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

NAB Response to Chairman Wheeler's Blog Statement
About Escalation of Retransmission Consent Fees

Dear Ms. Dortch:

Virtually all children resort to excuses when facing the prospect of being held accountable for behavior that adults deem troublesome. As we mature, most of us learn that the tactic is not an effective way to avoid the consequences of our behavior but, for some, making excuses becomes a permanent personality trait.

Excuse-making can be a characteristic of organizations, as well as individuals—witness the reaction of the National Association of Broadcasters (NAB) to last week's observation by Chairman Wheeler on the FCC blog that retransmission consent fees have "skyrocketed from \$28 million in 2005 to \$2.4 billion in 2012—a nearly 8,600 percent increase in seven years."¹ According to one press report, a NAB spokesperson, Dennis Wharton, responded by declaring that "[i]t is utterly disingenuous for policymakers and the Big Cable lobby to suggest that broadcasters are the cause of rising cable rates. Cable TV companies have been gouging subscribers with jarring rate hikes long before broadcasters began receiving modest compensation for the most-watched programming on television."² This is an institutional version of the childhood classic: "It wasn't my fault—she started it."

Experts have recommended a variety of techniques for dealing with children who are inveterate excuse-makers. The following are some suggestions that may also be useful to the Commission in handling the flood of excuses we can expect from NAB as the Commission considers (and hopefully adopts) measures to reign in the extraordinary explosion of both blackouts and retrans fees:

- "One of the best things you can do is catch your child when he's blaming someone—or something—for his actions, and then call him out."³ Whether a child or a broadcaster, it is important to establish that "no matter what, in your eyes they are accountable for their own choices and behavior."⁴

¹<http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition>.

²Quoted in B. Fung, *Last year's CBS blackout was terrible for everyone. Here's one idea to fix it*, Mar. 7, 2014, <http://www.washingtonpost.com/blogs/the-switch/wp/2014/03/07/last-years-cbs-blackout-was-terrible-for-everyone-heres-one-idea-to-fix-it/>.

³J. Lehman, *Kids and Excuses: Why Children Justify Their Behavior*, <http://www.empoweringparents.com/kids-making-excuses.php#>.

⁴*Id.*

- “It’s empowering to know that we all have choices in life—and that goes for your kids, too. They’re making a choice to either follow the rules or not follow the rules; there is a moment in time when they choose misbehavior instead of the right behavior, or vice versa. If your teen daughter is with friends and realizes she is going to be late for curfew, she has the choice to text you and let you know—or to call and ask for a ride. Blaming her friends for her inability to get home on time is not a valid excuse. She’s not a victim or powerless to change the outcome of her actions each time she steps out of the house.”⁵ Similarly, in deciding to order a shutoff or raise a retrans fee by 25%, 50% or more every few years, station owners also have a choice and are not victims or powerless. The owner has the ability to take another action, such as submitting to mediation or binding arbitration, publishing rather than hiding the prices that different MVPDs in a market are charged and letting individual consumers choose whether they want to pay the price. Blaming blackouts on Time Warner Cable, Dish Network and DirecTV is not a valid excuse.
- “Teach kids the difference between real excuses and lazy excuses. Real excuses mean that something has come up that makes it difficult to follow through with a responsibility, such as getting sick. . . . A lazy excuse is one that your child makes up or is using only because he or she does not want to do chores.”⁶ We need to help broadcasters learn the difference, too. For example, the publicly available evidence shows that the retrans fees paid to large station groups are kept by the corporate parents and used for executive salaries, dividends, stock buybacks and acquisitions. So, when broadcasters claim that local stations need to collect their retrans billions in order to fund more and better local programming, point out that this is a lazy excuse unless they present hard evidence that the money is both needed and actually spent for that purpose.
- “Young children come up with fantastical excuses when they don’t want to stop playing. Go along with their fantasies and try to work them into the responsibility. For example, if your child is talking about how a monster keeps him from picking up his room, say that the monster’s mom told you that the monster also has to help.”⁷ Similarly, when NAB offers up its fantastical claims that the Big Cable ogre is behind everything from shutoffs and rising prices to criticism of broadcasters, say that if broadcasters do their share, the Commission will protect them from the big, bad MVPDs.
- “Figure out consequences for when your child refuses to take responsibility. For example, if your child won’t do the dishes, restrict his access to video games, the computer, or TV until he’s finished he’s done them.”⁸ For broadcasters who won’t accept responsibility for blackouts and the fact that retrans fees grow at outrageous rates even as broadcast television viewership steadily declines, popular programming is shifted to cable networks affiliated with the Big 4 networks and local news coverage and operations are homogenized, eliminated and consolidated, take away their network exclusivity and place conditions on their license renewals until they change their ways.

