

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

In the Matter of)
)
Application to Assign Station WADL, Mount) File No. 0000214896
Clemens, MI from Adell Broadcasting Corporation)
to Mission Broadcasting)
)
)

OPPOSITION OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
TO INFORMAL OBJECTION OF NCTA

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July 7, 2023

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I. INTRODUCTION AND SUMMARY

Until recently, the National Association of Broadcasters (NAB)¹ had rarely commented on proposed transactions involving individual broadcast licensees. Unfortunately, due to a disturbing new trend perpetrated primarily by the pay TV industry, NAB has been forced to engage in certain Commission broadcast transaction proceedings to combat attempts to use such proceedings as an end-run around the notice-and-comment rulemaking process. The informal objection² filed by NCTA-The Internet & Television Association (NCTA) concerning the proposed assignment³ of Station WADL, Mount Clements, MI from Adell Broadcasting Corporation (Adell) to Mission Broadcasting, Inc. (Mission) is the latest example. Despite the fact the Commission permits separately-owned broadcast stations to negotiate together for

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

² Informal Objection of NCTA-The Internet & Television Association, File No. 0000214896 (June 20, 2023) (NCTA Objection).

³ Application to Assign Station WADL, Mount Clemens, MI from Adell Broadcasting Corporation to Mission Broadcasting, Inc., File No. 0000214896 (May 17, 2023) (Application).

the retransmission of their signals when they are located in different markets (and has even expressly rejected in the rulemaking context pay TV calls to ban such negotiations), NCTA nevertheless urges the Commission here to circumvent the rulemaking process by adopting conditions forbidding parties associated with this transaction from exercising these rights. Since no rule forbids these types of retransmission negotiations – and the law clearly and rationally permits them – the Commission should reject NCTA’s attempt to turn the Administrative Procedure Act (APA) on its head.

As discussed further below, NAB not only requests that the Commission refrain from imposing new rules in the guise of conditions that would only apply to the new station owner here, but also to disregard NCTA’s speculative and unsupported contentions that this transaction involving a single station will have harmful effects on the retransmission consent marketplace. NCTA’s retransmission consent-related contentions lack factual support and even common sense, and its proposed conditions would violate Section 325 of the Communications Act of 1934, as amended (Act). Similar to NCTA’s proposals in other FCC proceedings,⁴ its proposals here, cloaked in the rubric of the “public interest,” are nothing more than a self-serving effort to further weaken broadcasters’ competitive position in the marketplace for the benefit of multichannel video programming distributors (MVPDs). Accordingly, the Commission should dismiss NCTA’s objection.

Finally, should the FCC consider entertaining such pay TV industry claims in the transaction context, it should be aware that it will be opening the floodgates for myriad

⁴ See, e.g., Comments of NCTA, MB Docket No. 22-459 (March 3, 2023) (proposing additional local television ownership restrictions and further limitations on broadcaster negotiations of retransmission consent); Comments of NCTA, MB Docket No. 18-349, at 2, 4-5 (Sept. 2, 2021) (NCTA Comments) (proposing additional local television ownership restrictions).

contentions in *all* transaction dockets – especially those involving MVPD deals – that could not otherwise be achieved in the notice-and-comment rulemaking process.

II. THE ISSUES RAISED BY NCTA ARE MORE APPROPRIATELY ADDRESSED BY A RULEMAKING PROCEEDING, ADJUDICATION OR BY CONGRESS (IF AT ALL)

