



August 24, 2015

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

Re: Notice of Ex Parte Communication, MB Docket No. 10-71

Dear Ms. Dortch:

On August 20, 2015, the undersigned of the National Association of Broadcasters participated in a meeting by telephone with Alison Nemeth of the Office of Commissioner Ajit Pai to discuss the Commission's pending Notice of Proposed Rulemaking on good faith negotiations within the retransmission consent process.

Last month, NAB alerted the Commission that it was likely to see an uptick in retransmission consent disputes involving certain MVPDs in light of new developments at the Commission.¹ Recent experience suggests that MVPDs manufacture disputes before critical regulatory proceedings as a means to encourage legislators and regulators to intervene and tinker with the current market-based system. As the Commission begins a review of the good faith totality of the circumstances test, as mandated by Section 103(c) of the STELA Reauthorization Act of 2014 (STELAR), we noted that certain MVPDs are all but certain to seize the opportunity to raise the profile of impasses, or near impasses, even in situations where negotiations might have otherwise concluded without a station being pulled by a pay TV provider from its system.

Unfortunately, NAB's prediction appears to have been accurate. Since we filed that warning, there have been several impasses or near impasses involving the usual cast of characters – mostly notably DISH, DirecTV, and Mediacom. DISH, which was recently admonished by the Commission for its attempt to circumvent the Commission's AWS-3 auction rules (costing

¹ See Ex Parte Letter from Erin Dozier *et al.*, of the National Association of Broadcasters in MB Docket No. 10-71 (filed July 13, 2015).

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the U.S. government \$3 billion),² has been involved in numerous disputes in the past few months.³ DISH even went so far as to file a good faith complaint against a broadcaster hoping that the FCC would step in and force the broadcaster to agree to an extension.⁴ Another broadcaster involved in a different dispute with DISH then filed a letter with the Commission noting that the exact behavior DISH complained about – refusal to allow an extension while the negotiations were ongoing – was nearly identical to how DISH was behaving in its negotiation.⁵

Mediacom, the pay TV poster child for self-serving behavior, has been particularly busy this summer. It lambasted the FCC for failing to inject itself into the free market,⁶ accused broadcasters of using Nazi-like propaganda to protect their Congressionally-mandated right,⁷ filed a widely-ridiculed petition for rulemaking⁸ and then promptly got involved in a conveniently timed retransmission consent dispute with a local broadcaster that has since been resolved without government intervention.⁹ They even built a website to publicize the dispute and to transparently link the impasse with their petition for rulemaking.¹⁰

In the teleconference, NAB noted that one way of addressing this distasteful behavior is to include a “bad actor factor” in the Commission’s evaluation of the totality of the circumstances in assessing a good faith complaint. This factor would have the FCC take into account circumstances where an MVPD created an impasse merely or primarily for advocacy purposes and at the expense of consumers. Such an approach would hopefully dissuade

² See Thomas Gryta, “FCC Votes to Deny \$3.3 Billion in Discounts Sought by Dish Network,” Wall Street Journal (Aug. 17, 2015).

³ See, e.g., John Eggerton, “Morgan Murphy Stations Returning to Dish in Washington,” Multichannel News (Aug. 20, 2015); See also, “WBRZ-TV says talks with Dish satellite company at an impasse,” The Advocate (Aug. 24, 2015).

⁴ See Jon Lafayette, “Dish Files Complaint With FCC Against Sinclair,” Broadcasting & Cable (Aug. 15, 2015) (noting that “Dish is asking the FCC to immediately grant preliminary injunctive relief while the Commission considers the complaint”).

⁵ See Letter from Jack Goodman, Counsel to Morgan Murphy Media, in MB Docket Nos. 10-71 and 12-1 (filed Aug. 18, 2015) (“It is quite remarkable that DISH, having declined to agree to extend the agreement with Morgan Murphy, then argued to the Commission that declining to accept an offer of a contract extension constitutes a violation of the good faith bargaining rules. To paraphrase DISH, it has nothing to lose and consumers everything to gain from an extension. That observation, however, apparently applies to broadcasters but not to DISH itself.”).

⁶ See Letter from Rocco Commisso, Chairman and Chief Executive of Mediacom Comm. Corp., to FCC Chairman Tom Wheeler (July 7, 2015) (saying that the Commission’s “refusal to become involved in specific disputes combined with an unwillingness to adopt corrective regulations add up to a do-nothing policy.”)

⁷ See Letter from Joseph E. Young, Senior Vice President, General Counsel & Secretary of Mediacom Comm. Corp. in MB Docket No. 10-71 (filed July 26, 2015) (comparing NAB to Nazi propagandists that painted “Poland as the aggressor”).

⁸ Petition for Rulemaking of Mediacom Comm. Corp. (July 7, 2015), RM-11752 (“petition” or “Mediacom Petition”); Public Notice, Consumer & Governmental Affairs Bureau, Reference Information Center, Petition for Rulemaking Filed, Report No. 3024 (July 15, 2015).

⁹ See Mike Farrell, “Media General Stations Go Dark on Mediacom,” Multichannel News (July 15, 2015).

¹⁰ <http://mediacomonyourside.com/>.

certain MVPDs from continuing the apparent practice of manufacturing disputes that harm consumers merely to gain an advocacy foothold at the Commission or in Congress.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

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