⁵*Id.*

⁶*Dealing with Excuses*, <http://www.parentfurther.com/discipline-values/chores/dealing-with-excuses>.

⁷*Id.*

⁸*Id.*

- “Once your child acknowledges his mistake, have him make amends if the situation warrants it. If your son hit his sister, he may need to write a note of apology or do a chore for her”⁹ Assuming CBS ever acknowledges that it was wrong, during its retrans dispute with Time Warner Cable, to block access to CBS’s online content for all TWC Internet customers, even those who did not subscribe to its video service, then CBS should apologize and maybe do the clean-up after a TWC corporate event.
- “Keep a sense of humor. If your child constantly comes up with more and more outrageous excuses, write them down. (Save them to tell your kids when they become adults!)”¹⁰ Similarly, when NAB publishes a press release quoting Mr. Wharton’s fantastical excuses for rising retrans fees or Gordon Smith, NAB’s President, as saying that there is no such thing as a blackout, shake your head, write it down and have a good laugh with Mr. Wharton or Mr. Smith about the statement a few years from now when he has retired or moved on to another job.

Specifically with regard to the most recent resort to excuse-making by broadcasters in response to Chairman Wheeler’s blog entry about the escalation of retrans fees, one thing responsible adults can do is point out that even if it were true that cable companies have been “gouging subscribers” for a long time, that fact would hardly justify similar or worse behavior by broadcasters. As Thomas Szasz, a psychiatrist and academic, once said: “Two wrongs don’t make a right, but they make a good excuse.”

In fact, however, the implication that cable companies are getting rich from “jarring rate hikes” is simply not true for Mediacom and probably for other cable companies as well. As Mediacom has pointed out publicly on many occasions, programming costs have increased annually at rates far in excess of inflation and have been the single largest factor contributing to increases in cable rates for at least the past decade. The rates for sports networks, which have limited, but intensely loyal audiences, are not only at exorbitant levels, but also increase annually at rates far in excess of inflation. Many non-sports networks have also increased their rates by far more than inflation. Although certainly excessive, the rates at which non-broadcast services have increased their wholesale prices pales by comparison to the 8,600 percent increase in retransmission consent fees referred to by Chairman Wheeler.

As pointed out in a September 1, 2011 letter from Mediacom’s CEO to former Chairman Genachowski (a copy of which is attached), Mediacom does not make more money when it raises video prices, because it both remits virtually every penny of the increase to the content owners and loses customers. As the letter says, over the three years preceding its date, the increase in Mediacom’s programming costs was more than **double** the increase in video revenues, even after taking subscriber rate increases and equipment charges into account.

Mediacom’s reluctance to continually increase its video prices is evidenced by the fact that, on more than one occasion, it has offered to freeze its monthly rate for its most popular video service tiers (limited and expanded limited basic) if the owners of the broadcast channels and cable networks on those tiers likewise agreed to freeze the fees they charge for their content. Unfortunately, not a single cable network or broadcast station owner has accepted that offer.

⁹J. Lehman, *Kids and Excuses: Why Children Justify Their Behavior*, <http://www.empoweringparents.com/kids-making-excuses.php#>.

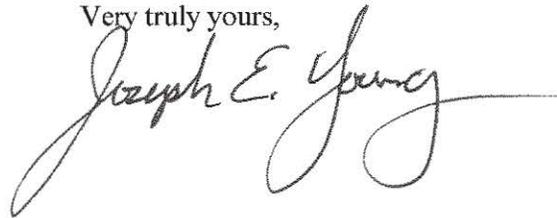
¹⁰*Dealing with Excuses*, <http://www.parentfurther.com/discipline-values/chores/dealing-with-excuses>.

