), 76.7(b), 76.65(c); 47 U.S.C. §§325(b)(3), 154(i), 303(r).

² See DISH Network v. Media General, Inc., Verified Retransmission Complaint, MB Docket No. 13-246, File No. CSR-8839-C, filed Oct. 18, 2013 (the "Complaint"); see also Special Relief and Show Cause Petitions, *Public Notice*, Report No. 0404 (rel. Oct. 23, 2013). This pleading is timely filed pursuant to an agreement for a 7-day extension reached between Media General and DISH.

³ Media General has chosen at this time to forgo filing a counterclaim asserting DISH's bad faith in failing to make reasonable efforts to reach an agreement with Media General because

In support whereof, Media General states the following.

I. INTRODUCTION

Media General and DISH have been negotiating retransmission consent terms for more than six months. The parties have exchanged numerous proposals and counter-proposals. Media General repeatedly has provided full drafts of long-form retransmission consent agreements that it would be willing to sign. Media General has at all times made itself available to negotiate with DISH, and the parties have exchanged dozens of emails and conducted frequent conference calls. All these activities are ongoing. In short, Media General and DISH have engaged in hard-fought negotiations for retransmission consent as Congress envisioned, and they have yet to strike a deal. Those facts alone warrant dismissal of DISH's complaint, because Media General's obligation to bargain in good faith unquestionably has been satisfied.

The parties have a heretofore unbridgeable gap in their estimation of the value of Media General's television stations to DISH's subscribers, and DISH repeatedly has demanded supporting terms and conditions that Media General believes could ultimately result in the decline of the high-quality service that Media General has always provided and upon which viewers rely. These are difficult issues, but Congress left it to Media General and DISH to sort them out in a marketplace negotiation. Commission intervention should not be necessary; all

Media General continues to believe that a deal between Media General and DISH can and should be reached without Commission intervention. As the facts disclosed below demonstrate, however, DISH has engaged in bad faith conduct under either the *per se* or "totality of the circumstances" prongs of Section 76.65 of the Commission's rules. Media General therefore reserves all rights to file a complaint asserting DISH's misconduct in this negotiation within the limitations period allotted by the Commission's regulations. To the extent the Commission deems Media General's claims of bad faith against DISH to be mandatory to resolution of this proceeding, Media General will seek leave to file a supplement to this Answer outlining such claims.

that is necessary is for DISH to take the negotiating process – and the well-being of its viewers – as seriously as does Media General.⁴

Unfortunately, DISH has rejected good-faith bargaining – choosing to rely instead on uncompromising tactics and now, legal action. Even prior to the expiration of the parties' retransmission agreement, DISH has been threatening to file a good faith bargaining complaint despite Media General's repeated efforts to find creative solutions to DISH's concerns, despite Media General's continuous availability for discussions by phone and email, and despite Media General's willingness to compromise on dozens of issues.

A full list of DISH's abusive negotiating tactics would be longer than the Complaint itself. Just a few examples are listed below. First, DISH has consistently refused to reduce the terms of its oral proposals to writing. For example, on several occasions, DISH offered to pay Media General rates equal to the rates DISH pays certain other broadcasters (but not all other broadcasters), but DISH refused to tell Media General the specific rates it was proposing or put an offer in writing. Similarly, on conference calls on November 4, November 8, and November 11, DISH orally offered a rate for one of the stations at issue, but each of its written drafts following those conference calls did not include the rate offer, leaving Media General to question whether DISH's oral offers were sincere. Only after a fourth call on November 13 and after Media General's continued prompting did DISH finally reduce its offer for that station to writing. Second, even though Media General provided DISH with a draft long-form agreement on September 6, 2013, and later updated that document on September 24, 2013, DISH refused to provide a markup of the long-form agreement until October 16, 2013, more than two weeks after

⁴ As evidence of its good faith in seeking to maintain service to its Media General went out of its way to avoid this dispute by triggering a three-month extension of the parties' previous retransmission consent agreement rather than have the stations go dark at the end of June 2013.

DISH first dropped the Media General stations. When DISH finally acquiesced in Media General's request that it provide a full counterproposal to Media General's September 6, 2013 proposal, the written terms DISH offered bore little resemblance to DISH's oral representations or email correspondence listing the open issues. Third, less than two hours before the parties' retransmission consent agreement expired, DISH's negotiators literally hung up on Media General toward the end of a telephone conference convened to try to finalize a deal. Finally, as evidenced by the Complaint, DISH has repeatedly engaged in histrionics over basic negotiating practices like Media General taking a day or two to respond thoughtfully to new DISH proposals and Media General including industry-standard provisions like adding an after-acquired stations clause to the deal.⁵

Rather than doing the hard work of hammering out a deal, DISH has postured and played the character of a "tough" negotiator while apparently plotting its litigation strategy. DISH's brinkmanship and preference for getting government help with problems it could more easily solve itself are the reasons DISH has been responsible for a vastly disproportionate share of broadcast TV blackouts.⁶ And DISH's misconduct in this matter is the sole reason that its subscribers in Media General's markets are deprived of service from Media General's stations today.

⁵ One issue in the negotiations has been whether the 14 stations Media General acquired as a result of a merger with New Young Broadcasting Holding Co. Inc. ("Young Broadcasting") will be covered by the retransmission consent agreement between Media General and DISH. DISH's position has changed repeatedly – sometimes in the same email – and, for long stretches during this negotiation, it has been unclear as to what it will accept. The stations that were transferred from Young Broadcasting to Media General are referred to herein as the "Young Stations."

⁶ See Testimony of Gerry Waldron, Testimony to House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet Hearing on *Satellite television Laws in Title 17*, Sept. 10, 2013, available at <http://www.nab.org/documents/newsRoom/pressRelease.asp?id=3222> (noting that since 2012, 89% of retransmission consent-related service disruptions are caused by DISH, Time Warner Cable, and DirecTV).

DISH also has conducted a highly dishonest public relations campaign in an apparent effort to intimidate Media General's negotiators into accepting DISH's terms and manipulate DISH customers into blaming Media General for the dispute. While MVPDs commonly conduct public relations campaigns during retransmission consent disputes, DISH's public messaging in this case has been uniquely deceitful and transparent. For example, although none of the stations at issue in this dispute serve the Richmond market, DISH hired airplanes with trailing banners, billboard trucks, and radio advertisements to publicize this dispute in the Richmond market. DISH used these media to spread the claim that Media General was seeking a "500%" rate increase that would raise subscribers' rates. DISH parked billboard trucks right in front of Media General's corporate offices in Richmond in an apparent effort to coerce Media General negotiators into granting DISH more favorable terms.

