February 8, 2016

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

Re: Written Ex Parte Communication in MB Docket No. 15-216

Dear Ms. Dortch:

Pay TV providers continue to insist that there is a "crisis" in the retransmission consent marketplace that demands the FCC's immediate attention.[1] To justify their calls for government intervention, MVPDs point to interruptions in their carriage of broadcast signals due to retransmission consent impasses that they claim reach now near catastrophic levels.[2] The trouble for the pay TV industry is that no amount of fuzzy math can change the fact that service disruptions are rare, and when they do occur, are brief.[3] The actual facts on the ground hardly portend impending doom.

The pay TV industry's hyperbolic claims are not new—it raised similar contentions in the past,[4] which were soundly refuted. In 2009, 2010 *and* 2011, NAB commissioned studies of this alleged "crisis" and repeatedly found that interruptions in broadcast signal carriage affect a miniscule amount of total consumer viewing hours.[5] In fact, the studies showed that

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[1] *See, e.g.,* John Eggerton, *ATVA Presents FCC with Good Faith Wish List*, Multichannel News (Dec. 1, 2015)*("*Dish's Jeff Blum, on a conference calling talking about the good faith filing, says there is a blackout 'crisis' that he laid at the feet of broadcasters.").

[2] *See, e.g.,* Comments of the American Television Alliance (ATVA), MB Docket No. 15-216 at 6-10 (Dec. 1, 2015); Comments of AT&T, Inc. MB Docket No. 15-216 at 2 (Dec. 1, 2015); Comments of Verizon, MB Docket No. 15-216 at 4 (Dec. 1, 2015); Comments of Time Warner Cable, Inc., MB Docket No. 15-216 at 7-8 (Dec. 1, 2015).

[3] *See* Reply Comments of NAB, MB Docket No. 15-216, at 9 & n.18 (Jan. 14, 2016).

[4] *See, e.g.,* Petition for Rulemaking of Time Warner Cable Inc., *et al*. to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71 (March 9, 2010) at 40 (complaining of a "constant threat" of service disruptions).

[5] *See,* Jeffrey A. Eisenach, *The Economics of Retransmission Consent*, Empiris, LLC (March 2009) (2009 Eisenach Study) at 39-40, attached to NAB Reply Comments, MB Docket No. 07-269 (June 22, 2009) (retransmission consent disputes from 2006-2008 affected less than one one-hundredth of one percent of annual household television viewing hours); Jeffrey A. Eisenach and Kevin W. Caves, *Retransmission Consent and Economic Welfare: A Reply to Compass Lexecon* (April 2010)

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consumers are far more likely to be unable to watch desired programming because of an electrical outage or a cable system outage than to be affected by a retransmission consent-related dispute.[6]

The legitimacy of the pay TV industry's claims on this point has not improved with time or repetition. Today, NAB submits an updated study which analyzes retransmission consent-related service interruptions during the period of 2011-2015.[7] As with the previous three studies, the attached analysis finds that the cumulative effect of retransmission consent-related service interruptions remains remarkably low, impacting, on average, only 0.01486% of total television viewing hours annually over the five-year period.[8] And far from being "on the rise," the hard data show that the number of affected viewing hours declined in 2014 as compared to 2013, with a further decline in 2015.[9]

There are nearly 1,400 commercial television broadcast stations,[10] and the Commission has estimated that most elect retransmission consent.[11] At any given time, thousands of retransmission consent agreements are in effect, quietly governing the relationships between local stations and pay TV providers across all 210 Nielsen Designated Market Areas and seamlessly being renewed. Numerous broadcasters in this proceeding attest that they have never experienced a negotiating impasse resulting in a service disruption, while others reported only two or three impasses over the course of more than two decades.[12]

While the "crisis" alleged by the pay TV industry has no basis in reality, the appearance of a crisis that the pay TV industry assiduously promotes directly serves its interest in

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(2010 Eisenach Study) at 19-20, attached to Opposition of Broadcaster Associations, MB Docket No. 10-71 (May 18, 2010) (an update to the previous study showed that retransmission consent-related interruptions affected approximately one one-hundredth of one percent of annual television viewing hours); NAB Comments, MB Docket No. 10-71 at Attachment A, Declaration of Jeffrey A. Eisenach and Kevin W. Caves at 30-31 (May 27, 2011) (2011 Eisenach Study) (share of total viewing hours affected by retransmission impasses remained approximately one one-hundredth of one percent, and also showing that retransmission negotiating impasses were not increasing in frequency or impact).

[6] *See* 2009 Eisenach Study at 40; 2010 Eisenach Study at 19; 2011 Eisenach Study at 25, 30.