In conclusion, whatever the excuse, justification or rationale put forth by broadcasters to deflect or avoid consumer outrage and governmental action, the basic facts cannot be denied: Cash retransmission consent costs were near zero a few years ago. Today, according to various public sources, the price is at or headed for \$2 per subscriber per month for each Big Four station. Based on the public statements of some executives of the Big Four networks and large station group owners, the goal is to drive the price for each Big Four station to at least as much as ESPN and perhaps as much as \$8.00 per subscriber per station or more, or from \$20 to \$30 per month for all Big Four stations in a market. Costs at those levels cannot be prudently absorbed by MVPDs, given the realities of the stock and other capital markets, particularly when we recognize that the costs of cable networks also rise every year at rates well above inflation. The bundling and other practices of the media conglomerates that control the most popular cable networks—some of which happen to also control the Big Four networks and their O&O Stations—and the competitive realities of the MVPD business mean that most MVPDs cannot adequately offset the increased costs of retransmission consent by dropping cable networks.

As a result, all or most of these costs will be passed through to consumers and the monthly rate for basic cable service, including the limited service relied upon by millions of senior citizens and others with little discretionary income, will continue to grow significantly. We think that is not only a shame, but also avoidable if the Commission took a more active interest in the impact on consumer pocketbooks of certain practices by content owners.

We commend Chairman Wheeler for looking through the broadcasters' smokescreen of excuses and we encourage the Commission to revive this docket with a view to instituting reforms that will help consumers.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph E. Young". The signature is written in black ink and is positioned below the typed name "Joseph E. Young".

Attachment



Rocco B. Commisso
Chairman and Chief Executive Officer

September 1, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski:

Shortly after becoming Chairman, you said that protecting consumers was one of your goals, and you pledged that the Commission would "strive to be smart" about how its decisions affect consumers' lives. We respectfully submit that you cannot hope to achieve that goal if you allow the Commission to continue to ignore the escalating wholesale costs for television programming.

For nearly a decade, I have been speaking out about the harm to Americans caused by rising programming costs. I devoted my keynote address at a 2003 industry event to this issue, and predicted that things would only get worse unless the Commission took an active role in finding a solution. Your remarks when you were first appointed as Chairman encouraged us to believe that, under your leadership, the Commission would finally address the problem. I regret to say that it is now almost three years later and nothing has been done.

The Commission's inexplicable inaction:

- Costs Americans billions of dollars, as programming owners have increased their rates well in excess of inflation in every year since my speech, and there is no end in sight. One study found that monthly per-subscriber video programming costs for basic and expanded basic channels increased by 67% across all MVPDs between 2003 and 2008, **four times** the rate of inflation during the same period. There is no reason that any of this has to be the case, as I understand that the per-subscriber wholesale cost for cable/satellite television programming in the United States is as much as **three to five times** the cost in Europe.
- Adds to consumers' bills and severely limits their freedom of choice by allowing content owners to require MVPDs to buy costly bundles of networks and carry them on the most popular service tiers, so that subscribers are forced to pay for channels they do not want.
- Exposes consumers to service disruptions because the Commission refuses to adopt measures like binding arbitration to prevent content owners from using blackouts as a negotiating tactic.
- Forces consumers to pay more for less or, at best, to simply keep what they already have. Paying additional money for channels that customers already receive does not produce additional content. Given the original intent of retransmission consent, it is especially shameful that retransmission consent fees have dramatically increased even as movies and sports events migrate from broadcast channels to pay networks and broadcast stations severely cut staff and budgets for news and public affairs programming.

- Creates a new digital divide as the price of cable television service is driven steadily upward to levels that are beyond the means of more and more Americans, especially in a time of high unemployment and stagnant wages. The second quarter of 2011 marked the first time that video subscribership in the combined cable/telephone/satellite industries suffered a net decrease.
- Opens the door for programmers to leverage their online content into higher fees. Online viewing of television programs once available for free to everyone is beginning to be confined to MVPD subscribers whose distributor has agreed to pay the programmer extra as part of retransmission consent or cable network license deals. Programmers also plan to charge extra if a video subscriber wants to watch a show on his/her laptop, iPad or smart phone, rather than on the television set. These practices will drive up consumer prices even more and negatively impact the ability to extend the benefits of broadband and advanced technology across all income levels.
- Impedes achievement of the Commission's goal of increasing broadband penetration. There is a direct correlation between broadband adoption and video penetration rates, so that consumers who find cable television service unaffordable may also forego broadband subscriptions.
- Reduces the ability of cable companies to respond to your call to extend the availability of low-cost broadband service for the under-privileged. If MVPDs have to pay hundreds of millions more for the same programming every year, that necessarily means there is less money to support your initiative.