DISH's attempts to intimidate Media General negotiators and DISH's dishonest communications to its own Richmond customers go far beyond the usual retransmission consent dispute rhetoric. But DISH's false statements to the public mirror its false statements to the Commission in the Complaint. Rewarding DISH for this conduct by taking seriously its allegations of bad faith negotiation by Media General would be the worst possible outcome for DISH customers and Media General viewers across the country.

II. SUMMARY OF DEFENSE AND REQUEST FOR SANCTIONS

Now that DISH has failed to bully Media General into granting below-market rates and unwarranted preferential terms and conditions, the Complaint asks the Commission to put the federal government's thumb on DISH's side of the negotiating scale by requesting a ruling that Media General has not acted in good faith. The Complaint includes no evidence that supports DISH's claim. As demonstrated below, the Complaint is riddled with mischaracterizations of the facts and tainted by outright misrepresentations and falsehoods. All three counts of the

Complaint display a surprising lack of candor and are easily disproven by communications authored by DISH's own negotiators. The Commission should dismiss the Complaint and impose appropriate sanctions on DISH to deter similar abuses of the Commission's processes in the future.

A. No Significant Delays in Negotiations Between DISH and Media General Have Occurred Since September 30, 2013.

First, Media General has not unreasonably delayed negotiations with DISH. Even if the Complaint honestly depicted DISH's negotiations with Media General, the alleged delays of 11 days and seven days between DISH's alleged offers and Media General's alleged responses would be entirely consistent with conduct previously held by the Commission to be consistent with good faith negotiations.⁷ But of course, DISH has completely misrepresented what actually occurred during the two periods of alleged delay – periods when negotiations continued, but DISH entirely refused to engage in reasonable back-and-forth bargaining.

First, no significant break in negotiations occurred between October 1 and 11, 2013. The parties continued to discuss carriage and the status of negotiations during that period. Between, October 4 and 6, the parties exchanged emails to arrange restoration of service to viewers potentially affected by Tropical Storm Karen. Between October 7-10, DISH and Media General exchanged further emails to clarify the parties' positions regarding their negotiating impasse and discuss a path forward.

More importantly, DISH's claim that Media General somehow failed to respond to an offer by DISH during this period relies on the false claim that an offer from DISH was actually on the table. In reality, during the period at issue, DISH refused to make any complete counter-

⁷ See, e.g., *Echostar Satellite Corp.*, 16 FCC Rcd 15077-78 (2001) (delays or breaks in negotiations followed by renewed negotiations do not constitute bad faith delay).

offer to Media General's last offer on September 30, 2013.⁸ DISH's last offer on September 30, 2013, which included only rates and a few of the terms in dispute, was all but identical to its previous offers on the material terms, and it did not include a response on many terms that remained in dispute.⁹ The eleven days between October 1 and 11 were really just a period when Media General declined to negotiate against itself, and DISH refused to set forth a complete new offer. DISH's account of events during this period is flatly untrue, and Media General has attached the communications demonstrating what actually occurred.¹⁰

⁸ Media General provided a complete draft retransmission consent agreement to DISH on September 6, 2013, and followed up with a revised draft agreement on September 24, 2013. Rather than marking up either agreement and returning it to Media General, DISH sought to discuss individual elements in Media General's proposal by email and on conference calls. When Media General made its final offer of revised rates and terms on September 30, 2013, that communication incorporated Media General's full offer on all terms from its September 24, 2013 draft agreement. Until October 16, 2013, DISH never made a full counter-proposal to that offer. As a result, for the first two weeks that Media General's stations were not available on DISH, Media General did not have a full picture of the deal that DISH was proposing, making ultimate agreement impossible.

⁹ On September 30, 2013, DISH sent two e-mails to Media General that included various proposed terms, including rates. The first was received at 5:05 PM Eastern Time and the second at 11:37 PM Eastern Time. Media General responded to DISH's 5:05 PM e-mail at 9:42 PM Eastern Time. Neither of DISH's e-mails on September 30, 2013 constituted a complete counter-offer because they did not address all open terms or propose specific contractual language that Media General could evaluate. Moreover, the two e-mails did not even constitute two separate offers on rates. The only identifiable difference between DISH's two rate offers was that in the latter e-mail, DISH proposed to substitute advertising commitments for cash payment, a framework that Media General had rejected in many previous instances. DISH did not provide a complete counter-offer addressing all terms other than rates at any time on September 30, 2013. Indeed, Media General did not receive a complete counter-proposal from DISH until October 16, 2013. The parties' negotiations on September 30, 2013 and thereafter are detailed in Media General's responses to DISH's specific allegations below. *See* Section II, Paragraphs 15-29A, *infra*, and Exhibits B-H.

¹⁰ *See* Exhibit B (Media General's 9:42 PM September 30, 2013 email proposing rates and responding to DISH's proposal on some additional terms and conditions); Exhibit C (DISH's 11:39 PM email proposing rates and responding to Media General on some terms and conditions); Exhibit D (Media General's 4:11 PM October 7, 2013 email thanking DISH for its cooperation in restoring service to Media General viewers during Topical Storm Karen and explaining Media General's position on the status of negotiations; also included is DISH's 11:16 AM October 7, 2013 email erroneously claiming that Media General had not responded to

DISH saves its most outrageous misrepresentations for its characterization of the second alleged delay in negotiations, which supposedly ran from October 11, 2013, when the parties exchanged proposals, until October 18, 2013, when DISH filed the Complaint. Again, no such interruption in negotiations ever happened. The actual sequence of events during that period is as follows:

- On October 11, 2013, in the interest of moving negotiations forward, Media General revised its own previous full proposal for rates and terms of carriage and transmitted it to DISH;
- Later the same day, DISH provided a counter-offer on rates and promised to turn a revision of Media General's offer on other terms "as soon as possible;"
- On October 15, 2013, DISH and Media General met by conference call to discuss outstanding issues;
- On October 16, 2013 at 11:08 PM, DISH provided a full counter-offer including all terms and conditions for the first time since Media General provided its own full proposal on September 6, 2013;
- On October 17, 2013, Media General sent an inquiry to DISH asking why DISH's mark-up bore so little resemblance to DISH's previous oral representations and emails describing the open issues and why DISH had raised so many new issues for the first time;

DISH's most recent offer); Exhibit F (Media General's 1:03 PM October 11, 2013 email transmitting a full long-form retransmission consent proposal, revising its previous September 27, 2013 proposal to which DISH responded only in part); Exhibit G (DISH 5:01 PM October 11, 2013 email providing a counter-offer on rates only and promising a revised long-form agreement "as soon as possible).

