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SUMMARY

Pursuant to 47 U.S.C. § 325(b)(3)(C)(ii) and Sections §§ 76.7 and 76.65 of the Commission's rules, DISH Network L.L.C. ("DISH") brings this Verified Retransmission Complaint against Media General, Inc. ("Media General"), the owner of 18 local broadcast television stations. As a satellite multichannel video programming distributor ("MVPD") to more than 14 million subscribers throughout the nation, DISH knows that consumers are increasingly suffering blackouts as broadcasters exercise their monopoly power to extract ever higher rates from distributors, and sometimes engage in bad faith tactics to hold consumers hostage until MVPDs capitulate to broadcaster demands.

DISH brings this complaint because Media General, unfortunately, has breached its duty to negotiate in good faith a renewal of DISH's retransmission rights for Media General's stations. *See* 47 C.F.R. § 76.65. These rights expired on September 30, 2013, after which DISH had no choice but to black out Media General's stations upon failure to reach a new agreement. DISH customers in seventeen markets have now been deprived of one or more local broadcast stations for 18 days. DISH repeatedly has offered to enter into a temporary extension of the entire expiring agreement in order to prevent disruption to viewers, but Media General refused all such offers.

Media General's conduct violates the Commission's rules requiring good faith negotiation for retransmission consent rights, because, among other things, Media General failed to respond for 11 days to DISH's last pre-blackout offer. There could not be clearer evidence of bad faith than when a broadcaster post-blackout *refuses* to even negotiate. Although Media General finally countered after 11 days, DISH has now been waiting 7 days for a response to DISH's subsequent counter offer. Media General, further, seeks to require DISH to reopen an

existing retransmission consent agreement with a totally separate company, New Young Broadcasting Holdings Co., LLC (“Young”), as a condition of Media General entering into a new agreement with DISH.

Throughout the negotiations, Media General has provided no legitimate explanation for its requirement that DISH re-open its existing contract with Young and incorporate the Young stations into any new Media General retransmission deal. The fact that Media General and Young have proposed to merge with one another, in a deal that has not yet received regulatory approval or been consummated, does not justify or explain Media General’s current stance.

DISH urges the Commission to act expeditiously to address Media General’s bad faith, and to (i) find that, pursuant to 47 U.S.C. § 325(3)(C)(ii) and 47 C.F.R. § 76.65, Media General has breached its statutory obligation to negotiate in good faith a retransmission consent agreement with DISH; (ii) immediately require Media General to negotiate in good faith with DISH to offer its retransmission consent so that its programming may be offered over DISH’s DBS system; (iii) immediately require Media General to submit to mediation with DISH in order to facilitate a good faith retransmission consent negotiation; and (iv) award such other relief that the Commission deems just and appropriate.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)
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DISH NETWORK L.L.C.)
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Complainant,)
)
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v.)
)
)
MEDIA GENERAL, INC.)
)
)
Defendant.)

MB Docket No. 12-1
File. No CSR-____-C

**EXPEDITED CONSIDERATION
REQUESTED**

TO THE COMMISSION:

VERIFIED RETRANSMISSION COMPLAINT

Pursuant to the Commission's Rules, 47 C.F.R. §§ 76.7 and 76.65, and 47 U.S.C. § 325(b)(3), DISH hereby brings a Retransmission Complaint against Media General, the owner of 18 local broadcast television stations. DISH is an MVPD that provides Direct Broadcast Satellite ("DBS") service to more than 14 million subscribers throughout the nation. DISH brings this complaint because Media General has breached its obligation to negotiate in good faith the terms for DISH's local retransmission of Media General's owned and operated stations. *See* 47 C.F.R. § 76.65.

I. THE COMPLAINANT

1. DISH is a provider of DBS services in the United States. DISH owns or leases 15 satellites that allow it to provide thousands of channels of digital television programming to more than 14 million subscribers throughout the continental U.S. DISH's address is 9601 S. Meridian Blvd., Englewood, Colorado 80112. Its United States telephone number is (303) 723-1000.

II. THE DEFENDANT

2. On information and belief, Media General is a company based in Richmond, Virginia that owns 18 broadcast stations in various markets throughout the United States. The principal address for Media General is 333 E. Franklin Street, Richmond, Virginia, 23219. Its United States telephone number is (804) 887-5000.