Contrary to accusations by industry critics, cable companies are reluctant to raise video subscriber rates because when we do, we lose customers. Mediacom does not make more money when we raise video prices, since we remit virtually every penny of the increase on to the content owners. Over the last three years, the increase in our programming costs was more than **double** the increase in video revenues, even after taking our subscriber rate increases and equipment charges into account.

I am deeply disappointed with the Commission's lack of interest in keeping multichannel television service affordable. Twice in the past five years, I have tried to stand up for consumers by resisting exorbitant demands for retransmission consent fees. And twice the Commission put the interests of broadcasters ahead of those of the viewing public. The Commission's position that it does not have the authority to intervene—even though a different interpretation of the law would clearly be sustainable—is forcing American consumers to pay billions of dollars for “free” over-the-air television without receiving anything more in return. Although retransmission consent fees have been the fastest growing component of programming cost increases, non-broadcast networks also keep pushing their charges higher and higher. Content owners have been unwilling to exercise the slightest measure of self-restraint, and are emboldened by the Commission's unwillingness to even try to impose some limits or speak out against programmers' practices.

Mr. Chairman, I respectfully call upon you to live up to the pledge you made when you took office and move forcefully to protect senior citizens, low-income households and rural residents from practices that are rendering cable television unaffordable. There are a range of tools at your disposal, including, but by no means limited to:

- Prohibiting price discrimination by program owners through volume discounting practices that prejudice millions of Americans living in rural areas and small towns throughout our nation.
- Increasing transparency by requiring broadcasters and cable networks to make public the prices they charge MVPDs in each market.
- Mandating the unbundling of stations and program services at the wholesale level.

- Banning programmers from forcing carriage on the basic, expanded basic or most popular digital tier.
- Preventing programmers from driving up the price of broadband, as well as video, service by replicating in the case of Internet video content the bundling and pricing practices that have been so detrimental to consumers of cable television service.
- Establishing a standstill mechanism and alternative dispute resolution to ensure service to consumers is not disrupted during negotiating impasses.
- Prohibiting a single company from negotiating for multiple big-four broadcast stations in a market, a network or other proxy from negotiating for multiple stations and a station group from refusing to offer consent for its stations on an unbundled basis and on reasonable terms.
- Instituting a carefully designed *a la carte* system, so that decisions about what video services are bought are made by consumers themselves, rather than by content owners.

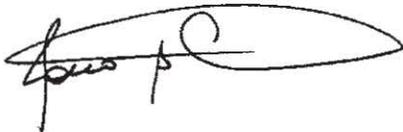
The Commission, citing its duty to promote the public interest, has employed similar tools in other contexts, including its recent program carriage order. Frankly, the harm to consumers from the practices of television content owners is far greater than that flowing from many of the issues to which you have devoted so much of your personal attention and the Commission's resources. There is no excuse for the Commission not to at least try to assert its vast authority with the goal of restoring a semblance of balance to the video programming marketplace—there is nothing to lose if its actions are successfully challenged in court and much to gain if, as we fully expect, its authority is confirmed by the courts.

When, as is inevitable, the retransmission consent cycle beginning this October 1 and recurring renewal negotiations for cable networks trigger a fresh round of actual and threatened service disruptions and yet another subscriber rate increase, the Commission must share responsibility with the content owners. In this regard, as of 5 PM yesterday, we were forced by LIN Television Corporation to stop retransmitting its television stations to tens of thousands of Mediacom subscribers in multiple DMAs simply because we refused to surrender to its exorbitant and discriminatory demands for triple-digit increases in retransmission consent payments.

My passion with respect to the issue of programming costs and their impact on my customers and my employees is well-known. I have spoken frankly in this letter, but mean no disrespect. I think we share a desire for a nation in which all of our citizens have affordable access to a basic level of information and entertainment programming.

I would be happy to meet with you at any time to discuss how we can work together to reach our shared goals.

Sincerely,

A handwritten signature in black ink, appearing to be "James P. [unclear]", written over a horizontal line.