- On October 18, 2013 – just over twenty-four hours after DISH returned its long form draft – DISH filed the Complaint.¹¹

For most of the seven-day period from October 11 to October 18, 2013, Media General simply awaited DISH’s promised counter-offer, which was supposed to arrive “as soon as possible.” DISH, however, apparently was drafting its good faith complaint. Labeling this sequence of events as bad faith on Media General’s part is truly a sophistic gem.

In an effort to somehow make the case that Media General is delaying negotiations, DISH completely misrepresents Media General’s offer of October 11, 2013. DISH claims that the October 11, 2013 offer gave DISH the choice of (1) entering into a new agreement that covers both the Media General and Young Stations; or (2) entering into an agreement that covers only Media General’s stations, but paying the same amount as under the first choice.¹² Media General made no such offer, and the offer it did make on October 11, 2013 is attached.¹³ As demonstrated in Exhibit F, Media General’s proposal of October 11, 2013 does not explicitly mention carriage of the Young Stations.¹⁴ This omission was at DISH’s request and in reliance on DISH’s oral representation that the Young Stations would be covered by the after-acquired station language in the agreement. For DISH to now claim – without attaching any documentation – that Media General’s offer included an allegedly unreasonable rate demand based on carriage of the Young Stations is pure duplicity toward Media General and lack of candor before the Commission.

¹¹ As detailed below, negotiations have continued since the Complaint was filed on October 18, 2013. *See* Section II, paragraph 29A, *infra*.

¹² Complaint at ¶ 27.

¹³ *See* Exhibit F.

¹⁴ The only reference to Young Broadcasting in Media General’s October 11, 2013 draft is in the definition of “Change of Control,” in which the draft proposes to clarify that the merger between Media General and Young Broadcasting will not be deemed a change of control of Media General.

In short, Count I of the Complaint is a combination of half-truths and flat misrepresentations. Virtually no delay has occurred in negotiations since DISH dropped Media General's stations, and any delay that has occurred is solely attributable to DISH's own conduct. The Commission should dismiss Count I of the Complaint.

B. Media General Never Demanded That DISH "Dissolve" or "Reopen" Its Retransmission Consent Agreement With Young Broadcasting.

Contrary to DISH's claims, Media General has never demanded that DISH "dissolve" or "reopen" its retransmission consent agreement with Young Broadcasting. DISH's representation that Media General has made such a demand is entirely false and is a knowing and willful misrepresentation to the Commission. On September 30, 2013, Media General proposed three different options for DISH: (1) add the Young Stations to the Media General agreement effective January 1, 2014; (2) add the Young Stations to the Media General agreement effective upon the expiration of the DISH/Young agreement; and (3) never add the Young Stations to the Media General agreement but make the Media General agreement co-terminus with the DISH/Young agreement. Thus, Options (2) and (3) would have allowed the DISH/Young agreement to run its course.

Even under Option (1), Media General never asked DISH to take any action whatsoever with respect to DISH's agreement with Young Broadcasting. Instead, Media General's Option (1) sought entirely unremarkable contractual language ensuring that stations acquired by Media General after completion of its retransmission consent agreement with DISH will be incorporated into that agreement. After-acquired station provisions represent standard industry practice, and requesting such a clause is not bad faith on Media General's part. Indeed, DISH has offered to Media General a variety of different proposals that would add acquired stations, including the

Young Stations, to the Media General agreement.¹⁵ It is frivolous for DISH to claim that such a contractual provision is bad faith when sought by Media General but entirely acceptable when sought by DISH.

Ironically, it was conduct by DISH – not Media General – that has made treatment of the Young Stations an issue in this negotiation. It is public knowledge that Media General acquired the Young Stations through a merger, and, at the time the Complaint was filed, applications were pending at the FCC seeking approval of the transaction. Those applications have now been granted. In the summer of 2013, however, DISH decided to take the unsupportable legal position that, in fact, Young Broadcasting would become the “owner, operator, manager or agent” of the Media General stations and that the Media General stations, therefore, should become after-acquired stations under DISH’s retransmission consent agreement with Young Broadcasting. Media General tried to clarify DISH’s alleged misunderstanding of the deal between Media General and Young Broadcasting in a letter dated September 17, 2013.¹⁶

Due to DISH’s “confusion,” Media General initially sought language in its proposed after-acquired station provision that would clarify how the Young Stations would be treated in the future under the agreement. Nonetheless, when DISH objected to Media General identifying the Young Stations in the agreement, Media General agreed to remove references to Young Broadcasting. In the several months of negotiations, DISH never suggested that Media General’s efforts to include the Young Stations as after-acquired stations required any special

¹⁵ Although the parties did not always agree on the exact date on which an acquired station would be added to the new Media General agreement, DISH offered to add acquired stations on a number of different occasions, including a long-form draft agreement on June 24, 2013; a telephone conversation with counsel for Media General on August 13, 2013; an email on September 27, 2013; and a long form agreement on October 16, 2013.

¹⁶ See Exhibit A.

explanation or represented an effort to get DISH to “dissolve” or “reopen” those negotiations. Those allegations are new in the Complaint and lack any factual foundation.