III. JURISDICTION

3. DISH brings this Retransmission Complaint in accordance with and pursuant to the Communications Act, 47 U.S.C. § 325(b)(3), and the Commission's Rules, 47 C.F.R. §§ 76.7 and 76.65(c). In relevant part, the Commission's Rules provide that any MVPD

“aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or subsection 76.64(m) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint” under the procedures specified in section 76.7. 47 C.F.R. § 76.65(c).

4. This Retransmission Complaint is timely filed because, in accordance with 47 C.F.R. § 76.65(e)(2), it is filed within one year of DISH engaging in retransmission consent negotiations with Media General where Media General has violated its duty to negotiate in good faith and this Retransmission Complaint is unrelated to any existing contract between Media General and DISH.

IV. LEGAL BACKGROUND – THE GOOD FAITH REQUIREMENT

5. The Satellite Home Viewer Improvement Act of 1999 (“SHVIA”) was enacted on November 29, 1999. In that statute, Congress confirmed satellite carriers’ ability to provide satellite subscribers with local broadcast signals by creating a statutory copyright license at 17 U.S.C. § 122. This license was intended to solve a problem long-perceived by both Congress and the Commission: that the absence of local signals from satellite offerings was one of the chief factors dissuading consumers from switching to satellite services from their cable system, which could offer these signals under the broad cable copyright license. This handicap in turn had prevented satellite carriers from introducing needed competition to the dominant cable operators and exercising some discipline on soaring cable rates.

6. According to the Commission, SHVIA was designed “to place satellite carriers on an equal footing with local cable operators when it comes to the availability of broadcast programming” and, thus, “authorizes satellite carriers to add more local and national broadcast programming to their offerings” for satellite subscribers. *See* Implementation of the Satellite

Home Viewer Improvement Act of 1999 – Retransmission Consent Issues, *Report and Order*, 15 FCC Rcd. 5445 ¶ 1 (2000) (“*Good Faith Order*”).

7. In addition to creating the new satellite copyright license, SHVIA also obligated satellite carriers to obtain the consent of the broadcaster for local retransmissions. *See* 47 U.S.C. § 325(b). At the same time, Congress required broadcasters to negotiate in good faith with MVPDs for retransmission consent. SHVIA directed the Commission to prescribe rules “prohibit[ing] a television broadcast station that provides retransmission content from engaging in exclusive contracts for carriage or failing to negotiate in good faith.” *See* Section 1009 of SHVIA, codified at 47 U.S.C. § 325(b)(3). In 2005, Congress directed the Commission to make the good faith obligation mutual, and the Commission did so in an amendment to its rules, *see* 47 C.F.R. § 76.65(a) (“Television broadcast stations and [MVPDs] shall negotiate in good faith the terms and conditions of retransmission consent agreements.”).

8. In implementing the good faith rules, the Commission recognized that the good faith statutory requirement was not “largely hortatory” and that it imposed a “heightened duty of negotiation” on broadcasters that exceeds what would otherwise be required under common law. *Good Faith Order* ¶ 24. Because of this, the Commission found that Congress intended for retransmission consent negotiations to take place “in an atmosphere of honesty, purpose, and clarity of process.” *Id.*

9. To implement its mandate from Congress, the Commission adopted a two-part test for assessing a television broadcast station’s “good faith” in negotiating retransmission consent. The first part of the test consists of a brief, objective list of negotiation standards. This list includes a “Refusal by a Negotiating Entity to put forth more than a single, unilateral proposal” and a “Failure of a Negotiating Entity to respond to a retransmission consent proposal

of the other party, including the reasons for the rejection of any such proposal.” 47 C.F.R. § 76.65(b)(1)(iv)-(v).

10. The Commission stated that under the *per se* rule against unilateral bargaining, “a broadcaster may not put forth a single, unilateral proposal and refuse to discuss alternate terms or counter-proposals.” *Good Faith Order* ¶ 43. Approaches such as “[t]ake it or leave it” bargaining are “not consistent with an affirmative obligation to negotiate in good faith.” *Id.*

11. Moreover, a broadcaster must “provide reasons for rejecting any aspects of an MVPD’s offer.” *Id.* ¶ 44; 47 C.F.R. § 76.65(b)(1)(v). “Blanket rejection of an offer without explaining the reasons for such rejection does not constitute good faith.” *Good Faith Order* ¶ 44. Although broadcasters are “not required to justify their explanations by document or evidence,” *id.*, such explanation must consist of something more than referral back to the terms of the broadcaster’s prior offer, or else the broadcaster violates the *per se* rule against unilateral bargaining, *see id.* ¶ 43.

