

December 2, 2013

Diane J. Cornell  
Special Counsel  
Office of the Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: FCC Process Reform

Dear Ms. Cornell:

On behalf of Comcast and NBCUniversal (“Comcast”), we want to thank Chairman Wheeler and you for your efforts to improve FCC processes.<sup>1</sup> We applaud your commitment to strive to improve the agency’s efficiency, transparency, and communications with stakeholders, and we welcome the opportunity to tender several suggestions to advance those goals.

As requested, we have limited these suggestions to ways to improve FCC processes, rather than substantive reforms, and we have avoided addressing issues that are pending in active dockets. The suggestions below are intended to help increase transparency, reform information collections, and eliminate requirements that are unnecessary and inefficient. Specifically, we recommend the following:

1. Retransmission consent election correspondence: broadcasters should be permitted to use established courier services.
2. Notifications of investigations: companies should be routinely informed when investigations are closed without enforcement action.
3. Update rules to reflect subsequent legal developments: the C.F.R. should be updated to conform to judicial and statutory developments.
4. Consolidate and eliminate data collections: unnecessary or duplicative information collections should be eliminated.
5. Broadcast renewals: broadcast renewal applications should be processed promptly, not held pending resolution of complaints.

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<sup>1</sup> See Diane Cornell, Special Counsel, Office of the Chairman, *A Call for Input: Improving Government Efficiency at the FCC*, Official FCC Blog (Nov. 18, 2013), <http://www.fcc.gov/blog/call-input-improving-government-efficiency-fcc>.

6. Children's television amendments: the consolidated database system should be changed so that minor amendments to children's programming reports do not overwrite the evidence of timely initial filings.
7. Weekly calendar: the FCC should resume the practice of regularly releasing a calendar showing upcoming speeches and other public appearances by the Chairman, Commissioners, and staff.

Each of these proposals is explained at greater length below.

Retransmission consent election letters: The Commission should allow retransmission consent correspondence to be sent by courier services like Federal Express and UPS. Every three years, commercial television stations must send letters to multichannel video programming distributors ("MVPDs") no later than October 1 electing between mandatory carriage and retransmission consent. For cable systems, the rules mandate that the election letter be sent by "certified mail." 47 C.F.R. § 76.64(h). For satellite carriers, the rules mandate that the election letter be sent by "certified mail, return receipt requested." 47 C.F.R. § 76.66(d)(ii). The purpose of these requirements is to avoid disputes about whether the MVPD received the station's election letter in a timely manner. The FCC has previously ruled that courier services such as Federal Express and UPS cannot be used. The U.S. Postal Service has not computerized the process of requesting certified mail or return receipts. This means that each form for certified mail and return receipts must be written out by hand. This can be exceedingly time-consuming: a broadcaster may have to send letters to thousands of individual cable systems. Using established courier services would be far less burdensome, while providing the same protections: the established courier services provide very detailed confirmation of the date and time of receipt, and labels for shipments can be generated by computer. *The Commission should therefore vote to amend rules 76.64(h) and 76.66(d)(ii) to include the option to send election letters by established courier services.*

Notifications regarding closing of investigations: *The Enforcement Bureau should routinely notify subjects of investigations when the investigations have been closed without enforcement action.* Advising subjects of Letters of Inquiry (or subjects of complaints that have been asked by the FCC to respond to or provide information about such complaints) that the matter has been closed would reduce uncertainty without limiting future FCC flexibility on analogous matters. If the matter is dismissed for procedural or other non-substantive reasons, the FCC could make that clear in the dismissal letter.

Update rules to reflect subsequent legal developments: The FCC's rules are not always corrected to reflect judicial and legislative developments. For example, certain changes to the cable attribution rules pertaining to insulation of limited partnership interests and attribution of minority interests where there is a single majority shareholder were vacated in 2001, but the C.F.R. still reflects the rules as they were revised by the order that was vacated. 47 C.F.R. §§ 76.501 Note 2, 76.503 Note 2(b)(1), (2), 76.504 Note 1(b)(1), (2). Various rules that are still on the books discuss regulation of the cable programming service tier, *see, e.g.*, 47 C.F.R. § 76.922, for which Congress sunsetted regulation effective in 1999, *see* 47 U.S.C. § 543(c)(4).