Since DISH offers no evidence that Media General has ever made any demand that DISH “dissolve” or “reopen” its agreement with Young Broadcasting (and because no such evidence exists), the Commission should dismiss without further consideration Count II of the Complaint, as well as Count III – its “totality of the circumstances” count – which is based on the same “dissolution” or “re-opening” mishmash.¹⁷

C. DISH’s Deliberate Abuse of the Commission’s Processes Warrants Dismissal and Imposition of Sanctions on DISH.

The Commission has repeatedly and rightfully warned parties against filing frivolous and meritless pleadings.¹⁸ Pursuant to the Commission’s inherent authority to control its own proceedings and under Sections 4(i) and 303(r) of the Communications Act, the Commission has the authority to levy appropriate punishments for the submission of documents that lack any basis in fact or law or that constitute a clear abuse of the Commission’s processes. The Complaint satisfies all these criteria, and DISH should be required to suffer the consequences of irresponsibly filing a document so full of outrageous falsehoods. Moreover, DISH should be dealt with as harshly as permitted by the Act and the Commission’s regulations because it is a

¹⁷ As described more fully in its responses to the numbered paragraphs of the Complaint in Section II, *infra*, DISH’s allegations in support of Counts I-III contain a number of blatant misrepresentations that should be part of the analysis of appropriate sanctions in this proceeding. See Section II, *infra*, ¶¶ 17-20, 27-28, 32-33, 34-36.

¹⁸ See, e.g., *Fireside Media and Jet Fuel Broadcasting*, 28 FCC Rcd 681, 683 (2013); Warren C. Havens, *Third Order on Reconsideration*, 26 FCC Rcd 10888, 10891-93 (Med. Bur. 2011), *aff’d* 27 FCC Rcd 2756 (2012); *Nationwide Communications, Inc.*, 13 FCC Rcd 5654, 5655 (1998); *Alexander Broadcasting Company*, 13 FCC Rcd 10355 (Med. Bur. 1998).

serial abuser of the Commission’s retransmission consent complaint process.¹⁹ The last time DISH was before the FCC in a reported retransmission consent negotiation case, the Commission stated that DISH “failed in its duty of candor” and “admonish[ed] [DISH] for this abuse of process and caution[ed] [DISH] to take greater care.”²⁰ DISH has ignored that admonishment and, if the Commission wishes to curtail such conduct DISH now must suffer meaningful consequences.²¹

First, the Complaint should be dismissed without further consideration. This is the Commission’s standard approach when a party makes frivolous or knowingly meritless filings in clear abuse of the Commission’s processes.²²

Second, and also consistent with the standard practice in abuse of process cases, the Commission should require that any future complaint DISH seeks to file alleging bad faith negotiations against Media General include a cover sheet requesting permission to file and the following statement: “Pursuant to previous findings by the FCC that DISH Network, L.L.C. (‘DISH’) has abused Commission processes, and requiring DISH to request permission of the

¹⁹ See *Echostar v. Young*, 16 FCC Rcd at 15083 (admonishing DISH’s predecessor for abuse of process by seeking confidentiality agreement then publicly disclosing information for which it sought confidentiality).

²⁰ See *id.*

²¹ Nor has DISH’s persistent abuse of process been limited to FCC proceedings. DISH and its affiliates have been cited by numerous courts for its vexatious litigation tactics by at least a dozen state and federal courts over the past few years. A recent press release of the National Association of Broadcasters collects notable quotations from judges across the country who expressed anger, disappointment, exasperation, and, in many cases, wonderment at the scope and variety of DISH’s unreasonable litigating tactics. See NAB Statement to Reporters Covering the Retransmission Consent Process, *available at* http://www.mediageneral.com/dish/NAB_Statement_to_Reporters.pdf.

²² See 47 C.F.R. §1.52; see also Commission Taking Tough Measures Against Frivolous Pleadings, *Public Notice*, 11 FCC Rcd 3030 (1996) (“*Frivolous Pleadings Public Notice*”); *Warren C. Havens*, 26 FCC Rcd at 10893.

Media Bureau to file further documents, DISH submits this request.”²³ Such a request for permission should act as a deterrent to future frivolous or vexatious DISH filings.

Third, the Commission should refer DISH to the Enforcement Bureau for appropriate proceedings addressing the clear and obvious misrepresentations included in the Complaint. The Commission rightfully holds its licensees to the highest standards of candor and honesty in filings as a way of safeguarding the integrity of the Commission’s processes.²⁴ In this case, DISH has sought to subvert those processes by alleging that Media General has engaged in bad faith retransmission consent negotiations based on contentions that are knowingly false. The result is that DISH has used the Commission’s complaint process to gain leverage in an ongoing commercial negotiation, essentially subverting not only future proceedings before the Commission but potentially all future retransmission consent negotiations. The Commission should impose a forfeiture or other appropriate sanction to ensure that future frustrated negotiating parties do not seek commercial advantage through similar abuse of the Commission’s processes.

Fourth and finally, the Commission should order DISH to pay Media General’s reasonable attorney’s fees in preparing a response to the Complaint. In most circumstances, the Commission has not granted attorney’s fee requests in complaint proceedings absent specific congressional authorization.²⁵ In cases like this one, however, an award of attorney’s fees is appropriate under Sections 154(i) and 303(r) to protect the Commission’s processes from future

²³ *Warren C. Havens*, 26 FCC Rcd at 10892; *Alexander Broadcasting Company*, 13 FCC Rcd at 10356.

²⁴ *See* 47 C.F.R. §§1.17; *Frivolous Pleadings Public Notice*, 11 FCC Rcd 3030; *see also*, *e.g.*, *Commercial Radio Service, Inc.*, 21 FCC Rcd 9983, 9986-87 (2006) (and cases cited therein).

²⁵ *See* Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility act of 2010, 26 FCC Rcd 14557, 14676 & n.739 (citing cases).

abuse. One likely explanation for DISH's flagrant violation of the Commission's rules requiring truthful statements is that it is simply trying to impose costs on Media General to force a better deal. If that is the case, DISH will have effectively abused the Commission's processes to its own advantage even if the Commission dismisses the Complaint because Media General has been forced to expend fees and resources replying. Even if the Commission levies a fine on DISH for its manifest violations of Section 1.17 of the rules, DISH – a much larger company capable of absorbing significant fines – will still benefit at the expense of Media General, which suffers the cost of defending against DISH's bad-faith allegations. Absent an award of attorney's fees, DISH's abuse of the Commission's process will have benefitted it and will serve as a bad example for future potential signal carriage litigants.

Previous requests for attorney's fees have been rejected on claims that the Commission lacks equitable power to order one party to make the other whole.²⁶ In cases of flagrant misconduct like DISH's behavior in this case, the Commission needs no such equitable power to require DISH to pay Media General's attorney's fees. The Commission's universally-acknowledged power to protect its own processes from abuse provides all the authority necessary for an attorney's fee award. The Commission should exercise that authority in this case and order DISH to pay Media General's attorney's fees.

