



December 18, 2013

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

Re: Notice of Ex Parte Communication in MB Docket Nos. 10-71 and 09-182

Dear Ms. Dortch:

On December 16, 2013, Jane E. Mago of the National Association of Broadcasters ("NAB") met with Maria Kirby of the Office of Chairman Wheeler.

At the meeting, Ms. Mago discussed the Commission's authority to regulate retransmission consent. She noted the agency's previous determinations that it does not have the authority to mandate interim carriage or require some form of mediation or arbitration.¹ Ms. Mago also discussed how, contrary to the views of some multichannel video programming distributors ("MVPDs"), the Commission's cable rate regulation authority does not establish a basis for regulating the prices, terms, or conditions of retransmission consent, mandating interim carriage, or requiring arbitration. As NAB has discussed in past filings, Section 325(b)(3)(A) is: (i) not a basis for regulating retransmission consent under basic principles of statutory construction;² (ii) irrelevant with regard to most MVPDs, which either are not subject to basic tier rate regulation in the first place (e.g., direct broadcast satellite) or have now

¹ The FCC's notice in this very proceeding stated that "[w]e do not believe that the Commission has authority to adopt either interim carriage mechanisms or mandatory binding dispute resolution procedures applicable to retransmission consent negotiations." *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2727-28 ¶ 18 (2011) ("Notice").

² Opposition of the Broadcaster Associations in MB Docket No. 10-71 (filed May 18, 2010) at 69-71 ("Opposition"); Letter from Erin L. Dozier of NAB to Marlene H. Dortch, FCC Secretary (filed Aug. 26, 2010 in MB Docket No. 10-71)("NAB Aug. 26, 2010 Ex Parte") at 3; Reply Comments of NAB in MB Docket No. 10-71 (Jun. 27, 2011) ("NAB 2011 Reply Comments") at 20-23.

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been found to be subject to effective competition;³ (iii) irrelevant as a practical matter unless the Commission starts regulating the rates actually charged by MVPDs to consumers, because reducing the prices MVPDs pay for retransmission consent would not require MVPDs to reduce consumer rates;⁴ and (iv) a red herring because so few MVPD dollars go towards retransmission consent when comparing retransmission fees to MVPD operating revenues or amounts paid for other programming.⁵

Ms. Mago also discussed NAB's positions concerning the Commission's broadcast ownership rules. As detailed in previous filings, NAB supports elimination of the radio-television and newspaper-broadcast cross-ownership rules and relaxation of the local television and local radio ownership rules.⁶ Ms. Mago also emphasized the importance of sharing arrangements (such as shared services and joint sales agreements) to broadcasters' ability to meet the needs of television viewers. As discussed in the record in this proceeding, these arrangements have allowed many

³ Opposition at 30-32; NAB Aug. 26, 2010 Ex Parte at 3; Supplemental Comments of NAB in MB Docket No. 10-71 (May 29, 2013) ("NAB Supplemental Comments") at 5 ("with increasingly rare exceptions, retail cable rates are not regulated by the Commission or by local authorities").

⁴ NAB Aug. 26, 2010 Ex Parte at 3; Comments of NAB in MB Docket No. 10-71 (May 18, 2011) ("NAB 2011 Comments") at 41-42 ("only regulation of MVPD retail rates would ensure a reduction in subscriber rates"); NAB 2011 Reply Comments at 45-47; NAB Supplemental Comments at 5 ("[i]n the absence of some binding requirements, there is no assurance that any savings would be passed on to consumers").

⁵ NAB Supplemental Comments at 4-5 (2013 SNL Kagan estimates show that retransmission consent fees are equivalent to only 2.7 percent of cable industry's *video-only* revenues, and would be a considerably smaller percentage of total revenues; 2011 Multichannel News analysis estimated that only *two cents* of every dollar of cable revenue go to broadcast retransmission consent fees, while *20 cents* of every dollar go to cable programming fees); NAB 2011 Reply Comments at 22; NAB 2011 Comments at 41-47; Declaration of Jeffrey A. Eisenach and Kevin W. Caves at 6 (May 27, 2011) ("Declaration"), attached to NAB 2011 Comments as Attachment A at 11-24 (retransmission consent fees represent a tiny fraction of MVPD costs, an even smaller percentage of MVPD revenues, and are not responsible for increasing consumer prices); Opposition at 45-50; NAB Aug. 26, 2010 Ex Parte at 2 ("the record reflects that MVPD revenues and profits are increasing at a rate that outpaces all of their programming costs, and that retransmission consent fees represent only a small fraction of programming costs"); Jeffrey A. Eisenach and Kevin W. Caves, *Retransmission Consent and Economic Welfare: A Reply to Compass Lexecon* (Apr. 2010) ("Navigant Report") at 21-22 (programming costs are rising slower than MVPD revenues, slower than other components of MVPD costs, and slower than MVPD profits, while retransmission fees make up a small fraction of programming costs, and an even smaller percentage of MVPD revenues); Jeffrey A. Eisenach, *Video Programming Costs and Cable TV Prices*, at 5-15 filed by The Walt Disney Company in MB Docket Nos. 10-71 et al. (Apr. 23, 2010) (conducting similar analysis with similar results).

⁶ See Comments of NAB in MB Docket No. 09-182 (Mar. 5, 2012); Reply Comments of NAB in MB Docket No. 09-182 (Apr. 17, 2012).

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stations to expand and enhance their local service offerings, including local news programming.⁷

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'ERL Dozier', written in a cursive style.

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

cc: Maria Kirby

⁷ See, e.g., Letter from Erin L. Dozier of NAB to Marlene H. Dortch, FCC Secretary (filed Nov. 30, 2012 in MB Docket No. 09-182) at 4-6.

