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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Matter of	)		
	)		
Amendments to the FCC's Good-Faith Bargaining Rules	)	RM No. 11720	Accepted/Filed
	)		JUN 19 2014
	)		FCC Office of the Secretary

To: Secretary
Attn: Chief, Media Bureau

OPPOSITION TO PETITION FOR RULEMAKING

Sinclair Television Group, Inc. ("Sinclair"), pursuant to Section 1.405(a) of the Commission's rules, 47 C.F.R. §1.405(a), hereby opposes the Petition for Rulemaking (the "Petition"), filed May 6, 2014 by Block Communications, Inc. ("Block") in the above-captioned proceeding. Block requests the Commission to initiate a rulemaking to amend its good-faith bargaining rules governing retransmission consent negotiations.[1] Block's attempt to have the Commission adopt rules clearly designed by Block to benefit only itself as both a broadcaster and a cable operator is transparent and must be rejected.

I. Introduction.

If for nothing else, Block must be commended for having the chutzpah to make the proposal it has submitted to the Commission. Unlike most self-interested parties, such as multichannel video programming distributors ("MVPDs"), who have petitioned the FCC to change the retransmission consent rules in the petitioning parties' favor, Block found itself in the difficult position of being both an MVPD and a broadcaster. As a result, Block has the unique

[1] The filing of Block's Petition appeared on an FCC Public Notice on May 20, 2014. *Public Notice*, Report No. 3003 (rel. May 20, 2014). This Opposition is being submitted within 30 days of that Public Notice and therefore is timely filed.

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problem of running the risk of being negatively impacted by any proposal that it submits to benefit one party or the other. Undeterred by such a conundrum, however, Block has managed to fashion a proposal which benefits MVPDs which meet certain criteria and also benefits broadcasters which meet certain criteria. Not surprisingly, Block conveniently manages to fall into both such categories. Such blatant self-serving proposals are not worthy of serious consideration.

Block describes itself as the operator of a small television station group, and also as the operator of a small cable system.[2] In its Petition, Block complains that television "supergroups" use their economic resources to extract above-market retransmission consent rates from small MVPDs. It also argues that nationwide MVPDs use their leverage to depress retransmission consent fees. Accordingly, Block requests that the FCC initiate a rulemaking proceeding to amend the good-faith bargaining rules. It proposes that in communities outside the top 30 DMAs, involving negotiations between either (a) an MVPD that serves fewer than 400,000 consumers and a TV station group that owns, or has a JSA or SSA with, at least 25 TV stations, or (b) an MVPD that has more than 1,500,000 subscribers and a broadcast TV group with 5 or fewer stations, that lead to a complaint before the Commission, the parties should be required to submit

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[2] Block says it owns five (5) full-power and several Class A and low-power stations in small and mid-sized stations around the country, all of which, it is fair to assume, are outside the top 30 DMAs, Petition at 2-3. Block also owns Buckeye Cablevision ("Buckeye"), which serves approximately 130,000 subscribers in Ohio and Southeast Michigan. *Id.* at 2. Block is, in fact, not a small company lacking negotiating strength, but is instead, as described on its own website, a "diversified media company" that "employ[s] nearly 3,000 persons" in order to "reach hundreds of thousands of people each day." http://blockcommunications.com/overview.html. It conveniently fails to point out that, in addition to its cable and television groups, Block publishes both *The Blade (*formerly the *Toledo Blade)*, the dominant daily newspaper in Northwestern Ohio, with a daily readership of 315,500 and 7.4 million page views per month, and the *Pittsburgh Post-Gazette,* the largest daily newspaper serving the Pittsburgh metropolitan area, with a daily readership of 608,581 and 35.4 million page views per month. See http://blockcommunications.com, last accessed June 16, 2014. Block provides CW Network service to the Toledo market through its cable channel WT05, which is also carried by other regional MVPD systems. It also operates an electronic news service (the *eBlade*), a high speed internet service, a competitive local exchange carrier ("CLEC"), a regional sports programming network, and a fiber and cable construction company, all focused on the Toledo market.

evidence on a confidential basis showing that their offers reflect actual market conditions, including the ratings of the television stations involved and the rates paid by other operators for other stations in the market.[3] Block contends that its proposal will help ensure that marketplace considerations, rather than the leverage of a nationwide broadcaster or MVPD, will dictate the outcome of a retransmission consent negotiation. Petition at 1.