II. PARAGRAPH-BY-PARAGRAPH ANSWER TO ENUMERATED ALLEGATIONS IN DISH'S COMPLAINT

A. The Parties

1. Media General admits that DISH is a provider of DBS services in the United States. Media General lacks sufficient information to admit or deny the other facts averred in

²⁶ See, e.g., *Turner v. FCC*, 514 F.2d 1354 (D.C. Cir. 1975).

paragraph 1 of the Complaint. To the extent any further response is required, Media General denies the remainder of the allegations included in paragraph 1 of the Complaint

2. Media General admits the allegations included in paragraph 2 of the Complaint.

B. Jurisdiction

3. Media General asserts that Section 47 C.F.R. §76.65(c) of the Commission’s rules speaks for itself. Media General denies that DISH’s frivolous Complaint is authorized by the Commission’s rules. To the contrary, the Commission’s rules bar abuse of the Commission’s processes and authorize the Commission to impose sanctions for parties that engage in such misconduct. *See* nn.18-24, *supra*. To the extent any further response is required, Media General denies the remainder of the allegations included in paragraph 3 of the Complaint

4. Media General admits that it has been engaged in retransmission consent negotiations with DISH during the past year and further responds that those negotiations remain active and ongoing. Media General denies that it has at any time violated its duty to DISH to negotiate a retransmission consent agreement in good faith and denies the remainder of allegations included in paragraph 4 of the Complaint.

C. Legal Background of Good Faith Bargaining Requirement.

5. Media General asserts that enactment of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”) is a publicly documented fact that speaks for itself. To the extent any further response is required, Media General denies the allegations included in paragraph 5.

6. Media General asserts that the orders of the Commission interpreting SHVIA, including Implementation of the Satellite Home Viewer Improvement Act of 1999 – Retransmission Consent Issues, *Report and Order*, 15 FCC Rcd. 5445 (2000) (the “*Good Faith Order*”), speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 6.

7. Media General asserts that SHVIA and the Commission's rules implementing SHVIA speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 7.

8. Media General asserts that the orders of the Commission interpreting SHVIA, including the *Good Faith Order*, speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 8.

9. Media General asserts that SHVIA and the Commission's rules implementing SHVIA speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 9.

10. Media General asserts that the orders of the Commission interpreting SHVIA, including the *Good Faith Order*, speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 10.

11. Media General asserts that the orders of the Commission interpreting SHVIA and the Commission's rules implementing SHVIA speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 11.

12. Media General asserts that the orders of the Commission interpreting SHVIA, including Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 – Reciprocal Bargaining Obligations, *Report and Order*, 20 FCC Rcd. 10339 (2005) (the "*Reciprocal Good Faith Order*"), and the Commission's rules implementing SHVIA speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 12.

13. Media General asserts that the orders of the Commission interpreting SHVIA, including the *Good Faith Order*, speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 13.

14. Media General asserts that the orders of the Commission interpreting SHVIA, including the *Good Faith Order*, speak for themselves. To the extent any further response is required, Media General denies the allegations included in paragraph 14.

D. DISH's Misrepresentation of Its Negotiations With Media General.

15. Media General admits that its retransmission consent negotiations with DISH have been continuous since May of 2013 and remain ongoing; that the parties' previous retransmission consent agreement expired on June 30, 2013; that the agreement could be extended for three months at the same rates and on the same terms and conditions at the election of either party; that Media General exercised its right to extend the agreement on June 28, 2013; and that the extended agreement expired on October 1, 2013 at 1:59 AM Eastern Time. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 15.

16. Media General admits paragraph 16.

17. Media General denies that it has proposed that DISH "reopen" its existing retransmission consent agreement with Young Broadcasting or that it has refused to negotiate a retransmission consent agreement that would not include the Young Stations. Media General admits that it has sought to negotiate with DISH an after-acquired station provision that would ensure that stations subsequently acquired by Media General will be included in the retransmission consent agreement between Media General and DISH. Further answering, Media General alleges that such after-acquired station provisions are a common feature in retransmission consent agreements, and that Media General has actively and in good faith sought

to structure the after-acquired station provision in its agreement with DISH in a way that will be mutually agreeable and beneficial. Media General further admits that it has made proposals that would ensure that the Young Stations would be covered by the after-acquired station provision, but it also has made proposals that would not include the Young Stations. On September 30, 2013, Media General presented DISH with three options for treating the Young Stations: (1) add the Young Stations to the Media General agreement effective January 1, 2014, (2) add the Young Stations to the Media General agreement effective upon the expiration of the DISH/Young agreement, and (3) never add the Young Stations to the Media General agreement but make the Media General agreement co-terminus with the DISH/Young agreement. On October 7, 2013, DISH clarified that it preferred Option (1) – adding the Young Stations effective January 1, 2014. DISH rejected the proposals that would have left the Young Stations under the DISH/Young agreement. Media General further admits that Young Broadcasting owns 14 television stations and that those are accurately described in paragraph 17. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 17.

18. Media General admits that it has agreed to acquire Young Broadcasting and that applications seeking Commission approval of a transfer of control of the Young Stations' licenses from Young Broadcasting to Media General currently were pending before the Commission as of the date of the Complaint. Those applications have now been granted. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 18.

19. Media General admits that at 9:42 PM Eastern Time on September 30, 2013, one of its negotiators sent an email to DISH that set forth, "among other things," a proposal that

would include the Young Stations as after-acquired stations in the retransmission consent between Media General and DISH. That email is included as Exhibit B. Further answering, Media General asserts that among the “other things” were two other proposals, one of which would not include the Young Stations as after-acquired stations in the agreement and the other would have added the Young Stations but only after the DISH/Young agreement expired. In other words, Media General offered DISH the choice of whether or not to include the Young Stations as after-acquired stations in the retransmission consent agreement. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 19.

