

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

In the Matter of)	
)	
Amendment to the FCC's Good-Faith)	MB RM-11720
Bargaining Rules)	
)	
)	

To: The Secretary

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ hereby files reply comments concerning the request of Block Communications, Inc. (“Block”)² that the Commission initiate a rulemaking proceeding to modify existing rules governing good faith negotiations for retransmission consent.³ As demonstrated by the record, the Petition should be denied.

As explained in NAB’s Opposition, the proposals advanced in the Block Petition would result in exactly the sort of governmental intrusion into the retransmission consent negotiation process that the Commission previously has determined is contrary to Congressional intent and beyond the scope of its statutory authority. Specifically, NAB explained that Section 325(b) of the Communications Act unequivocally prohibits a

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Petition for Rulemaking of Block Communications, Inc. (May 6, 2014), RM No. 11720.

³ Opposition of the National Association of Broadcasters to the Petition for Rulemaking of Block Communications, Inc., MB Docket No. RM-11720 (Jun. 19, 2014)(“NAB Opposition”). See also Motion to Accept NAB Opposition, MB Docket No. RM-11720 (Jul. 1, 2014).

cable system or other multichannel video programming distributor (“MVPD”) from retransmitting a television broadcast station’s signal without the station’s express consent;⁴ that the legislative history of Section 325(b) makes clear that Congress intended to provide broadcast stations with the exclusive right to control others’ retransmission of their signals and to negotiate the terms and conditions of such retransmission through private agreements;⁵ and that the Commission’s limited authority to adopt regulations to prevent parties from “failing to negotiate in good faith”⁶ cannot be interpreted to encompass substantive government involvement in the details of retransmission consent negotiations, as contemplated by Block.⁷ As NAB previously discussed, Block’s proposals would clearly—and unlawfully—require the Commission to evaluate the terms and conditions of parties’ retransmission consent proposals, including proposed rates, to determine whether they are “reasonable.”⁸ Because Block’s proposals are beyond the scope of the Commission’s authority, the Commission need not initiate further proceedings to consider the Petition.

⁴ NAB Opposition at 3, *citing* 47 U.S.C. § 325(b)(1)(A); *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445, 5471 ¶ 60 (2000) (“*Good Faith Order*”).

⁵ NAB Opposition at 3-4, *citing* S. Rep. No. 102-92 at 34-35, 37 (1991) (“*Senate Report*”) (“Congress’ intent was to allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means”; and “[c]arriage and channel positioning for such stations will be entirely a matter of negotiation between the broadcasters and the cable system”).

⁶ 47 U.S.C. § 325(b)(3)(C).

⁷ NAB Opposition at 3-8, *citing, inter alia, Good Faith Order* at ¶ 14 (concluding that Congress did not intend for the “good faith requirement” to result in the FCC “assum[ing] a substantive role in the negotiation of the terms and conditions of retransmission consent.”).

⁸ NAB Opposition at 5 (observing that Block’s request that the Commission adopt “objective measures of the market value” of broadcast signals runs counter to the Commission’s previous conclusion that “it is not practically possible to discern objective competitive marketplace factors that broadcasters must discover and base any negotiations and offers on.”)(quoting *Good Faith Order* at ¶ 8).

NAB also agrees with Sinclair Television Group, Inc. (“Sinclair”) that the Commission cannot and should not “adopt special rules for every party that believes its relative size places it at a disadvantage in retransmission consent negotiations.”⁹ As NAB has previously explained, so-called “smaller” MVPDs often have significant bargaining power because they control a large share of the MVPD subscribers in a particular local market.¹⁰ And, in many instances, small local broadcasters must negotiate for retransmission of their signals with the largest cable and satellite operators. Given the individualized factors at issue in any particular negotiation, it would not be possible for the Commission to adopt rules that establish a perfect balance in every negotiation.¹¹

Only two parties offer lukewarm support for the proposals in the Petition. Notably, they fail to point to any legal authority that would permit the Commission to approve those proposals.¹² Conceding that the Petition’s proposals “may not be exactly what the Commission should adopt,” CenturyLink nonetheless urges the Commission to

⁹ Sinclair Opposition to Petition for Rulemaking, RM No. 11720 (Jun. 19, 2014) at 4.

