



December 20, 2013

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

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

Dear Ms. Dortch:

On December 19, 2013, Jane Mago, Jerianne Timmerman and the undersigned of the National Association of Broadcasters ("NAB") met with Adonis Hoffman, Senior Legal Advisor to Commissioner Clyburn.

In our meeting, NAB observed that, although the FCC has explicitly recognized its limited statutory authority to regulate retransmission consent,<sup>1</sup> multichannel video programming distributors ("MVPDs") continue to offer unmeritorious arguments about the FCC's authority to intervene in the retransmission consent marketplace established by Congress. In particular, various MVPDs continue to erroneously contend that Section 325(b)(3)(A)<sup>2</sup> is somehow a basis for regulating the prices, terms or conditions of retransmission consent. As NAB has discussed in multiple previous filings since 2010, this section is: (i) not a basis for regulating retransmission consent under basic principles of statutory construction;<sup>3</sup> (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 been found to be subject to effective

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<sup>1</sup> See NAB Ex Parte in MB Docket No. 10-71 (filed Dec. 5, 2013); NAB Ex Parte in MB Docket No. 10-71 (filed Nov. 15, 2013)(noting, *inter alia*, the FCC's own statement in the rulemaking notice in this proceeding that it does not have authority to adopt either interim carriage mechanisms or mandatory binding dispute resolution procedures applicable to retransmission consent negotiations); *Amendment of Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2727-28 ¶ 18 & n.6 (2011).

<sup>2</sup> 47 C.F.R. § 325(b)(3)(A) (referencing cable rate regulation authority).

<sup>3</sup> 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.

1771 N Street NW  
Washington DC 20036 2800  
Phone 202 429 5300

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competition;<sup>4</sup> and (iii) irrelevant as a practical matter unless the Commission starts regulating the rates actually charged by MVPDs to consumers, because controlling the prices of inputs into MVPD service would not require MVPDs to change consumer rates.<sup>5</sup> Pay television providers' continued invocation of the FCC's ancillary authority as a source of authority for regulating the retransmission consent marketplace is similarly unavailing, as NAB has also explained since 2010.<sup>6</sup>

We also discussed how the marketplace has changed for both broadcasters and MVPDs in recent years. We noted that broadcasters today are competing against, and negotiating retransmission consent agreements with, regionally clustered MVPDs that control large percentages of television households in many local markets and that jointly sell advertising in local markets via interconnects.<sup>7</sup> In this environment, sharing arrangements (such as shared services agreements and joint sales agreements) are critical to broadcasters' ability to meet the needs of television viewers.<sup>8</sup>

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Erin L. Dozier  
Senior Vice President and Deputy General Counsel

cc: Adonis Hoffman

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<sup>4</sup> 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").

<sup>5</sup> 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").

<sup>6</sup> See, e.g., Opposition at 72; Reply Comments of the Broadcaster Associations in MB Docket No. 10-71 (June 3, 2010) at 3-5.

<sup>7</sup> See, e.g., NAB Supplemental Comments at 8-11; NAB Ex Parte in MB Docket No. 10-71 (filed Dec. 5, 2013) at 4-6.

<sup>8</sup> 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 (discussing how sharing arrangements have allowed many stations to expand and enhance their local service offerings, including local news programming).