20. Media General admits that at 11:39 PM Eastern Time on September 30, 2013, DISH sent an email to Media General, which outlined some proposed rate and other terms and which asserted that “Nothing about Young will be added to this agreement.” An email string that includes the 11:39 PM email is attached as Exhibit C. Further answering, Media General states that DISH’s statement about Young, which is quoted from the 11:39 PM email included in Exhibit C, was merely a reiteration of the position DISH’s negotiator had taken in an email sent at 5:05 PM Eastern Time on September 30, 2013, which also is included in Exhibit C. In that message, DISH’s negotiator made the statement “I have taken the Young Stations completely out” of the proposed agreement. That statement made no sense because the partial proposal on the table from DISH included an after-acquired station clause that would have added any after-acquired stations to the agreement, such as the Young Stations. Media General’s email attached as Exhibit B was in response to DISH’s 5:05 PM email and sought clarification about whether DISH’s declaration that the Young Stations were “out” of the agreement meant that DISH was seeking to change the after-acquired stations provision. DISH’s aggressive posturing that

“Nothing about Young will be added to this agreement” failed to clarify – or even respond to – Media General’s confusion over DISH’s intention as to the operation of the after-acquired stations provision of the agreement. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 20.

21. Media General admits that representatives of Media General and DISH spoke by telephone at around midnight Eastern Time on September 30, 2013. That conversation, however, ended when representatives of DISH terminated that call by hanging up on Media General’s negotiators toward the end of the ongoing discussions. Media General admits that at 12:48 AM Eastern Time on October 1, 2013 it received an email from DISH requesting a further extension of retransmission consent. Media General did not respond to that email because Media General already had told DISH that it would not agree to an extension and, in any event, DISH already had benefitted from a 3-month extension of the parties’ previous retransmission consent agreement between July 1, 2013, and September 30, 2013. Media General further admits that at approximately 2:00 AM Eastern Time on October 1, 2013, DISH ceased carriage all of Media General’s stations. Media General otherwise denies the allegations in paragraph 21.

22. Media General admits that it did not contact DISH between October 1 and 3. Further answering, Media General states that it received no communication from DISH between October 1 and October 3, 2013. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 22.

23. Media General admits that it authorized DISH to retransmit the signals of several of Media General’s stations that serve areas affected by Tropical Storm Karen from October 5, 2013 at 7:00 AM Eastern Time through October 6, 2013 at 1:01 AM Eastern Time. To the

extent any further response is required, Media General denies the remainder of the allegations in paragraph 23.

24. Media General admits that it did not provide a new proposal to DISH on October 5, 2013 or October 6, 2013. Further answering, Media General states that it received no communication from DISH on October 5, 2013 or October 6, 2013. Media General denies that it did not respond to DISH's final substantive counter-offer of September 30, 2013. At that time, DISH's most recent *bona fide* counter-offer was made by email at 5:05 PM Eastern Time on September 30, 2013, and is included, along with Media General's 9:42 PM counter to that offer, which is included in Exhibit B. DISH's subsequent email at 11:39 PM Eastern Time on September 30, 2013, which is included as Exhibit C, simply reiterated the terms of DISH's previous partial offer except to the extent it inserted terms that Media General had previously rejected and repudiated terms DISH had previously accepted. DISH's 11:39 PM email also failed to respond to Media General's requests for clarification of DISH's position on important issues, such as the functioning of DISH's proposed after-acquired station provision. Media General rejected that non-responsive counter-offer and considered negotiations at an end until such time as DISH would be willing to present a serious counter to Media General's then most recent offer, included in Exhibit B, or, at the very least, a response to Media General's requests for clarification. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 24.

25. Media General admits that on October 7, 2013, DISH contacted Media General by email to solicit a further contract offer from Media General. Media General further admits that it responded to DISH's request by email at 4:11 PM Eastern Time on October 7, 2013, explaining that Media General had made the last serious offer and that the next move belonged to DISH.

An email string that includes DISH's communication to Media General and Media General's response is attached as Exhibit D. In a responsive email at 8:53 PM Eastern Time on October 7, 2013, DISH (following numerous misstatements of past events) finally provided the requested clarification of its position with respect to operation of DISH's proposed after-acquired stations provision. On October 8, 2013, at 9:09 PM, Eastern Time, Media General responded by correcting DISH's self-serving and untrue account of past negotiations, but Media General acknowledged that DISH's belated clarification of its after-acquired stations provision provided a basis for restarting negotiations. Media General's response and correction of DISH's misstatements is included as Exhibit E. Further answering, Media General states that DISH's clarification of its position on the operation of the after-acquired stations clause occurred seven days after Media General requested such clarification. DISH's refusal to provide such clarification was the cause of any delay in negotiations during that period. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 25.

26. Media General admits that on October 11, 2013, in a good faith effort to restart negotiations, it adjusted its most recent September 30, 2013 offer rather than continue encouraging DISH to make a legitimate counter-offer. Media General denies the remainder of the allegations in paragraph 26.

27. The allegations in paragraph 27 blatantly misrepresent Media General's October 11, 2013 offer to DISH. That offer did not contain two options, and it did not mention the Young Stations at all. Media General's correspondence conveying the October 11, 2013 offer and the proposal itself are attached as Exhibit F. DISH's response, which makes no mention of the false allegations included in paragraph 27 is included as Exhibit G. Media

General further denies that its October 11, 2013 offer, which bears no resemblance to DISH's description of it, is evidence of bad faith. To the contrary, Media General made the offer to restart negotiations because DISH insisted that its non-offer of September 30, 2013 required an answer before DISH would seek to restart negotiations. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 27.

28. The allegations in paragraph 28 completely distort what the documents show actually happened. In fact, DISH did not provide a comprehensive written counter-offer to Media General's October 11, 2013 offer at any time on October 11, 2013. As shown in Exhibit G, DISH provided a counter-offer only on rates. DISH promised to turn a draft of the other terms of the agreement, many of which remained in dispute, "as soon as possible." DISH then waited for nearly five days to provide a full counter-offer, which Media General received on October 16, 2013 at 11:08PM. And even that counter-offer was not a *bona fide* offer. It came with the following *caveat* from DISH's negotiator: "I am sending this to you at the same time we are reviewing internally. We will have to reserve the right to make additional comments or changes." So DISH's counter-offer was really no counter-offer at all. DISH's email and contingent, provisional non-counter-offer are attached as Exhibit H. Moreover, in substance, DISH's October 16, 2013 offer created several new disputes between the parties that had not previously been discussed and backtracked on several issues on which agreement previously had been reached. DISH's allegation that Media General was continuing to demand that DISH "reopen the separate Young Agreement" is simply false. That issue had been resolved the previous week when the parties reached agreement on the operation of the after-acquired station provision. Paragraph 28 can only be described as a complete misrepresentation of events. To

the extent any further response is required to paragraph 28, Media General denies the remainder of the allegations therein.