Conveniently, Block's proposal benefits Block in markets where it is a broadcaster and also benefits Block in markets where it is a cable operator. Despite being worth at least hundreds of millions of dollars, Block has somehow determined that it needs the government's help in its retransmission consent negotiations, regardless of the side of the table on which Block is sitting. Such self-serving suggestions are not worthy of serious consideration.

It is impossible for the Commission to adopt a set of specialized rules that would fairly treat every entity involved in the retransmission consent process.[4] Congress wisely left the parties to negotiate among themselves as to what represents a fair bargain, and Block's attempt to have the Commission tinker with those negotiations would improperly involve the Commission in picking winners and losers in retransmission consent negotiations, a task that Congress has not authorized the Commission to undertake. Moreover, due to the complexity of retransmission consent negotiations, it would not be feasible for the Commission to conduct the proposed "heightened good faith bargaining" review without engaging itself in a determination

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[3] Not surprisingly, Block has crafted the proposed criteria for determining when the "heightened good faith bargaining requirements" would apply so they would be applicable in both the situation where Block is the owner of a television station or where Block is the cable operator, to benefit Block in each of its retransmission consent negotiations (and to none of the entities with which it negotiates). Petition at 12.

[4] Sinclair, for example, would like to have a government mandated advantage in retransmission negotiations with a company, such as Block, that not only owns the largest cable system in a market, but also owns the market's only daily newspaper, but Sinclair does not believe in wasting the Commission's time with such self-serving proposals.

concerning retransmission consent fees, something which the Commission has said it does not have the authority to do.[5]

II. Block's Proposal Should Not Be Adopted Because the Commission Should Not Adopt Special Rules For Every Party That Believes Its Relative Size Places It at a Disadvantage In a Retransmission Consent Negotiation.

It is inherent in the very nature of the retransmission consent process that, in the vast majority of cases, one party is going to be in a stronger bargaining position than the other.[6] This is true of virtually every type of negotiation. It would create an unworkable and endless administrative process for the Commission to attempt to adopt specific rules for each and every party involved in a retransmission consent negotiation who perceives that its relative size places it at a comparative disadvantage in a negotiation. Nevertheless, that is precisely what Block has requested the Commission to do in this proceeding, and it has done so in a manner that does not even pass the straight faced test given the shameless creation of a rule that benefits broadcasters only when they are Block's size and benefits MVPDs, again, only when they are Block's size.

Block's assumption that smaller MVPDs inherently lack bargaining power ignores that, even if that were true (which it is not), other factors beyond mere size can change the balance of power. For example, Block owns the dominant MVPD in the Toledo market, as well as owning

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[5] Sinclair is also compelled to note that Block spends a good portion of its petition attacking Sinclair's handling of current retransmission consent negotiations with Block's subsidiary, Buckeye. That is a docketed proceeding, involving complaints of failure to negotiate in good faith, and is covered by the Commission's *ex parte* restrictions. Moreover, Block totally misstates Sinclair's positions. As one example among many, Block claims that Buckeye did not have an opportunity "to raise the fact that Sinclair has demanded compensation for carriage that is unrelated to its actual position in the Toledo marketplace." *Petition* at 9. A review of the pleadings in MB Docket 14-33, however, will show that Buckeye has made this specious argument *ad nauseam*. Even though Block's Petition addresses the merits of the dispute in MB Docket 14-33, Sinclair was not served with a copy of the Block Petition, and only learned of it through press reports. Block's Petition violates the *ex parte* rules and should be stricken on that ground.