[7] Mark R. Fratrik, Ph.D., BIA/Kelsey, *Updated Analysis of Carriage Interruption on Viewing Hours: 2011-2015*, attached hereto.

[8] *Id.* at 2, 4.

[9] *Id.* at 2, 4.

[10] FCC News Release, *Broadcast Station Totals as of December 31, 2015* (Jan. 8, 2015), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0111/DOC-337189A1.pdf.

[11] *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Notice of Proposed Rulemaking, 27 FCC Rcd 1713, 1718 ¶10 (2012).

[12] *See, e.g.*, Comments of The E.W. Scripps Co., MB Docket No. 15-216 at 2 (Dec. 1, 2015); Comments of Graham Media Group, MB Docket No. 15-216 at 2 (Dec. 1, 2015); Comments of Raycom Media, Inc. MB Docket No. 15-216 at 6 (Dec. 1, 2015); Comments of Gray Television Group, Inc., MB Docket No. 15-216 at 2-3 (Dec. 1, 2015).

government intervention in the retransmission consent marketplace. As NAB has previously noted, so long as avenues, such as this proceeding, remain open for pay TV providers to seek government assistance to increase their bottom lines, they will continue to weigh the political value of not reaching retransmission consent agreements in a timely manner. In fact, the retransmission consent impasses in 2015 show a clear pattern of large pay TV providers failing to reach agreement with, in the great majority of cases, small broadcasters.[13] Such retransmission consent disputes help feed the pay TV industry's false narrative of a retransmission consent system in need of government "fixing," without adversely impacting the pay TV behemoths. To ensure that pay TV providers – especially those multi-billion dollar corporations with the vast majority of viewers and responsible for most disputes – bargain in good faith with broadcasters, rather than engage in government rent-seeking, the Commission should expeditiously close this proceeding. Only this action will remove the incentives for pay TV providers to create service disruptions and, thus, promote the interests of viewers.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

cc: Jessica Almond, Holly Saurer, Marc Paul, Matthew Berry, Robin Colwell, Bill Lake, Marybeth Murphy, Nancy Murphy, Martha Heller

[13] *See* Atif Zubair, *2015 retrans roundup: Industry consolidation leads to larger renewals, high-profile disputes*, SNL Kagan (Jan. 22, 2016) (list of 2015 retransmission consent disputes shows that DISH alone was involved in half of them, with DirecTV and then the combined DirecTV/AT&T being involved in a quarter of them).

UPDATED ANALYSIS OF CARRIAGE INTERRUPTION ON VIEWING HOURS: 2011-2015

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February 3, 2016

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UPDATED ANALYSIS OF CARRIAGE INTERRUPTION ON VIEWING HOURS: 2011-2015

Introduction and Summary

There has been a considerable amount of discussion in recent years about multichannel video programming distributors' (MVPDs) carriage of local over-the-air television stations being interrupted due to unsuccessful retransmission consent negotiations. Previous research covering the years prior to mid-2011 showed that the cumulative effect of these interruptions was almost infinitesimal when compared to total television viewing hours overall.[1] Examining the period from January 2006 to May 2011, this earlier research found that carriage interruptions affected, on average, only about 0.01% of total annual television viewing hours.[2] The 2011 report concluded that the average household is much more likely to be without electricity, or to experience a cable system outage, than "to be unable to watch its favorite broadcast channel via an MVPD as a result of a retransmission impasse."[3]

This report builds upon that earlier analysis by analyzing the carriage interruptions since that time. Specifically, this report will examine all carriage interruptions from 2011 through the

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[1] See *Declaration of Jeffrey A. Eisenach and Kevin W. Caves*, submitted as an attachment to the Comments of the National Association of Broadcasters in the Matter of Amendment of the Commission's Rules Related to Retransmission Consent, MB Docket No. 10-71, May 27, 2011 (hereafter referred to as 2011 Eisenach Report). This report updated earlier similar reports by the same author.

[2] See 2011 Eisenach Report, p. 29.

[3] 2011 Eisenach Report, p. 25, 30. See also Jeffrey A. Eisenach and Kevin W. Caves, *Retransmission Consent and Economic Welfare: A Reply to Compass Lexecon* at 19 (Apr. 2010),

end of 2015. Once again, we will examine the specific local television stations not carried, the number of households affected, the number of days the carriage interruptions lasted, and the sizes of the audiences that were affected. By analyzing those factors to determine the effects of carriage disruptions and comparing those effects with overall total viewing hours, we can gauge the relative impact of retransmission consent related carriage interruptions.