29. Media General vehemently denies that, as of October 18, 2013, “DISH has taken many steps to . . . reach a retransmission consent agreement with Media General.” Prior to filing its Complaint, DISH decided to make a major deal point out of the routine issue of including after-acquired station provisions in its retransmission consent agreements; it cut off negotiations with Media General on September 30, 2013 then dropped Media General’s stations; it refused to make a *bona fide* counter-offer to Media General’s September 30 offer, ultimately forcing Media General to negotiate against itself through its offer of October 11; and then it refused to offer a *bona fide* counter-offer to Media General’s October 11 offer. At every juncture prior to filing its Complaint, DISH has tried to torpedo the fair and reasonable deal that Media General repeatedly has proposed. The culmination of DISH’s complete bad faith in this negotiation was its filing of the Complaint – riddled with obvious factual errors designed to portray Media General in a false and defamatory light – while it purported to continue negotiating. To the extent any further response is required to paragraph 29, Media General denies the remainder of the allegations therein.

29A. Although the Complaint was not filed until October 18, 2013, DISH’s Complaint curiously omits any events in the parties’ negotiation after October 11, 2013. Of course, negotiations continued between October 11, 2013, and October 18, 2013, and, as shown below, have continued since.

- On October 15, 2013, the parties held a conference call to discuss outstanding issues. On October 16, 2013, DISH finally delivered its response on non-rate terms, opening several new issues and reneging on several previously agreed terms.

- On October 18, 2013, despite DISH's filing of the Complaint, the parties exchanged correspondence discussing their differences and potential future meetings.
- On October 20, 2013, the parties held another conference call to discuss open issues.
- On October 21, 2013, Media General provided a counter-offer on all economic and non-economic terms to DISH's October 16, 2013 offer.
- On October 22, 2013, the parties held another conference call to discuss outstanding issues.
- On October 23, 2013, DISH provided a counter-offer on both rates and non-economic terms.
- On October 25, 2013, DISH executive Dave Shull reached out to Media General's President and Chief Executive Officer, George Mahoney, agreeing to increase DISH's rates and outlining the issues of greatest importance to DISH.
- On October 27, 2013, Media General sent DISH a revised offer that respected each of Mr. Shull's requests.
- On October 29, 2013, the parties met by teleconference to discuss the remaining outstanding issues, and DISH followed-up that call with an email outlining its understanding of the issues that remained under discussion.
- On October 30, 2013, Media General informed DISH that it would prefer to negotiate by exchanging mark-ups of the long-form agreement that the parties had been negotiating rather than exchanging open-issues lists.
- On October 31, 2013, DISH responded to Media General's request by demanding the participation in negotiations of Media General executives and threatening to pull its latest rate offer if a deal was not reached by 11:59 PM Mountain Time on November 1, 2013.

- Later on October 31, 2013, DISH provided a revised retransmission consent agreement, including proposals on all rates, terms, and conditions.
- On November 1, 2013, Media General made a full counter-proposal on all rates, terms, and conditions.
- On November 2-3, Media General and DISH exchanged emails and scheduled a conference call for November 4, 2013.
- On November 4, 2013, DISH and Media General participated in a conference call that narrowed some outstanding issues in the negotiation.
- On November 5, 2013, DISH provided a revised long-form counteroffer.
- On November 7, 2013, Media General sent back a revision of DISH's proposal.
- On November 8, 2013, DISH and Media General participated in a conference call that further narrowed some of the outstanding issues in the negotiation.
- On November 9, 2013, DISH sent to Media General a revised long-form contract offer.
- On November 10, 2013, Media General sent to DISH a further revision of the proposed contract.
- On November 11, 2013, DISH and Media General participated in a conference call during which most outstanding issues other than rates are resolved.
- Later on November 11, 2013, DISH sent a revised long-form agreement to Media General.
- On November 12, 2013, Media General provided a full counter-proposal to DISH and DISH responded by email noting that it will not meet Media General's proposed rates and that its last rate proposal was its best and final offer.

- On November 13, 2013, Media General and DISH participated in a conference call in which DISH reiterated that its proposed rates were its final offer. Media General rejected those rates.
- On November 13, 2013, DISH followed up with an email stating that its rate offer from three weeks earlier on October 25 was its “bottom line.”

E. Count I – Unreasonably Delaying Retransmission Consent Negotiations

30. In response to paragraph 30, Media General hereby incorporates as if fully restated the matter included in Section I hereof, its responses to paragraphs 1-29 of the Complaint, and paragraph 29A hereof. To the extent any allegations in paragraphs 1-29 of the Complaint remain unanswered, they are denied.

31. Paragraph 31 of the Complaint contains legal conclusions to which no response is required. To the extent any response is required, those allegations are denied. Further answering, Media General states that as described in paragraphs 22-29 above, DISH’s allegations that Media General delayed providing DISH with an offer for 11 days between September 30, 2013 and October 11, 2013, and for seven days between October 11, 2013 and October 18, 2013, are false. Media General has not unreasonably delayed its negotiations with DISH. To the contrary, DISH’s brinkmanship and delay have deprived Media General viewers of television programming for more than a month. Nor has Media General “unilaterally demand[ed] that DISH re-open its retransmission consent agreement with Young.” As of the date DISH filed its Complaint, DISH had represented to Media General that the issue had been resolved, so either it was lying to Media General or to the Commission. Either way, DISH’s bad faith is manifest. Media General requests that the Commission refer DISH to the Enforcement Bureau to

determine appropriate sanctions for DISH's knowing and willful misrepresentations and lack of candor before the Commission.

F. Count II – Failing To Provide Legitimate Reasons for Requiring That DISH Renegotiate for the Unaffiliated Young Stations.

32. In response to paragraph 32, Media General hereby incorporates as if fully restated the matter included in Section I hereof, its responses to paragraphs 1-31 of the Complaint, and paragraph 29A hereof. To the extent any allegations in paragraphs 1-31 of the Complaint remain unanswered, they are denied.