[6] As noted above, Sinclair believes that it is at a disadvantage in its negotiations with Block because of Block's ownership of the dominant cable system in Toledo, as well as Block's ownership of the only local newspaper in the market, a newspaper which Block has continuously used during negotiations to criticize Sinclair. Sinclair also believes that it is at a tremendous disadvantage when negotiating with companies that dwarf Sinclair in size, such as Comcast, Time Warner Cable, DirecTV and Dish.

the only local daily newspaper, a Toledo-based electronic news service, a Toledo-based regional sports service, and a cable service that provides the CW Network service to the Toledo area. It has used its newspaper to publicize its cable system's positions in retransmission disputes with local broadcasters, while refusing to accept counter-advertising from the affected broadcaster refuting Block's assertions. These facts show that Block "punches above its weight class" in negotiating with local broadcasters.

Given the individualized factors which can permeate every situation, it would be impossible for the Commission to adopt a set of specialized rules such as those suggested by Block that would fairly treat every entity involved in the retransmission consent process. Block seeks to have the Commission place a heavy thumb on the negotiating scales in order to benefit Block where it perceives an imbalance in its own negotiating power. To do so would be a terrible error, tasking the Commission with picking winners and losers, and discouraging small MVPDs and broadcasters from negotiating at all.

Block's proposal is also deficient with respect to the submission that would be required to make a *prima facie* showing of bad faith. Block proposes that the complaining party would need to show that the other party's offers are unreasonable in light of the complaining party's other deals with broadcasters or cable operators in the same market, and the ratings achieved by the station in comparison to ratings of stations involved in prior retransmission consent agreements. Petition at 15. As a threshold matter, however, a complaining party would not be privy to the rates or other terms that the opposing party negotiated in prior years with other broadcasters. Moreover, those rates and terms would have little relevance to the negotiation at issue.

Further, although broadcasters have had the right to seek compensation from MVPDs since 1992, as a practical matter obtaining actual compensation from MVPDs for such rights is a relatively new occurrence. As a result, the market for obtaining such rights is relatively immature, and not surprisingly, is characterized by wide disparities in price. As demonstrated above, those price disparities result from numerous factors, including when the agreements were executed (since pricing has increased rapidly over time), the stations involved, the number of subscribers, the market dominance of MVPDs, and numerous other considerations. This wide variety of factors – all of which contribute to the significant disparity in pricing – make it impossible for the Commission to attempt to conduct any meaningful analysis of whether a party's position is "unreasonable" or whether it has acted in bad faith without necessarily engaging itself in a pricing determination, something which the Commission has previously stated it does not have the authority to do.

CONCLUSION

Block has requested the Commission to initiate a rulemaking proceeding for the purpose of amending its good-faith bargaining rules governing retransmission consent negotiations. As demonstrated herein, however, Block's Petition is tantamount to a request for the Commission to carve out special rules for a broadcaster/cable operator who operates in small and mid-sized markets, and who believes that its relative size places it at a comparative disadvantage vis-a-vis large TV group owners and MVPDs in negotiating retransmission consent. Indeed, the factual premise upon which Block's proposal is based is not supported by the record, and its proposed remedy in the event of a dispute would require the Commission to make a determination that it is not authorized to conduct. Therefore, for all of these reasons, the Petition should be dismissed or denied.

Respectfully submitted,

Sinclair Broadcast Group, Inc.

By: Clifford Harrington / by AK
Clifford M. Harrington
Andrew S. Kersting

Its Attorneys

PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037
Telephone: (202) 663-8000
Facsimile: (202) 663-8007

Dated: June 19, 2014

CERTIFICATE OF SERVICE

I, Julia Colish, a legal secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that on this 19th day of June, 2014, a copy of the foregoing **Opposition to Petition for Rulemaking** was sent by first-class U.S. mail, postage prepaid, to the following:

William Lake, Chief*
Media Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C740
Washington, DC 20554

Block Communications, Inc.
405 Madison Avenue Suite 2100
Toledo, OH 43604
Attn: W.H. Carstensen, President

Julia Colish

Julia Colish

*by Hand Delivery

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