*The FCC should adopt a process to automatically track these legal developments and conduct a thorough syncing of its rules on an annual basis to ensure consistency.*

Information collections: You asked specifically about information collections and in particular about how to make them more focused, transparent, and relevant. This is clearly an area in which substantial reduction of burdens ought to be achievable. The Government Accountability Office (“GAO”) reported in 2010 that the FCC gathers information through 413 separate OMB-approved collection instruments.<sup>2</sup> GAO further reported that the FCC estimates that it receives nearly 385 million responses to these collection instruments, which collectively impose an estimated 57 million paperwork burden hours on consumers and industry.<sup>3</sup> At the time, the GAO report indicated that the then-FCC Chairman had directed the Office of Strategic Planning and Policy Analysis to conduct a top-to-bottom review of the Commission’s systems and processes for information collection, processing, analysis, and dissemination.<sup>4</sup> *This process should be reinvigorated to ascertain whether each current data collection is truly needed. The FCC should also strive to harmonize data collections, and avoid duplication of data requests.*

For example, the required annual Cable Operator Report (Form 325) and the annual Cable Industry Price Survey both include the production of similar information. FCC Form 325 solicits detailed operational information from cable television systems, including number of subscribers, potential subscribers and homes-passed; plant data (e.g., length of coaxial cable (km), length of fiber cable (km), number of fiber nodes, average subscribers served per node, etc.); signal and frequency distribution data; CPE data; and channel line-ups, all collected on a Physical System Identification Number (“PSID”) or Cable System basis, while the Cable Price Survey includes rates for basic cable service, rates for cable programming service, equipment rates and installation charges, number of subscribers per CUID, channels offered on each tier, availability of advanced services (i.e., telephony and HSI) by community, and channel lineup for each community. In addition to eliminating any duplication between these information collections, the Commission should consider whether it really needs to collect all of the detailed technical plant data that is required by Form 325.

Act promptly on broadcast renewal applications: *The Commission should end the practice of routinely placing lengthy holds on broadcast renewal applications for the purpose of extending the statute of limitations for potential NALs against broadcast stations.* A large number of broadcast renewal applications have been held for more than one eight-year renewal cycle due primarily to the pendency of unresolved indecency complaints. This means that many broadcasters have multiple renewal applications pending. This can have implications for broadcasters who seek financing and must disclose to potential lenders that their broadcast

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<sup>2</sup> U.S. Gov’t Accountability Office, GAO-10-249, *Information Collection and Management at the Federal Communications Commission*, at 4 (Jan. 2010), available at <http://www.gao.gov/assets/310/300545.pdf>.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 23.

licenses are subject to ongoing regulatory uncertainty. The FCC can deal with this by acting promptly on the pending complaints (including dismissal where appropriate) and by entering into tolling agreements.

Children's television amendments: Form 398 is filed quarterly by commercial television stations to report on the children's educational and informational programming broadcast by the station in the prior calendar quarter. These reports must be filed on the 10th day following the close of the quarter. Television station licensees must certify in their renewal applications that they filed these reports in a timely manner throughout the eight-year license term. Occasionally, licensees discover errors in their reports that they correct on their own initiative. When they amend a previously filed report, however, the new report completely replaces the prior report, and the "date filed" appearing on the report in the Media Bureau's Consolidated Database System will be ONLY the date of the amendment, which will erroneously make the report appear to be late-filed.<sup>5</sup> *The CBDS should be changed so that minor amendments to children's programming reports do not overwrite the evidence of timely initial filings.*

Weekly calendar: Finally, *we recommend that the Commission resume its practice of releasing a weekly calendar that lists all upcoming speeches and other public appearances by the Chairman, Commissioners, and senior agency staff.*

We appreciate the opportunity to share these ideas with you and would be pleased to discuss these issues further with you or your designee.

Sincerely,

/s/ Kathryn A. Zachem  
Kathryn A. Zachem  
Senior Vice President, Regulatory and State Legislative Affairs  
Comcast Corporation

/s/ Meredith Attwell Baker  
Meredith Attwell Baker  
Senior Vice President, Government Relations  
NBCUniversal

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<sup>5</sup> For this reason, the Media Bureau recently rescinded a Notice of Apparent Liability that charged the licensee with numerous late filings. See *KPLC License Subsidiary*, Order, DA 13-2162 (M.B., Nov. 13, 2013).