March 31, 2010

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Room TW-A325
445 12th Street SW
Washington DC 20554

RE: Comments of BEVCOMM, Inc. and Cannon Valley Cablevision, Inc.
MB Docket No. 10-71
Petition for Rulemaking to Amend the Commission’s Rules Governing
Retransmission Consent

Dear Ms. Dortch:

I enclose for filing an original and four (4) copies of the Comments of BEVCOMM, Inc.
and Cannon Valley Cablevision, Inc. in MB Docket No. 10-71.

Very truly yours,

James L. Beattie
Assistant General Counsel

JLB: mo
Enclosures

cc: Diana Sokolow
Media Bureau
Federal Communications Commission
Room 4-A734
445 12th Street SW
Washington DC 20554
In the Matter of

Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent

MB Docket No. 10-71

COMMENTS OF BEVCOMM, INC. AND CANNON VALLEY CABLEVISION, INC.
IN SUPPORT OF PETITION

A. Introduction

BEVCOMM, Inc., and its affiliated company Cannon Valley Cablevision, Inc. ("BEVCOMM") is a small multichannel video programming distributor ("MVPD") headquartered in Blue Earth, Minnesota. BEVCOMM has approximately 4,500 subscribers to its video service, either as the incumbent traditional cable service provider or as a competitive provider using what is commonly referred to as Internet Protocol Television ("IPTV") technology. In several communities BEVCOMM competes directly with incumbent cable providers Comcast or Mediacom. BEVCOMM also competes with satellite providers DIRECTV and Dish Network throughout our entirely rural service territory.

BEVCOMM agrees that the current retransmission consent process is broken. BEVCOMM’s experience is that the current process harms consumers through increased wholesale rates, passed on to consumers, which greatly exceed the rate of inflation or has resulted in the loss of broadcast signals for extended periods of time. This signal loss continues up to the date these comments are filed.

B. Comments

The need to amend the current rules governing retransmission consent is succinctly stated in the petition. BEVCOMM argues that one need look no further into the truth and veracity of the Petition’s argument that the current rules are broken than to read the petitioner’s names. They represent every aspect of the highly competitive MVPD market: cable, satellite, and telephone companies. Many of them compete directly, and aggressively, against each other. BEVCOMM can not think of any other industry, joined by consumer advocacy groups, where vigorous competitors agree that the actions of
wholesale distributors of “must have” products, in this case broadcast network television stations through the government sanctioned business practice known as retransmission consent, significantly harm American consumers.

BEVCOMM is particularly concerned about the blatant misrepresentations of the current state of the retransmission consent process as contained in CBS Corporation’s notice of ex parte communication with FCC Commissioners and staff regarding this docket. (Exhibit A).

In its notice of ex parte communication, CBS states:

“In all of the meetings, we noted that the retransmission consent process is not broken, as the petition for rulemaking asserts. To the contrary: While thousands of retransmission consent agreements have been reached over the last 18 years, merely a half-dozen negotiations over the past decade have attracted press headlines. Few have threatened disruption to an MVPD’s carriage of a broadcast television station. And very recently, only one has led to an actual disruption of service—and that for less than 9 hours’ duration.”

(CBS ex parte communication dated March 23, 2010, attached as Exhibit A.)

This statement could not be further from the truth. It is common knowledge in the industry that several MVPD’s, and more importantly, their customers, have experienced actual disruption of service—periods greatly in excess of 9 hours’ duration. The undersigned can not speak to other MVPD’s experiences, but after the last retransmission consent cycle negotiation period, the result was that many BEVCOMM customers have continuously lost access to the broadcast signals of CBS, NBC and Fox affiliates for 15 months.