12. The Commission recognized that its *per se* rules could not capture the entire range of the often subtle behaviors that may constitute bad faith negotiating. The Commission therefore adopted a totality of the circumstances test to complement its *per se* rules. Under the second part of the good faith test, the Commission may find that a television broadcast station breached its duty of good faith “based on the totality of the circumstances of particular retransmission consent negotiation.” 47 C.F.R. § 76.65(b)(2). This totality of the circumstances test is “necessarily contextual.” *See Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 – Reciprocal Bargaining Obligations, Report and Order*, 20 FCC Rcd. 10339 ¶ 29 (2005) (“*Reciprocal Good Faith Order*”).

13. The Commission's *Good Faith Order* explained that the Commission "will entertain complaints under the totality of circumstances test alleging that specific retransmission consent proposals are sufficiently outrageous . . . as to breach a broadcaster's good faith negotiation obligation." *See Good Faith Order* ¶ 32. Moreover, under this standard, a MVPD may present facts that "reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith." *Good Faith Order* ¶ 14. The Commission further noted that "the totality of the circumstances test will also enable the Commission to continue refining and clarifying the responsibilities of parties to retransmission consent negotiations." *Id.* ¶ 30.

14. The Commission has recognized that any interruption in consumers' receipt of local broadcast programming is "highly undesirable," *Good Faith Order* ¶ 12, and expressed its "concern regarding the service disruptions and consumer outrage that will inevitable result should MVPDs that are entitled to retransmit local signals subsequently lose such authorization," *id.* ¶ 61. When the Commission passed the *Good Faith Order* in 2000, it remarked that it expected such loss of retransmission rights, even on an interim basis, to be "the exception rather than the norm." *Id.* The Commission further "encourage[d] broadcasters and MVPDs that are engaged in protracted retransmission consent negotiations [to] agree [] short-term retransmission consent extensions so that consumers' access to broadcast stations will not be interrupted while the parties continue their negotiations." *Id.*

V. FACTUAL BACKGROUND: MEDIA GENERAL'S BREACH OF ITS DUTY TO NEGOTIATE IN GOOD FAITH

15. DISH and Media General began retransmission consent negotiations in May 2013. The previous retransmission consent agreement was set to expire June 30, 2013, with an option to extend an additional three months by election of either party. Media General chose to

elect the three month extension. The agreement therefore expired September 30, 2013 at 11:59 PM Mountain Time (MT).

16. Media General controls licenses for 18 broadcast stations, of which 17 are affiliated with one of the four major networks and 6 operate in the top 40 markets. The agreement that expired September 30 covered all of these stations. The Media General stations in the DISH agreement are as follows:

DMA	Affiliation	Call Sign
Myrtle Beach-Florence, SC	CBS	WBTW
Charleston, SC	NBC	WCBD
Charleston, SC	CW	WCBDD
Columbus, OH	NBC	WCMH
Tampa, FL	NBC	WFLA
Hattiesburg, MS	CBS	WHLT
Providence, RI	NBC	WJAR
Augusta, GA	ABC	WJBF
Tri-Cities, TN/VA	CBS	WJHL
Jackson, MS	CBS	WJTV
Mobile, AL	CBS	WKRG
Raleigh, NC	NBC	WNCN
Greenville, NC	CBS	WNCT
Greenville, NC	CW	WNCTD
Columbus, GA	CBS	WRBL
Savannah, GA	NBC	WSAV
Roanoke, VA	NBC	WSLS
Greenville, SC	CBS	WSPA
Birmingham, AL	NBC	WVTM
Greenville, SC	CW	WYCW

17. In the months leading up to the September 30 expiration of the agreement, Media General had refused to enter into a new agreement without DISH's concession to re-open and include in any new Media General agreement all of the local broadcast stations covered in an entirely separate retransmission consent agreement with Young (the "Young Agreement"). Media General has made rate offers that are contingent on DISH aggregating all of the Media

General and Young stations under a single new agreement. The Young Agreement includes Young's 14 broadcast stations. The stations included in the Young Agreement are:

DMA	Affiliation	Call Signs
Rapid City, SD	CBS	KCLO
Sioux Falls, SD	CBS	KELO
Lafayette, LA	CBS	KLFY
San Francisco, CA	MNT	KRON
Davenport, IA	NBC	KWQ
Knoxville, TN	ABC	WATE
Green Bay, WI	ABC	WBAY
Lansing, MI	MNT	WHTV
Nashville, TN	ABC	WKRN
Lansing, MI	CBS	WLNS
Richmond, VA	ABC	WRIC
Albany, NY	ABC	WTEN
Albany, NY	FOX	WXXA

18. On information and belief, Media General and Young are seeking to merge with one another, and await transaction approval from the Federal Communications Commission. See FCC News Release, *Media Bureau Announces Filing of Applications Seeking Consent to the Proposed Merger of Media General Communications Holdings, LLC and New Young Broadcasting Holdings Co., Inc.*, July 31, 2013.