In the Application, Mission proposes to acquire a single station located in the Detroit Designated Market Area, Station WADL, from Adell. Under one of the agreements associated with the proposed transaction, Nexstar Media Group, Inc. (Nexstar) would provide certain services to Station WADL, including negotiating retransmission consent agreements on the Station’s behalf (the “Station Services Agreement” or “SSA”).⁵ Nexstar has no stations in the Detroit market, so such negotiations would not violate the prohibition on non-commonly owned, same market stations jointly negotiating retransmission consent, or any other good faith negotiation standard.⁶ Nevertheless, NCTA proposes that the Commission condition its approval of the transaction on: (1) a prohibition on Mission’s (lawful) delegation of retransmission consent negotiation authority to Nexstar; (2) safeguards to ensure that Nexstar’s agreements with Mission with respect to Station WADL are not used to “circumvent the ban on joint retransmission consent negotiations among non-commonly owned *same* market stations”;⁷ and (3) reporting obligations to ensure compliance with these unjustified conditions.⁸

⁵ See Application at Exhibit, Form of Station Services Agreement at 3.

⁶ 47 CFR §76.65(b)(i)(viii). NCTA concedes that the practice of joint negotiations involving non-commonly owned stations in separate markets is not unlawful. NCTA Objection at 3, note 9.

⁷ NCTA Objection at 12-13 (emphasis added). This proposed condition is nonsensical and its purpose unclear. Since Nexstar does not have a station in the Detroit market, NAB is unaware of any “same market” negotiations that could be implicated by the proposed transaction. In any event, NAB opposes adoption of the proposed condition.

⁸ NCTA Objection at 12-13.

To be clear, NCTA's concerns are consistent with MVPDs' repeated attempts to artificially depress the amount they must pay local stations to resell their valuable content to pay TV customers. According to NCTA, Station WADL is currently being carried "at no charge as a must-carry station on cable and other MVPD systems serving the Detroit market."⁹ While it does not cite any specific retransmission consent agreements or any specific terms of such agreements, NCTA apparently fears that the terms of existing and/or future agreements between Nexstar and MVPDs, together with the terms of the Nexstar-Mission SSA, will result in MVPDs potentially carrying WADL pursuant to retransmission consent.¹⁰ NCTA contends – again, with no evidentiary support – that payment for carriage of WADL would be inconsistent with competitive marketplace conditions.¹¹ There are multiple legal and factual problems with NCTA's claims and proposed conditions. For the reasons discussed below, NAB urges the Commission to decline to consider NCTA's proposals in the context of this transaction review.

A. Entertaining NCTA's Claims Would Disregard Decades of FCC Transaction Review Precedent

Setting aside the issue of whether the Commission has the authority to adopt rules that would achieve the outcomes NCTA seeks in this transaction (which it does not), the Commission has repeatedly held that complaints in transaction proceedings that are not transaction-specific will not be considered as part of the review process. As NCTA is well

⁹ NCTA Objection at 3.

¹⁰ NCTA Objection at 3 (asserting without support that "it appears highly likely—indeed, nearly certain—that Mission and Nexstar contemplate that the station will be included under Nexstar's retransmission consent contracts with cable operators and other MVPDs."); *id.* at 6-7 (speculating that Nexstar will "almost certainly" incorporate WADL into its existing retransmission consent agreements pursuant to after-acquired station provisions, as well as future agreements).

¹¹ NCTA Objection at 5-9.

aware, “[t]he Commission has repeatedly held that it ‘will not consider arguments in [merger] proceeding[s] that are better addressed in Commission proceedings or other legal fora, including the[courts] and the Congress.’”¹² This well-established precedent “clearly applies to arguments involving rules or policies of general applicability.”¹³ In dozens of transaction reviews, “[t]he Commission has regularly declined to consider . . . matters that are the subject of other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceeding of general applicability.”¹⁴ For example, the Commission declined to impose certain program access and arbitration conditions proposed in connection with the Charter-Time Warner Cable transaction, holding that such issues were “more appropriately addressed in a rulemaking of

¹² See Reply to Comments and Petitions to Deny of Comcast Corporation and AT&T, Inc., MB Docket No. 02-70 (May 21, 2002) at 96-97 (quoting *Applications of Craig O. McCaw and American Tel. & Tel. Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5904 ¶ 123 (1994), *aff’d sub nom SBC Communications, Inc. v. FCC*, 56 F. 3d 1484 (D.C. Cir. 1995) (AT&T-McCaw Order)). See also Oppositions to Petitions to Deny and Response to Comments of Comcast Corporation, *et al.*, MB Docket No. 10-56 (Jul. 21, 2010) at 10-11. See also *Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), et al.*, Memorandum Opinion and Order, 34 FCC Rcd. 8436, 8451-52 ¶ 29 (2019) (Nexstar/Tribune Order) (“the Commission is not the proper forum for resolving an alleged private contractual dispute”).

