

*Before the
Federal Communications Commission
Washington, DC*

In the Matter of:)	
)	
Mediacom Communications Corporation)	
)	
v.)	CSR-7058-C
)	
Sinclair Broadcast Group, Inc.)	
)	
Emergency Retransmission Consent Complaint)	
And Complaint for Enforcement for Failure to)	
Negotiate Retransmission Consent Rights in Good)	
Faith)	
TO: The Commission		

APPLICATION FOR REVIEW

MEDIACOM COMMUNICATIONS CORPORATION

Fleischman and Walsh, L.L.P.
1919 Pennsylvania Avenue, NW, Suite 600
Washington, DC 20006
(202) 939-7900

Its Attorneys

Date: January 8, 2007

SUMMARY

Mediacom Communications Corporation (“Mediacom”) hereby seeks reversal of the Media Bureau’s *Memorandum Opinion and Order* (“*MO&O*”) denying Mediacom’s Complaint alleging that Sinclair Broadcast Group, Inc. (“Sinclair”) has failed to engage in good faith retransmission consent negotiations as required by the Communications Act and the Commission’s rules. Commission reversal of the *MO&O* is warranted because the Bureau’s decision involves a number of questions of law or policy not previously resolved by the Commission; conflicts with established law and policy; and contains erroneous findings as to one or more important or material questions of fact.

In adopting the *MO&O*, the Bureau erred in a number of ways:

(1) Mediacom’s retransmission consent complaint should have been acted on by the full Commission, not by the Media Bureau on delegated authority. Mediacom’s Complaint raised novel questions of law, fact and policy not previously addressed by the Commission, and therefore the matter should have been referred to the full Commission for its consideration and resolution.

(2) The Bureau erred by basing its decision on its judgment regarding the reasonableness of Sinclair’s price demands in light of the prices Mediacom pays for cable networks, a determination that was not required by the Complaint and that exceeded the Bureau’s statutory authority. Even if the Bureau could properly assess the reasonableness of Sinclair’s price demands in order to determine whether its discriminatory prices were based on competitive marketplace conditions, considering cable network prices is inconsistent with Commission precedent finding that carriage of broadcast stations and cable networks represents separate product markets. Finally, the Bureau’s analysis of the value of Sinclair’s retransmission consent rights was arbitrary and denied Mediacom basic due process.

(3) The Bureau, despite Sinclair’s admission that it was singling out Mediacom for discriminatory pricing demands, and the absence of any evidence of market conditions justifying such discrimination, inappropriately abdicated its responsibility to assess whether or not Sinclair’s discriminatory retransmission consent demands reflected competitive marketplace conditions. Where the parties negotiating for retransmission consent disagree as to whether discriminatory price demands are in fact based on competitive marketplace conditions and where evidence is put forward of behavior and actions that seek to distort the marketplace, it is incumbent on the Commission to make a determination as to whether the discriminatory price demands are lawful under the statutory standard established by Congress. To avoid this responsibility, as the Bureau had done here, renders that statutory standard a nullity.

(4) The Bureau erred by failing to fully assess the impact of Sinclair's Bounty Payment Agreement with DIRECTV on the competitive marketplace for retransmission consent despite evidence that the intended and actual effect of such arrangement was to alter Sinclair's ordinary incentives to complete a carriage agreement with Mediacom in good faith and in line with ordinary competitive market considerations. At very least, the Bureau should have deferred ruling on the issue until it had exercised its authority to require discovery under Section 76.7(f) of the Commission's rules to conclusively establish the terms of the arrangement.

(5) The Bureau erred by failing to consider the Complaint in light of either the Commission's determination that the law requires broadcasters to negotiate with a sincere purpose of reaching agreement or the body of NLRB precedent that the Commission deemed the most relevant guidance to the determination of bad faith in negotiations. Despite Mediacom's clear demonstration of Sinclair's bad faith under NLRB precedent and the absence of any rebuttal from Sinclair, the Bureau incorrectly dismissed Mediacom's complaint without distinguishing or even discussing the relevant case law.

(6) The Bureau erred by selectively ignoring post-complaint evidence of Sinclair's continuing course of bad faith behavior.

(7) The Bureau erred by finding that allegations that Sinclair engaged in an unlawful, take it or leave it, course of conduct are moot because Sinclair, after more than five months, supposedly abandoned that tactic. Not only was there un rebutted evidence that Sinclair's abandonment of this tactic was a sham, but by effectively ignoring Sinclair's conduct, the Bureau has not merely abdicated its statutory responsibility to enforce the good faith negotiation requirement, it has actually encouraged future bad faith.

(8) The Bureau erred by holding that the Commission lacks the authority in the retransmission consent context to order binding arbitration. To the contrary, the Commission has ample authority to order arbitration both under its general authority under Section 4(i) of the Communications Act and its more specific authority under 303(r) of the Communications Act.

(9) The Bureau's consideration and rejection of Mediacom's Complaint appears to reflect a result-driven analysis that arbitrarily discounted and ignored Mediacom's arguments and evidence in its pursuit of a favored outcome. Mediacom submits that, were the entire record of this proceeding viewed objectively, the only conclusion is that Mediacom has met its burden and that the Bureau's decision denying its complaint should be reversed.

In light of the foregoing, the Commission should grant Mediacom's application for review, reverse the *MO&O*, and order appropriate relief as specified in its Complaint.

A complete copy of all filings may be found at:

http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.