19. On September 30, 2013 at 7:45 pm MT, Media General sent DISH a counter offer that, among other things, included all of the Media General stations and all of the unaffiliated Young stations.

20. On September 30, 2013 at 9:39 PM MT, DISH made a written counter offer on rates and other terms, but explicitly stated that its offer was limited to the Media General stations and did not include any stations subject to the existing Young Agreement.

21. On September 30, 2013 at 10:05 PM MT, in a telephone call between representatives for Media General and DISH, Media General stated that they would get back to

DISH regarding DISH's most recent counter offer. At 10:48 PM MT, DISH sent an email to Media General to follow up. This email was not responded to. After 11:59 PM MT the night of September 30, DISH had no choice but to black out the Media General stations.

22. Between October 1 and October 3, 2013, DISH received *no* communications from Media General.

23. On October 4, 2013, at DISH's request, Media General agreed to provide temporary consent for DISH to retransmit four of Media General's stations due to viewers impacted by Tropical Storm Karen. Those four stations were: Birmingham, Ala. – WVTM (NBC, channel 13); Hattiesburg, Miss. – WHLT (CBS, channel 22); Jackson, Miss. – WJTV (CBS, channel 12); and Mobile, Ala./Pensacola, Fla. – WKRG (CBS, channel 5). Media General allowed DISH to carry those four stations from October 5, 2013 at 6:00 AM Central Time (CT) through October 6, 2013 at 12:01 AM CT.

24. From October 5, 2013 until October 7, 2013, DISH received no response from Media General on DISH's counter offer of September 30, 2013.

25. On October 7, 2013, DISH reached out to Media General and requested that they negotiate in good faith and respond to DISH's counter offer. The same day, Media General responded that they would *not* be responding to DISH's counter offer of September 30, but that if DISH wished to make a new counter offer against itself, then Media General would review it.

26. Finally, on October 11, 2013, Media General sent a written counter offer to DISH's counter offer of September 30, 2013, which represented a small movement in the total payment under the life of the contract. Media General allowed **11 days** to lapse between the time DISH made its last counter offer on the day the agreement expired and when Media General finally responded.

27. The October 11th Media General offer presented two options. One, DISH could enter into a new agreement covering both the Media General stations and the unaffiliated Young stations. Or, two, DISH could enter into a new agreement covering only the Media General stations, but pay the exact same aggregate amount under the duration of the contract as it would have under the first option. Media General is thus forcing DISH to pay for the Young stations regardless of whether or not DISH capitulates to the demand to dissolve the Young Agreement. If DISH were to pay the demanded amount for the Media General stations alone, it would represent a 500 percent increase from the prior agreement. And, if DISH were to choose to enter into an agreement just for the Media General stations based on the latest offer, then DISH would be paying the same amount as it would pay if it chose to dissolve the Young Agreement, *and* would have to continue to pay under the Young Agreement for the life of that contract. Giving DISH the choice between two unacceptable outcomes is clear evidence of bad faith.

28. On October 11, approximately four hours after receiving Media General's written counter offer, DISH replied with its own counter offer. Media General has not yet responded, meaning that **7 days have now elapsed since DISH's latest counter offer**. Consumers in the Media General markets have now been deprived of important local and network content since September 30, 2013. Media General's demand to re-open the separate Young Agreement and include those stations within any new DISH-Media General retransmission consent agreement comes despite the fact that DISH and Young have a valid, binding contract that does not expire for more than a year. As a result, it is inappropriate for Media General to demand dissolution of the unaffiliated Young Agreement as a condition of reaching a new retransmission consent agreement.

29. As demonstrated in this verified complaint and in accordance with 47 C.F.R. § 76.7(a)(4)(ii), DISH has taken many steps to resolve the problem and reach a retransmission consent agreement with Media General.

