

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of the Commission’s Rules |) | MB Docket No. 10-71 |
| Related to Retransmission Consent |) | |
| |) | |

REPLY COMMENTS OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. (“Univision”) respectfully submits these reply comments in the above-captioned proceeding to address the request by certain cable commenters that the Commission severely limit the ability of broadcast networks and their affiliates to control the distribution of their valuable content. These commenters suggest that the Commission, based on its authority to regulate good faith retransmission consent bargaining, should effectively prohibit networks and their affiliates from bargaining for first-call and distribution provisions.¹ The Commission must reject this ill-considered and unlawful proposal.

I. INTRODUCTION

Univision offers a unique perspective as the nation’s largest Spanish-language media company. The Hispanic population in the U.S. continues to grow rapidly, and a significant number of Hispanic viewers receive Univision and other broadcast programming solely on a non-subscription, over-the-air basis. In Los Angeles, the largest Hispanic DMA, nearly 20 percent of Hispanic TV households do not subscribe to pay television services and receive

¹ See Comments of American Cable Association (“ACA”), MB Docket No. 10-71 (filed June 26, 2014); Comments of Mediacom Communications Corp., Cequel Communications, LLC D/B/A/ Suddenlink Communications, and Bright House Networks, LLC, MB Docket No.10-71 (filed June 26, 2014) (“Joint MVPDs,” and together with ACA, the “RTC Opponents”).

television programming only over the air.² Twenty-five percent of all Hispanic households rely on free, over-the-air television, and less than half (49%) of households the prefer speaking Spanish at home had a pay-TV service in 2013.³ The continued economic viability of local broadcast television stations thus is a particularly critical concern for Hispanic and other minority communities.⁴

II. THE COMMISSION SHOULD NOT ENTERTAIN THE RTC OPPONENTS' ATTEMPT TO INTERFERE WITH NETWORK-AFFILIATE BARGAINING

Enforceable geographic distribution limitations often are a key component in maintaining a healthy network-affiliate relationship. Stations rely primarily on advertising revenue, with retransmission consent revenue providing a critical supplemental source of revenue for the most popular stations.⁵ Mutually agreed-upon first-call rights and certain geographic limitations are one way networks bolster local affiliates' abilities to serve their communities by protecting these revenue streams. Indeed, the Commission previously has recognized that agreements of this nature are a "valuable and legitimate business practice."⁶ Network affiliation agreements are designed to benefit both networks and stations by enabling networks to distribute their content widely while giving affiliates access to the resources necessary to produce strong local programming.

² National Association of Broadcasters, "Broadcast Television and Radio in Hispanic Communities," at 2 (July 2013) (citing Nielsen, November 2012).

³ See National Association of Broadcasters, "Over-the-Air TV Renaissance Continues as Pay TV Cord-Cutting Rises," available at <http://www.nab.org/documents/newsroom/pressRelease.asp?id=3168> (June 21, 2013).

⁴ *Id.* (noting that minorities make up 41% of all broadcast-only homes).

⁵ See *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, R&O & FNPRM, FCC 14-29, at ¶ 59 (observing that on-air advertising revenues constitute about 85 percent of broadcasters' revenues) ("*Further Notice*").

⁶ *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, Report and Order*, 3 FCC Rcd 5299, 5300 (1988).

ACA makes no effort to disguise its true goal -- to undermine the value of stations' network affiliations by obtaining the right for cable operators to freely import distant station signals in the event of a retransmission consent bargaining dispute.⁷ Mediacom *et al.* similarly ask the FCC to prohibit any agreements, arrangements or understandings that have the effect of creating marketplace exclusivity.⁸ Meanwhile, the compulsory copyright licenses of Sections 111, 119, and 122 of the Copyright Act of 1976, as amended, limit the ability of networks and other program owners to control the circumstances under which MVPDs can publicly perform their copyrighted works through broadcast retransmissions. The cumulative effect of these provisions would be to eliminate any legal avenue for a station to protect its bargained-for rights to network or syndicated programming, thus crippling the ability of local stations to negotiate on a level playing field with MVPDs. This is precisely the outcome the RTC Opponents hope to achieve.

ACA, for instance, repeatedly emphasizes its supposed desire to protect "the ability of MVPDs to negotiate retransmission consent with willing sellers for out-of-market signals."⁹ In fact, however, the regime ACA advocates is designed to bolster MVPDs' leverage by bringing government coercion to bear against networks and broadcasters at every level. In ACA's world, a broadcast station would remain legally required to negotiate in good faith with MVPDs wishing to carry the station's signal in any market,¹⁰ and networks and other programmers would be compelled to license their copyrighted works to MVPDs for distribution in any market,¹¹

⁷ See ACA Comments, at 14-15.

⁸ See Comments of Joint MVPDs, at 16.