¹³ See Oppositions to Petitions to Deny and Response to Comments of Comcast Corporation, *et al.*, MB Docket No. 10-56 (Jul. 21, 2010) at 11 (citing *Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer of Control*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20083, 20087-88 ¶¶ 210, 220-221 (1997) (Bell Atlantic-NYNEX Order); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21306 ¶ 29 (1998) (SBC Order)).

¹⁴ See, e.g., SBC Order at 2306 ¶ 29 (citing AT&T-McCaw Order at 5877 ¶ 70 and Bell Atlantic-NYNEX Order at 20083 ¶ 210).

general applicability.”¹⁵ The Commission also has declined to impose conditions where its own adjudicatory processes, such as the program access, program carriage, or good faith complaint processes, are sufficient to address the matters raised. For example, the Commission declined to impose arbitration or program access conditions in connection with AT&T’s acquisition of DIRECTV, finding that there was nothing about the proposed merger that raised issues that could not be addressed by the Commission’s existing program access rules.¹⁶

As NCTA concedes, there is no ban on out-of-market joint negotiation for retransmission consent, and no prohibition on after-acquired stations or after-acquired systems provisions.¹⁷ In fact, the Commission has already expressly rejected pay TV’s call for banning joint retransmission consent negotiations for non-commonly-owned stations that do not operate in the same market:

Although we proposed to adopt a rule that was not limited in application to stations serving the same geographic market, we adopt a rule that is more narrow in scope because we conclude that the competitive concerns discussed above are present only in cases where joint negotiation involves stations that, absent such negotiation, would compete directly for retransmission consent revenues. Such stations are those that compete for

¹⁵ See *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6426 ¶ 205 (2016).

¹⁶ See *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9194-97 ¶¶ 167-76 (2015).

¹⁷ NCTA reports that it proposed a one-sided ban on out-of-market joint retransmission negotiations that would apply only to broadcasters in a March 2023 filing in connection with the Commission’s 2022 review of its broadcast ownership rules. We note that the Commission’s consideration of potential modifications of its broadcast ownership rules to ensure that they remain in the public interest in light of competition pursuant to Section 202(h) of the Act is also not a relevant forum for this proposal.

carriage on MVPD systems *in the same DMA*.¹⁸

If NCTA wants the Commission to adopt new policies concerning the prices, terms and conditions of retransmission consent or retransmission consent negotiations, it is free to file a petition for rulemaking, file additional comments in the Commission's pending rulemaking proceeding concerning retransmission consent (MB Docket No. 10-71), or urge Congress to make modifications to the good faith standards or other aspects of Section 325 of the Act. Similarly, if any MVPD disagrees with any broadcaster over specific terms and conditions of their retransmission consent agreements, they are free to seek relief through the Commission's good faith complaint process, in the courts, or through future contractual negotiations. The Commission's review of a station acquisition, however, is an entirely inappropriate forum for the adoption of new rules or policies concerning the prices, terms and conditions of retransmission consent or retransmission consent negotiations that would affect all broadcasters, or for adjudicating the terms of existing agreements between broadcasters and MVPDs. NCTA has advanced no rationale for the Commission to depart from decades of transaction review decisions declining to consider matters more appropriately addressed by rulemaking, adjudication or Congressional action.