Unsurprisingly, the cumulative effect of the carriage interruptions from 2011-2015 is extremely minor. Over the past five years, the carriage interruptions on an annual basis ranged from a low of 0.00423% in 2011, to a high of 0.02977% in 2013, of the total television hours viewed.[4] For the entire five year period, carriage interruptions, on average, impacted only 0.01486% of the total annual hours viewed in the U.S. This five-year average is very close to the 0.01% of annual television viewing hours impacted by carriage interruptions from 2006 through May 2011, as found in the 2011 Eisenach Report. Clearly, the vast majority of retransmission consent negotiations between local television broadcasters and MVPDs have been successfully concluded during the past five years, without any disruptions to viewers. Like the previous research has shown,[5] these updated results indicate that the average household is still more likely

submitted as an attachment to the Opposition of the Broadcaster Associations, MB Docket No. 10-71 (May 18, 2010) (hereafter referred to as 2010 Eisenach Report).

[4] These very small percentages, moreover, represent the *maximum* effect as the figures assume that the affected households could not view the non-carried stations by any other means. Of course, some of the affected households could likely receive the stations over-the-air. Hence, these estimates are conservative ones that overstate the impact on viewers.

[5] See 2011 Eisenach Report at 25, 30; 2010 Eisenach Report, p. 19 (average North American household experiences annual electricity outages of about 381 minutes).

to be unable to view a local television station from electricity outages than from carriage interruptions caused by unsuccessful retransmission consent negotiations.

Analysis

In order to assess the impact of carriage interruptions, we utilized the listing of these interruptions as reported by SNL Kagan. Through their comprehensive MVPD database and monitoring daily activities in the broadcasting and MVPD industries, SNL Kagan compiles a list of the cable Multiple System Operators (MSOs), telephone company video providers, and satellite operators that were unable to successfully conclude retransmission consent agreements with broadcasters, leading to carriage disruptions over the past five years.

We then analyzed the overlap between these cable MSOs and local television station groups to ascertain which stations[6] of these groups were not carried and in what geographic areas (specifically, the counties in which these MSOs provided cable service).[7] Using data on the number of households in these affected counties, the local market cable, telco or satellite penetration, and audience levels of the non-carried stations, we can then estimate the average daily numbers of hours of viewing that were affected.[8] We then multiply that daily impact by the

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[6] BIA/Kelsey has maintained for over twenty-five years a comprehensive database (MAPro™) of all commercial and non-commercial radio and television stations that includes information on ownership as well as location data on all of these stations.

[7] For carriage interruptions involving satellite distribution, the entire local television market in which the station operates is affected. We adjust this impact by estimating the satellite provider's penetration in those specific markets.

[8] In order to estimate the daily number of hours affected, we multiplied the local station's share of overall viewing to the national estimate of daily viewing hours as estimated by Nielsen Media Research. See *Free To Move Between Screens: The Cross-Platform Report*, March 2013,

number of days the carriage interruptions occurred to estimate the total impact for the entire carriage interruption. Totaling those instances allows us to gauge the overall impact by dividing that sum from the total number of viewing hours nationwide for each of the years 2011-2015.[9] Table 1 shows those results for each of those years, as well as the average for the entire five year period.

Table 1 – Yearly Impact of Carriage Interruptions on Viewing Hours: 2011-2015

Year	Average Affected Daily Viewing Hours	Total Affected Viewing Hours	% of U.S. Annual Viewing Hours Affected
2011	1,355,906	26,352,705	0.00423%
2012	5,676,590	117,435,675	0.01819%
2013	10,015,107	191,181,793	0.02977%
2014	8,199,019	68,534,126	0.01111%
2015	22,754,658	53,003,789	0.01099%
2011-2015	48,001,280	456,508,088	0.01486%

p. 9; *The Total Audience Report: Q4 2014*, p. 10, 2015; and *The Total Audience Report: Q3 2015*, p. 12, 2015, Nielsen Media Research.

[9] In order to generate the total hours viewed nationwide, we once again used the average daily viewing hours as estimated by Nielsen Media Research multiplied by the total population of the U.S. by the number of days in the year.

Conclusions

While there has been considerable recent discussion about retransmission consent related carriage interruptions, the actual impact of those disruptions is clearly very minor. Many of these interruptions only last a few days. Moreover, the number of these interruptions is remarkably low when compared to the total number of agreements between MVPDs and the many different local television broadcasters. The overall impact on viewing is negligible, with carriage interruptions, on average, affecting only 0.01486% of total U.S. television viewing hours from 2011-2015. This new research also shows that the effects of carriage interruptions on viewing hours did not materially increase from the period January 2006-May 2011.