33. Paragraph 33 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, those allegations are denied. Further answering, Media General admits that it has sought to negotiate with DISH an industry-standard after-acquired stations provision in its retransmission consent agreement. Media General further admits that such clause would apply to the Young Stations, in accordance with terms agreed upon between DISH and Media General, once Media General's acquisition of those stations was complete. Otherwise, paragraph 33 consists of allegations that are outright false and characterized by overblown rhetoric and deliberate misrepresentation of the facts. Media General has never demanded that DISH take any action whatsoever with respect to its current agreement to carry the Young Stations. That allegation is unsubstantiated and unsustainable. It never happened. Rather, on September 30, 2013, Media General presented DISH with three options for treating the Young Stations: (1) add the Young Stations to the Media General agreement effective January 1, 2014, (2) add the Young Stations to the Media General agreement effective upon the expiration of the DISH/Young agreement, and (3) never add the Young Stations to the Media General agreement but make the Media General agreement co-terminus with the DISH/Young agreement. Thus, Options (2) and (3) contemplated that the Young

Stations remain under the DISH/Young agreement until expiration of that agreement. To the extent Media General's negotiations with DISH have expressly included discussions of the operation of the Young Agreement, that has been at DISH's request. To the extent any further response to paragraph 33 is required, the remainder of the allegations contained therein is denied, and Media General requests that the Commission refer DISH to the Enforcement Bureau to determine appropriate sanctions for DISH's knowing and willful misrepresentations and lack of candor before the Commission.

G. Count III – Totality of the Circumstances

34. In response to paragraph 34, Media General hereby incorporates as if fully restated the matter included in Section I hereof, its response to paragraphs 1-33 of the Complaint, and paragraph 29A hereof. To the extent any allegations in paragraphs 1-33 of the Complaint remain unanswered, they are denied.

35. The allegations in paragraph 35 of the Complaint constitute legal conclusions to which no response is required and the quotation of the language of 47 C.F.R. §76.65(a) speaks for itself. To the extent any response is required, Media General again denies that it has demanded that DISH "re-open" or "renegotiate" any retransmission consent agreement that DISH may have with Young Broadcasting. Media General repeats that it has sought in good faith to negotiate language in the contract that would cover after-acquired stations. Media General asserts that seeking such industry-standard language is not bad faith under either the Commission's *per se* or "totality of the circumstances" tests. Moreover, on September 30, 2013, Media General presented DISH with three options for treating the Young Stations: (1) add the Young Stations to the Media General agreement effective January 1, 2014, (2) add the Young Stations to the Media General agreement effective upon the expiration of the DISH/Young agreement, and (3) never add the Young Stations to the Media General agreement but make the

Media General agreement co-terminus with the DISH/Young agreement. Thus, Options (2) and (3) contemplated that the Young Stations remain under the DISH/Young agreement until expiration of that agreement. Any discussion between the parties of changes to the Young Agreement since the Complaint was filed were pursuant to DISH's initiation, not a demand by Media General. To the extent any further response is required, Media General denies the remainder of the allegations in paragraph 35.

36. The allegations included in paragraph 36 of the Complaint consist of legal conclusions to which no response is required and that are based on willful and knowing misrepresentations of fact by DISH. To the extent any response to paragraph 36 is required, Media General denies all allegations therein and requests that Commission refer DISH to the Enforcement Bureau to consider appropriate sanctions for DISH's misrepresentations and lack of candor before the Commission.

H. DISH's Prayer for Relief

37. Paragraph 37 consists of DISH's Prayer for Relief and requires no response. To the extent any response is required, Media General denies that DISH is entitled to any judgment against Media General or any relief stemming therefrom. To the contrary, DISH's complaint should be dismissed and DISH should receive the harshest possible treatment from the Commission for its knowing, willful, and apparently malicious abuse of the Commission's processes. To the extent any further response is required, Media General denies the allegations included in paragraph 37.

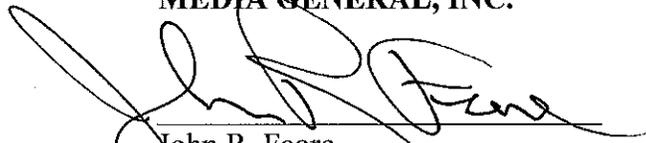
III. PRAYER FOR RELIEF

WHEREFORE, Media General respectfully requests that the Commission dismiss the Complaint *in toto*; that DISH take nothing by way of the Complaint; and that the Commission issue an order (1) requiring DISH to seek leave to file any future complaint alleging bad faith

bargaining on the part of a broadcaster; (2) referring DISH to the Enforcement Bureau for proceedings to determine appropriate sanctions for DISH's wanton and willful violation of Section 1.17 of the Commission's rules; and (3) requiring DISH to pay Media General's reasonable attorney's fees for Media General's preparation of its response to DISH's frivolous Complaint.

Respectfully submitted,

MEDIA GENERAL, INC.

A handwritten signature in black ink, appearing to read "John R. Feore", is written over a horizontal line. The signature is fluid and cursive.

John R. Feore

Jason E. Rademacher

Robert J. Folliard, III

DOW LOHNES PLLC

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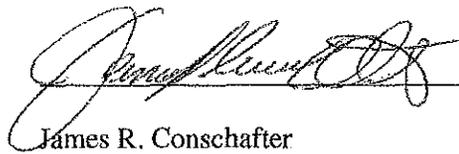
Its Attorneys.

November 14, 2013

DECLARATION OF

1. My name is James R. Conschafter, and I am the Vice President of Broadcast Markets for Media General, Inc.
2. I have read the foregoing "Answers and Requests for Sanctions" (the "Answer"), and I am familiar with the contents thereof.
3. The facts contained herein and within the foregoing Answer are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2013



James R. Conschafter
333 East Franklin Street
Richmond, VA 23219
(804) 887-5150

DECLARATION OF

1. My name is Stephen H. Gleason, and I am the Vice President of Programming for Media General, Inc.
2. I have read the foregoing "Answers and Requests for Sanctions" (the "Answer"), and I am familiar with the contents thereof.
3. The facts contained herein and within the foregoing Answer are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2013

A handwritten signature in black ink, appearing to read "S. Gleason", written over a horizontal line.

Stephen H. Gleason
333 East Franklin Street
Richmond, VA 23219
(804) 887-5150

CERTIFICATE OF SERVICE

I, Rayya Khalaf, certify that on this fourteenth day of November, 2013, I caused the foregoing Answer and Request for Sanctions to be served by first-class mail and, where indicated with a *, by hand delivery on the following:

Jeffrey H. Blum
Alison Minea
Hadass Kogan
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Diana Sokolow*
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Best Copy and Printing, Inc.*
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(with confidential material deleted)


Rayya Khalaf