¹⁰ See, e.g., NAB Comments in MB Docket No. 14-16 (Mar. 21, 2014) at 16-17, *citing 2013 SNL Kagan MediaCensus, Estimates—3rd Quarter 2013*. There are 57 DMAs in which a single MVPD enjoys a share of 50 percent or more of the MVPD market, even taking direct broadcast satellite and other MVPD subscribers into account. *Id.* This includes so-called “smaller” cable operators like CableOne, Inc., which controls 64.1 percent of the MVPD market in the Biloxi, MS DMA, and Suddenlink, which controls 61.6 percent of the MVPD market in the Victoria, TX DMA and 56 percent in the Parkersburg, WV DMA. *Id.*

¹¹ Sinclair Opposition at 5. In any event, Block’s complaints about being a small entity at a competitive disadvantage vis-à-vis broadcast stations ring hollow. As Sinclair points out, in the Toledo, OH market, Block owns not only the dominant MVPD but also the only local daily newspaper, an electronic news service, a regional sports service, and a cable entertainment programming service. *Id.* at 4-5.

¹² See Comments of the American Cable Association (“ACA”) Regarding Petition for Rulemaking of Block Communications, Inc., MB Docket No. RM-11720 (Jun. 19, 2014) (“ACA Comments”); Comments of CenturyLink Regarding Petition for Rulemaking of Block Communications, Inc., MB Docket No. RM-11720 (Jun. 19, 2014) (“CenturyLink Comments”).

initiate a rulemaking proceeding because the proposals “warrant serious consideration.”¹³ Similarly, ACA does not endorse Block’s proposals but contends that the proposals and other issues raised by the Petition “deserve a full airing before the Commission in a rulemaking proceeding where all points of view can be represented.”¹⁴ To the contrary, proposals that cannot be lawfully adopted *do not* warrant additional consideration or a full “airing.” The Commission’s resources are appropriately devoted to considering proposals that are within the scope of its statutory authority.

Conclusion

Under the retransmission consent system established by Congress, local television stations have the opportunity to negotiate for compensation from MVPDs in exchange for the right to retransmit and resell their broadcast signals.¹⁵ Contrary to Block’s claims, Congress made it quite plain that the retransmission consent marketplace is to function without government intervention, and emphatically rejected the notion that it or the Commission should or would “dictate the outcome” of the negotiations between broadcasters and MVPDs.¹⁶ Block’s proposals to remove retransmission consent negotiations from the marketplace and involve the Commission in the substance of those negotiations are entirely inconsistent with the statute, Congressional intent, and multiple Commission decisions. Block’s proposals therefore

¹³ CenturyLink Comments at 4.

¹⁴ ACA Comments at 1.

¹⁵ See *Senate Report* at 36 (stating that the Cable Television Consumer Protection and Competition Act of 1992 created a “marketplace for the disposition of the rights to retransmit broadcast signals”).

¹⁶ *Id.*

do not warrant further Commission or public consideration and the Petition should be summarily denied.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, NW
Washington, DC 20036
(202) 429-5430



Jane E. Mago
Jerianne Timmerman
Benjamin F.P. Ivins
Erin L. Dozier

Maxwell Hsu, Of Counsel

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CERTIFICATE OF SERVICE

I, Erin L. Dozier, Senior Vice President and Deputy General Counsel of the National Association of Broadcasters, certify that on this 7th day of July, 2014, a copy of the foregoing Reply Comments 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

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

Barbara Esbin
Cinnamon Mueller
1875 Eye Street, NW, Suite 700
Washington, DC 20006

Clifford Harrington
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

Melissa E. Newman
CenturyLink
1099 New York Avenue, N.W., Suite 250
Washington, DC 20001

Tiffany West Smink
CenturyLink
1801 California Street, 10th Floor
Denver, CO 80202



Erin L. Dozier