B. The Commission Does Not Have the Legal Authority to Regulate the Prices, Terms or Conditions of Retransmission Consent

Even if a transaction review were an appropriate forum for consideration of NCTA's complaints and proposed conditions, the Commission lacks the authority to address its concerns. Although pay TV providers may wish the law was different, it is well established that the Commission does not have authority to regulate the prices, terms, or conditions of

¹⁸ *Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3368 ¶ 25, n. 95 (2014) (internal citations omitted) (emphasis added).

retransmission consent. Its authority is limited to ensuring that broadcasters and MVPDs negotiate in good faith. In Section 325(b)(1), Congress unequivocally forbade any MVPD from retransmitting the signal of a broadcast station without the “express authority” of the originating station.¹⁹ In adopting this provision, Congress intended “to create a marketplace for the disposition of the rights to retransmit broadcast signals” but *not* to “dictate the outcome of the ensuing marketplace negotiations.”²⁰ In this retransmission marketplace, Congress gave the Commission only the narrow authority to ensure that broadcasters and MVPDs abide by their reciprocal duty to negotiate retransmission consent in “good faith.”²¹ The Commission has acknowledged repeatedly that Congress did “not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission.”²² Congress instead relied upon market-based exchanges of rights between broadcasters and MVPDs.²³ The Commission thus has no role in determining what rates are proper; “it is the retransmission consent negotiations that take place that are the market through which the relative benefits and costs to the broadcaster and MVPD are established.”²⁴ Even if it agreed with NCTA’s empty claims, the Commission lacks any authority to address complaints about the level of retransmission consent fees that MVPDs agree to pay or to otherwise intervene in the retransmission market to set prices. And the Commission certainly has no

¹⁹ 47 U.S.C. § 325(b)(1).

²⁰ S. Rep. No. 92, 102nd Cong., 1st Sess. at 36 (1991).

²¹ 47 U.S.C. § 325(b)(3)(C).

²² *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999*, Report and Order, 15 FCC Rcd 5445 ¶ 6 (2000).

²³ *Id.* at ¶ 14.

²⁴ *Id.* at ¶¶ 8, 53. See also *id.* at ¶ 23 (“Congress clearly did not intend the Commission to sit in judgement of the terms of every retransmission consent agreement executed between a broadcaster and an MVPD.”).

basis to take any action based on MVPD complaints that a transaction would likely result in a station changing its status from must carry to retransmission consent – a right specifically granted to broadcast TV stations by Congress.

Notably, NCTA fails to even mention Section 325 or explain how the Commission could lawfully impose conditions for the purpose of directly or indirectly regulating the prices, terms, and conditions of retransmission consent agreements. NCTA does not cite a single Commission decision imposing the conditions it proposes here.²⁵ Indeed, NCTA repeatedly relies on a transaction review order that actually supports NAB’s position,²⁶ in which the Commission rejected an MVPD contention that a broadcaster would have market power leading to increased retransmission consent fees, observing that perhaps it served the MVPD’s “private interest to have a broader geographic reach than the broadcast companies with which it negotiates retransmission consent agreements.”²⁷

NCTA’s objection here, like virtually all its proposals with respect to broadcast regulation, is rooted in a desire to weaken broadcasters’ competitive position in the marketplace while its members enjoy no limits on their horizontal or vertical ownership, fewer regulations in all other areas, and fewer public interest obligations. Pay TV commenters complaining of retransmission consent fees also have never explained how

²⁵ NCTA Objection at 8-9.

²⁶ NCTA Objection at 5, 8 and notes 14, 15, 26 and 27 (citing Nexstar/Tribune Order at 8451-52 ¶ 29).