Every retransmission consent negotiation under the current rules threatens disruption to an MVPD’s carriage of a broadcast television station, because unless the MVPD reaches an agreement for carriage with a broadcaster, it is prohibited from carrying that signal on its system. Furthermore, when a small company such as ours fails to come to mutually agreeable terms with a broadcast station, there will be no headlines, due to the small number of consumers affected. Our customers are simply too small in number to matter. Broadcasters pay little or no attention to the loss of 4,500 viewers, and do not suffer any significant financial hardship as a result of the broken, and heavily one sided, retransmission consent process. Our customers, true voices in the wilderness to broadcasters often hundreds, if not thousands, of miles away, are totally innocent victims of their negotiation strategies made possible by the current retransmission consent rules.

If we reach an agreement, the result means higher rates to the customer. If we fail to reach an agreement, the result is the loss of “must have” broadcast television programming that the customer has come to expect. BEVCOMM fails to see how the current rules benefit consumers given these two options.
C. Conclusion

For the reasons stated above, BEVCOMM fully supports the petition for rulemaking to amend the Commission’s rules governing retransmission consent. Common sense and fair play business practices need to replace the current system which in the end harms consumers and potentially deprives them of “must have” sports and prime time programming, as well as access to local news, weather and emergency information.

Respectfully submitted this 31st day of March, 2010,

James L. Beattie  
Assistant General Counsel  
BEVCOMM  
123 W. Seventh Street  
Blue Earth, MN 56013  
Phone: (507) 526-5535  
Email: jbeattie@bevcomm.com  

cc: Diana Sokolow  
   Media Bureau  
   Federal Communications Commission  
   Room 4-A734  
   445 12th Street SW  
   Washington DC 20554
March 23, 2010

Ex parte via electronic filing

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TW-A325
Washington, DC 20554

RE: Ex parte notice – MB Docket No. 10-71, Petition for Rulemaking to Amend the Commission’s Rules Governing Retransmission Consent

Dear Ms. Dortch:

In conformance with the directives set forth in the public notice related to the above-cited docket (DA 10-474, March 19, 2010), we file this ex parte notice relating to meetings at the Commission.

On March 22, 2010, Martin D. Franks and Anne Lucey of CBS Corporation met separately with William Lake, Robert Ratcliffe, Mary Beth Murphy, Nancy Murphy and Eloise Gore of the Media Bureau; and with Sherrese Smith of Chairman Genachowski’s office. John Orlando joined in the separate meetings with Commissioner McDowell and Rosemary Harold; with Commissioner Copps and Joshua Cinelli; with Bradley Gillen of Commissioner Baker’s office; and with Commissioner Clyburn and Rick Kaplan.

In all of the meetings, we noted that the retransmission consent process is not broken, as the petition for rulemaking asserts. To the contrary: While thousands of retransmission consent agreements have been reached over the past 18 years, merely a half-dozen negotiations over the past decade have attracted press headlines. Few have threatened disruption to an MVPD’s carriage of a broadcast television station. And very recently, only one has led to an actual disruption of carriage — and that for less than 9 hours’ duration.
We further noted that the FCC has no jurisdiction to impose arbitration or standstills or otherwise get involved in the retransmission consent process beyond the rules currently in place. Moreover, we pointed out that the process involves highly complex and heavily labor- and time-intensive negotiations that relate to terms and conditions beyond price. Any governmental involvement not only would intrude upon a market that is properly functioning --where buyer and seller ultimately reach agreement-- but would lead to an FCC that does nothing but oversee retransmission consent negotiations. There is no market failure that warrants imposing new burdens on the Commission.

Finally, we stated that Americans today now enjoy real choice in the video distribution marketplace, thanks to the decades-long efforts of the FCC and Congress. Thus, there is no need for government intervention in this vibrant market.

Please direct any questions to the undersigned.

Sincerely,

[Signature]

By mail
cc: Commissioner Copps
    Commissioner McDowell
    Commissioner Clyburn
    Sherrese Smith
    Joshua Cinelli
    Rosemary Harold
    Rick Kaplan
    Brad Gillen
    William Lake
    Robert Ratcliffe
    Mary Beth Murphy
    Nancy Murphy
    Eloise Gore