VI. COUNT I – UNREASONABLY DELAYING RETRANSMISSION CONSENT NEGOTIATIONS

30. DISH hereby incorporates as if fully restated the allegations in paragraphs 1 through 29 hereof.

31. Between September 30 and October 11, 2013, Media General refused to respond to DISH’s requests for negotiations for the Media General stations. After promptly responding to Media General’s counter offer of October 11, 2013, DISH has now been waiting for 7 days for a response. By unreasonably delaying the process of negotiating retransmission consent, Media General has committed a violation of the Commission’s *per se* rule against “acting in a manner that unreasonably delays retransmission consent negotiations.” *See* 47 C.F.R. § 76.76(b)(1)(iii). Media General has also frustrated any possibility of timely achievement of a new retransmission consent agreement with DISH by unilaterally demanding that DISH re-open the Young Agreement as a condition of reaching a new deal.

VII. COUNT II – FAILING TO PROVIDE LEGITIMATE REASONS FOR REQUIRING THAT DISH RENEGOTIATE FOR THE UNAFFILIATED YOUNG STATIONS

32. DISH hereby incorporates as if fully restated the allegations in paragraphs 1 through 29 hereof.

33. Despite DISH’s repeated requests to do so, Media General has refused to deviate from its position that DISH shall not receive retransmission consent for the Media General stations unless DISH dissolves its current Young Agreement and includes those stations as part

of any new Media General deal. Media General's offer to charge the same amount but leave out the Young stations from any new agreement, while appearing to be a change of position, offers no meaningful change from the prior stance. In declining to deviate from this unreasonable and baseless condition, Media General repeatedly refused to offer DISH any acceptable reason for this condition. This is a violation of the Commission's *per se* rule against unsupported rejections of retransmission consent proposals. See 47 C.F.R. § 76.76(b)(1)(v).

VIII. COUNT III – TOTALITY OF THE CIRCUMSTANCES

34. DISH hereby incorporates as if fully restated the allegations in paragraphs 1 through 29 hereof.

35. Media General's unilateral condition that DISH re-open and renegotiate the unaffiliated Young Agreement also meets the Commission's "totality of the circumstances" standard for violations of the good faith rules. In addition to *per se* violations, a party to a negotiation "may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station . . . breached its duty to negotiate in good faith as set forth in § 76.65(a)."

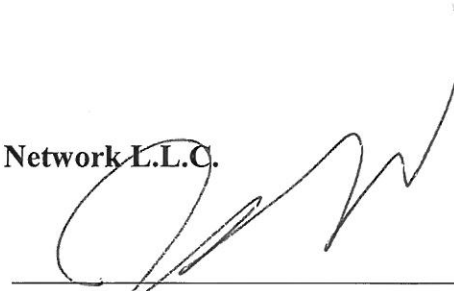
36. Asking DISH to re-open an entirely separate retransmission consent agreement, and one which does not expire for more than a year, is an unreasonable and unwarranted misuse of the leverage that Media General wields over DISH through the ongoing blackout of the Media General stations. Based on Media General's latest counter offer, DISH would be punished for asking to limit any new agreement to the Media General stations alone, because DISH would pay the same aggregate amount as it would pay if the Media General and Young stations were combined, and would be obligated to continue paying under the current Young Agreement for the life of that contract.

IX. REQUEST FOR RELIEF

37. Wherefore, DISH respectfully requests that the Commission (i) find that, pursuant to 47 U.S.C. § 325(3)(C)(ii) and 47 C.F.R. § 76.65, Media General has breached its statutory obligation to negotiate in good faith a retransmission consent agreement with DISH; (ii) immediately require Media General to negotiate in good faith with DISH to offer its retransmission consent so that its programming may be offered over DISH's DBS system; (iii) immediately require Media General to submit to mediation with DISH in order to facilitate a good faith retransmission consent negotiation; and (iv) award such other relief that the Commission deems just and appropriate.

DISH Network L.L.C.

By:

A handwritten signature in black ink, appearing to read 'Jeffrey H. Blum', is written over a horizontal line. The signature is stylized and cursive.

Jeffrey H. Blum
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1110 Vermont Ave NW, Suite 750
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Dated: October 18, 2013

VERIFICATION

I have read and reviewed the foregoing Verified Retransmission Complaint of DISH Network L.L.C. and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing; and it is not interposed for any improper purpose. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on October 18, 2013.



Sruta Vootukuru
Director of Programming
DISH Network L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of October 2013, a copy of the foregoing Verified Retransmission Complaint was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via First Class† or electronic mail*:

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