²⁷ Nexstar/Tribune Order at 8451-52 ¶ 29. In that same order, the Commission also explicitly rejected the idea it could regulate after-acquired station provisions as part of a transaction review or otherwise: “Such after-acquired station clauses were negotiated by the parties outside of this transaction, and there is no apparent reason to step in and deny one party the benefit of the negotiated bargain absent evidence of anticompetitive practices or other wrongdoing not apparent here. In addition, the Commission is not the proper forum for resolving an alleged private contractual dispute.” *Id.* at 8462-63 ¶ 59.

they would be held accountable for passing any of the savings they would earn from reduced retransmission consent fees on to consumers. As NAB previously explained, any MVPD contentions that they would charge consumers less if only broadcast retransmission fees were lower do not even pass the laugh test.²⁸

C. NCTA Lacks Factual Support for its Claims

Even assuming the Commission would not be acting outside the scope of its authority by imposing the conditions NCTA seeks, NCTA's contentions are factually unfounded. Most notably, even assuming NCTA has accurately looked into its crystal ball and WADL is carried by MVPDs pursuant to retransmission consent at some point in the future, this does not prove that payment for carriage of WADL would be the result of anything other than competitive marketplace conditions, as NCTA claims. It is just as likely that the value of WADL's signal is artificially depressed today because it is a standalone television station and is forced to negotiate with some of the largest MVPDs in the nation.²⁹ As ATVA flatly states, "MVPDs almost never pay" for standalone stations not affiliated with the four major broadcast networks.³⁰ If Adell elected retransmission consent for its MyNetwork affiliated station, rather than must carry, it would be attempting to negotiate with national pay TV

²⁸ See, e.g., Reply Comments of NAB, MB Docket No. 18-349, at 48-49 and notes 144-145 (Oct. 1, 2021).

²⁹ Adell owns a single television station and one AM radio station. See Application at Exhibit, Assignor's Other Stations.

³⁰ ATVA Comments at 6. NAB hopes this apparent uniformity across the MVPD industry reflects individual good faith negotiations by MVPDs on a case-by-case basis, rather than a refusal to consider alternate proposals by non-Big Four stations in violation of MVPDs' good faith negotiation obligations and the nation's antitrust laws. Further, ATVA does not appear to realize that its statement could just as easily be interpreted as reflecting a wild anticompetitive imbalance in market power between ATVA's "members" and much smaller local TV broadcasters (NAB uses the term "members" loosely because ATVA is not truly a trade association, but more precisely a front group for MVPDs housed in a partisan lobbying shop).

behemoths like Comcast, Charter, or DirecTV. The transaction costs of negotiating with these massive companies alone are likely prohibitive for a small entity like Adell. The chances of a successful negotiation are low, and the risk of not obtaining MVPD carriage at all would be far too great for Adell to bear. The pay TV industry's desire to deal with smaller TV station groups or stand-alone stations lacking the ability to negotiate for retransmission consent on an even remotely level playing field is not a public interest goal the Commission should consider here or in any other FCC proceeding.

Moreover, retransmission consent agreements are complex, involving numerous terms and conditions in addition to price.³¹ It is not uncommon for retransmission consent agreements to contain after-acquired stations provisions *and after-acquired systems* provisions.³² The broadcast and MVPD parties to these agreements have ample

³¹ See, e.g., Opposition of the Broadcaster Associations, MB Docket No. 10-71 (May 18, 2010) (“retransmission consent negotiations typically involve many complex and multifarious issues such as video on demand, the purchase of broadcast advertising by the MVPD, the purchase of MVPD advertising by the broadcast station, broadcast station promotion by the MVPD, MVPD promotion by the broadcast station, fiber connectivity between the station’s studio or transmitter and the MVPD’s headend or local receive facility, channel position and tier placement, digital and multicast channel carriage, system expansion options, studio/personnel/equipment sharing, electronic program guide placement, news insertion options, carriage of non-broadcast programming, duration of the term of the agreement, technical standards, after-acquired system provisions, after-acquired station provisions, non-discrimination clauses, indemnity provisions, venue, jurisdiction, and manner of dispute resolution, to list but a few. Given this complexity, Congress wisely established a retransmission consent regime that does not attempt to choose winners or losers among broadcast stations and MVPDs but instead maintains a fair and open process so that the marketplace can operate freely.”).

