

December 19, 2013

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, MB Docket No. 10-71; *2010 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182

Dear Ms. Dortch:

On December 17, 2013, the following representatives met with Adonis Hoffman, Chief of Staff and Senior Legal Advisor-Media to Commissioner Clyburn, to discuss the above referenced proceedings: John Bergmayer of Public Knowledge; Stacy Fuller of DIRECTV; Alex Hoehn-Saric of Charter Communications; Hadass Kogan of DISH Network; Ross Lieberman of the American Cable Association; and Cristina Pauzé of Time Warner Cable.

They began by discussing the fact that, although the marketplace has changed significantly since retransmission consent was created in 1992, the Commission's regulation of that regime has not. When Congress created that regime in 1992, it sought to balance the market power of monopoly cable operators and broadcast stations with exclusive territories. In the ensuing two decades, the video programming distribution industry has undergone profound changes, such that most consumers can now choose from among three or more distributors, not to mention Internet video. By contrast, broadcasters' exclusive territories and the Commission's retransmission consent regime have remained largely unchanged. Moreover, broadcasters have increasingly engaged in conduct designed to enhance their bargaining power in ways that are inconsistent with the core obligation to negotiate in good faith—such as colluding in the sale of retransmission consent (often through the use of Local Marketing Agreements (“LMAs”), Shared Services Agreements (“SSAs”), and similar “sharing” agreements).

Broadcasters have exploited this situation by abusing their retransmission consent rights during negotiations, using the tactics of brinkmanship and blackouts to extract ever-greater fees from MVPDs – with no end in sight. SNL Kagan estimates that MVPDs paid \$3.3 billion in retransmission consent fees in 2013, and that this figure will soar to a staggering \$7.6 billion by 2019. When MVPDs decline to meet broadcaster's demands, they face the loss of programming for their subscribers. In just the first ten months of 2013, there have been more than 110 broadcaster blackouts, compared with 91 blackouts in 2012, 51 blackouts in 2011, and 12 blackouts in 2010. The result is consumer harm through either increasing subscription rates or the loss of popular broadcast programming. In addition, this abuse of market power gives

broadcasters an improper incentive to hold onto their spectrum rather than participate in the upcoming incentive auction.

As discussed in the attached document, the Commission has broad authority to implement comprehensive reforms to the retransmission consent regime to protect consumers and better reflect market conditions. The representatives discussed potential actions ranging from prohibiting separately owned television stations from coordinating their retransmission consent negotiations to protecting consumers caught in the middle of retransmission consent disputes by establishing dispute-resolution mechanisms and requiring interim carriage in the event of negotiating impasses. The Commission can take such actions in the context of either its 2010 rulemaking considering reforms to its retransmission consent regime (MB Docket No. 10-71) or its pending 2010 quadrennial media ownership review (MB Docket No. 09-182), or address them in both proceedings. But it cannot simply permit the status quo to continue consistent with its statutory obligations to protect consumers and competition.

Respectfully submitted,

/s/

Stacy Fuller
Vice President, Regulatory Affairs
DIRECTV

cc: Adonis Hoffman