⁹ See ACA Comments at 32.

¹⁰ ACA Comments at 11 & n.31.

¹¹ See ACA Comments at 6-7 (asserting benefits of compulsory copyright licenses).

generally at below-market rates.¹² At the same time, no network or station would be permitted to request or enter into any agreement designed to prevent — or even to “dis-incent” — an MVPD from carrying an out-of-market station or an out-of-market station from agreeing to such carriage.¹³ In other words, ACA seeks to legally require every station to become a “willing seller” of out-of-market retransmission consent, while legally barring the station, its network, or any other station or programmer from negotiating for any geographic limits on that consent.

Granting MVPDs this unfettered importation right would reduce the network affiliation’s value to local stations, as networks no longer could offer stations the benefit of serving as a unique source of network programming within a defined area. In markets where the risk is particularly high that MVPDs will import adjacent-market or other out-of-market stations, networks (especially emerging networks) may have difficulty obtaining local affiliates at all, thus undermining the Commission’s goals of promoting localism, diversity, and competition.

III. THE RTC OPPONENTS’ PROPOSAL IS INCONSISTENT WITH CONGRESSIONAL INTENT, COMMISSION PRECEDENT, AND THE PUBLIC INTEREST

The RTC Opponents’ proposed regime bears no resemblance to the free-market negotiations Congress sought to facilitate between broadcasters and MVPDs, and it far exceeds any authority Congress conferred on the Commission to oversee such negotiations. The Commission itself has held that “neither the text nor the legislative history” of the 1992 Cable Act “indicate[s] a congressional intent to restrict the rights of networks and their affiliates through the good faith or reciprocal bargaining obligation to agree to limit an affiliate’s right to

¹² See, e.g., Satellite Home Viewer Extension and Reauthorization Act Section 109 Report, Register of Copyrights, at vi (rel. June 30, 2008) (“Based on the record in this proceeding, it appears that the royalties in the statutory licenses are set at below-market levels”).

¹³ ACA Comments at 14-15.

redistribute affiliated programming,”¹⁴ and that Section 76.65 of the Commission’s rules was “not intend[ed] to affect the ability of a network affiliate agreement to limit redistribution of network programming.”¹⁵ There is no basis for the RTC Opponents’ attempt to relitigate these well-settled issues. The terms of privately negotiated arrangements between stations and their networks are beyond the scope of the good faith rules, which are designed solely to require stations and MVPDs to engage in meaningful negotiations for retransmission consent (whether or not an agreement ultimately is reached). Any ban on private arrangements also would be well beyond the scope of the *Further Notice*, which is limited to considering whether the Commission’s exclusivity rules themselves are necessary.

Univision’s experience in successfully negotiating carriage agreements with cable, satellite, and telco providers across the country also belies the narrative of MVPDs who argue that supposed flaws in the retransmission consent regime require Commission action to weaken stations’ bargaining position.¹⁶ In a period of little more than two years following its initial election of retransmission consent status in 2008, Univision successfully entered into over 150 carriage agreements with MVPDs of all sizes throughout the United States, to the mutual benefit of Univision’s networks, the stations, and MVPDs. Since then, Univision has negotiated many retransmission consent agreements on behalf of the stations it owns, and in some cases — including at the request of certain MVPDs — on behalf of its network affiliates. The resulting revenues have had demonstrable benefits for Univision viewers, including the introduction of new Spanish language VOD services, the development of programming services tailored to meet the unique needs of U.S. Hispanic viewers, and the production and/or acquisition of rights to

¹⁴ *In re Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, 20 FCC Rcd 10339, 10354 (2005) (“*Reciprocal Bargaining Order*”).

¹⁵ *Id.* at 10355.

¹⁶ *See* Comments of Joint MVPDs, at 3-4.

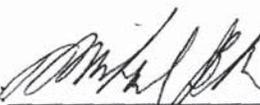
marquee sports and other valuable programming such as the World Cup. Giving the RTC Opponents the unfettered rights they seek would undercut the ability of networks and stations to continue producing and distributing this high-quality content.

CONCLUSION

The Commission should reject the RTC Opponents' attempt to limit or interfere in the privately negotiated relationships between broadcast stations and networks or other programmers. These relationships are fundamental to the ability of broadcast television stations to effectively serve their local communities. Accordingly, the Commission should reaffirm that, even in the absence of the Commission's exclusivity rules, "free market negotiations between broadcasters and networks or syndicated program suppliers would continue to determine the exclusivity *terms* of affiliation and syndicated programming agreements, and broadcasters and MVPDs would continue to conduct retransmission consent negotiations in light of these privately negotiated agreements"¹⁷

Respectfully submitted,

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¹⁷ Further Notice at ¶ 66 (emphasis supplied).