³² See, e.g., *id.*; Letter to Marlene H. Dortch, FCC Secretary, from Jennifer Johnson, Counsel to Smaller Market Coalition, MB Docket No. 10-71 (May 9, 2016) at 3 (“if the Commission were to adopt any restrictions on broadcasters’ flexibility to negotiate for certain types of after-acquired stations provisions (as has been advocated by some parties), then those restrictions must be mirrored by restrictions on MVPDs’ flexibility to negotiate for after-acquired systems provisions”); Letter to Marlene H. Dortch from Paul Karpowicz, Meredith Corporation, MB Docket No. 10-71 (May 27, 2011) (terms commonly negotiated in retransmission consent agreements include “confidentiality, technical carriage terms,

opportunities to consider the various terms and conditions of the agreements. If parties choose to execute those agreements, they have determined that, on balance, the benefits and rewards of the proposed agreement outweigh the costs and risks. Presumably, MVPDs that sign agreements involving after-acquired stations (or other stations with which broadcasters have lawful sharing arrangements) either found the after-acquired provision advantageous (because contracts would not be reopened with the acquisition of new stations) or negotiated other favorable terms in exchange for it (e.g., after-acquired systems provisions). No single provision can be viewed in isolation. This is the retransmission consent marketplace that Congress established.³³ The idea that NCTA members are not sufficiently sophisticated to understand and evaluate the terms of their agreements with local broadcast companies (when even larger broadcasters are generally a mere fraction of the size of their MVPD counterparts)³⁴ is not credible and does not provide a basis for Commission intervention into the prices, terms, and conditions of retransmission consent agreements generally, or this proposed transaction specifically.

In short, NCTA has identified no legal authority, no policy justification, and no evidentiary basis for adopting its proposed conditions (or even a logical basis for its second nonsensical condition relating to joint negotiations among “same market” stations when

multicast carriage, channel positioning, promotion and advertising, after-acquired systems or stations, and most-favored-nation provisions”); Comments of Morgan Murphy Media, MB Docket No. 10-71 (May 18, 2010) at 6.

³³ See *supra*, notes 19-24.

³⁴ See, e.g., Comments of NAB, GN Docket No. 22-203 (Jul. 1, 2022) at 47 (comparing the market capitalizations of larger broadcast companies such as TEGNA (\$4.78 billion) and Nexstar (\$7.07 billion) with those of MVPDs such as Charter (\$86.83 billion) and Verizon (\$216.22 billion).

Nexstar owns no stations in the Detroit market). Accordingly, the Commission must reject NCTA's proposals and dismiss its objection.

III. MVPD TRANSACTIONS SHOULD BE SUBJECT TO CONDITIONS THAT WILL RESULT IN DIRECT AND IMMEDIATE BENEFITS TO THE PUBLIC

For years, NCTA (and ATVA) have intervened in proceedings concerning broadcast regulation, especially the quadrennial ownership reviews, to push for unjustifiable increased restrictions on local TV stations that would reduce the ability of broadcasters to compete against pay TV operators. The pay TV industry also has found it in their economic interest to oppose proposed broadcast TV station transactions, even those that abide by existing FCC rules (including ownership restrictions) and that would significantly increase minority ownership of broadcast stations. Should the FCC now for some reason entertain NCTA's claims in a transaction involving only a single broadcast station, or in other future broadcast transactions, then the Commission also must consider comparable conditions in future MVPD transactions, regardless of whether the Commission has any rules on point or even if it lacks the requisite rulemaking authority (as is the case here). Unlike NCTA's proposals and conditions, however, which would directly and only benefit pay TV/broadband providers, the Commission could easily adopt conditions on pay TV transactions that will result in direct and immediate benefits to members of the public paying for high-priced TV and broadband services.³⁵ Such conditions the FCC could then routinely contemplate may include, but not be limited to, the following:

³⁵ Consumer surveys continue to show that MVPD/broadband providers fail to offer either high quality service or value for subscribers' dollars. A recent Consumer Reports (CR) survey of pay TV, home internet and bundled plans again found that "telecommunication services are some of the least popular of all the services" that CR members rate. James Willcox, *Best and Worst Home Internet Providers of 2023*, Consumer Reports (Nov. 7, 2022, updated Jan. 1, 2023). According to this survey, consumers were "particularly critical of their traditional

- **Consumer Refunds for Pay TV Disputes.** Approval of pay TV transactions should be conditioned on consumer refunds during disputes about signal/program carriage. Specifically, if a consumer is paying for a package that includes broadcast signals or any non-broadcast programming that an MVPD is not providing due to a retransmission consent or other programming dispute, the MVPD should be required to refund consumers the value of losing the broadcast signal or other programming for as long the dispute lasts. MVPDs routinely make money off consumers who do not receive the programming for which they pay, and indeed use these subsidies to fund negotiation impasses with content providers.
- **Customer Service Windows.** As a condition of transaction approvals, the FCC could impose conditions on an MVPD where the acquiring entity has unreasonably long service windows they expect customers to be home waiting for them to arrive for any installations or repairs. Without meaningful competition, MVPDs are currently in a position to dictate the terms on which they service their customers, and further consolidation would simply encourage even worse customer service. The Commission could therefore require the new entity resulting from an MVPD transaction to guarantee service within a shorter window, with that service and perhaps monthly bills being waived if a technician arrives beyond the committed window.
- **Pricing Transparency.** MVPDs proposing transactions could be required to abide by pricing transparency requirements, including specifying the “all-in” price clearly and prominently for video programming services in their promotional materials and on subscribers’ bills, consistent with the rules the Commission recently proposed (but has not yet adopted).³⁶
- **Broadband Speed.** MVPD transactions involving entities also providing broadband service could be conditioned on the assignee or transferee agreeing to meet specified minimum download and upload speeds.
- **Data Caps.** To protect consumers’ internet access and their choice of online services, MVPD transactions involving entities also providing broadband service could be conditioned on the merged entity refraining from imposing data caps or usage limits on their customers.
- **Broadband Residential Buildout Requirements.** MVPD deals involving entities also providing broadband service could be conditioned on investment in residential broadband facilities. MVPDs would be required to deploy services to a specified

pay TV services.” Only one TV service provider (Dish) received “passable marks for overall satisfaction,” and “[e]very single company earned the *lowest possible score for value*” (emphasis added). When rating bundles that combined TV, internet and phone service, “[n]o bundle provider received a favorable overall satisfaction score,” and, again, “[e]very single provider received [CR’s] *worst mark for value*” (emphasis added).

³⁶ *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket NO. 23-203 (Jun. 20, 2023).

number of additional customer locations during the months and years following a particular transaction.³⁷

Should the Commission continue down the road of considering conditions that are more appropriate for industry-wide rulemakings, NAB stands ready to closely monitor MVPD industry transactions to offer such proposals relevant to these transactions.

IV. CONCLUSION

For the foregoing reasons, the Commission should reject NCTA's proposed conditions on grant of the Application and dismiss the objection. The proposals lack a legal or factual basis and cannot be squared with Commission transaction review precedent or Section 325 of the Act. Like virtually all other pay TV proposals concerning broadcast regulation, the instant proposals are designed only to improve pay TV's competitive position and would harm broadcasters' economic viability and ability to serve American viewers.

Respectfully submitted,

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³⁷ See *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6544-45, Appendix B, Section V (2016).

CERTIFICATE OF SERVICE

I, Erin Dozier, hereby certify that on July 7, 2023, I caused true and correct copies of the foregoing to be served via email upon the following:

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