

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

In the Matter of	)	
	)	
Implementation of Section 103 of the STELA Reauthorization Act of 2014	)	MB Docket No. 15-216
	)	
Totality of the Circumstances Test	)	
	)	

**OPPOSITION OF INCOMPAS, ITTA–THE VOICE OF MID-SIZE  
COMMUNICATIONS COMPANIES, NTCA–THE RURAL BROADBAND  
ASSOCIATION AND PUBLIC KNOWLEDGE TO  
MOTION FOR EXTENSION OF TIME**

INCOMPAS,<sup>1</sup> ITTA–The Voice of Mid-Size Communications Companies, NTCA–The Rural Broadband Association and Public Knowledge (collectively known as Networks for Competition and Choice) hereby oppose the request of the National Association of Broadcasters and the four network affiliate associations (the Broadcast Associations) for the Commission to extend the upcoming comment and reply comment deadlines in the above-referenced proceeding by 60 days.<sup>2</sup> The broadcasters contend that a delay would be justified given their concurrent participation in the incentive auction; however, both Congress and the Commission have provided sufficient notice of this proceeding and consumers have waited long enough for a resolution to address the increasing number of disputes between broadcasters and multichannel video programming distributors (“MVPDs”) over retransmission consent agreements. In this

---

<sup>1</sup> COMPTTEL is now doing business as INCOMPAS.

<sup>2</sup> Motion for Extension of Time by the National Association of Broadcasters *et al.*, MB Docket No. 15-216, (filed Oct. 23, 2015).

case, the broadcasters are using the incentive auction as an opportunity to delay a proceeding that could reign in their unchecked bargaining leverage in retransmission consent negotiations with MVPDs. This self-serving motion falls far short of meeting the Commission's high bar for granting an extension only for good cause shown and the Commission should deny the Broadcast Associations' request.<sup>3</sup>

While a comment deadline extension would allow broadcasters the ability to focus on one Commission proceeding at a time, it would maintain the status quo for MVPDs who have had to deal with exorbitant price increases for both broadcast and non-broadcast programming, as well as for their customers who have seen these increases reflected in their monthly billing statements. In a recent survey of NTCA and INCOMPAS members that currently provide video service, 95% of respondents indicated that the single biggest barrier to providing video is obtaining access to reasonably-priced programming.<sup>4</sup> In addition, 40% reported increases in retransmission consent fees during the current contract cycle in comparison to the previous contract cycle of more than 100% (11% reported increases of more than 200%).<sup>5</sup> Furthermore, the survey results clearly show that video service providers are not able to exert any type of

---

<sup>3</sup> See, e.g., *Application of Media General Broadcasting of South Carolina Holdings, Inc. for Renewal of License for Station WBTW(TV), Florence, SC*, 19 FCC Rcd 24744 (2004) (“For good cause shown, we will grant the requested extension of time.”). Generally, the Commission’s “criteria for granting such requests are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay.” *Audio Enterprises, Inc.*, 3 FCC Rcd 5402 (1988). The Broadcast Associations’ request fails to satisfy these criteria.

<sup>4</sup> See NTCA–The Rural Broadband Association and INCOMPAS’ 2015 Video Competition Survey, INCOMPAS, 3 (Oct. 20, 2015), [www.incompas.org/files/The%20RuralBroadbandAssociationandINCOMPAS2015VideoCompetitionSurvey.pdf](http://www.incompas.org/files/The%20RuralBroadbandAssociationandINCOMPAS2015VideoCompetitionSurvey.pdf). A total of 226 companies participated in the survey and the results can be estimated to be accurate within +/- 6% at the 95% confidence level.

<sup>5</sup> *Id.*

leverage in their negotiations with programmers,<sup>6</sup> and the impact is being felt by consumers in the form of increased prices and the loss of local programming via blackouts.

Separately, ITTA surveyed its members. ITTA's members also have reported escalating content fees as the single most significant issue from a cost standpoint that they face in the delivery of video programming. With respect to retransmission consent fees for broadcast programming, 50% of survey respondents reported that they experienced an increase in those fees of more than 90% in comparison to the previous contract cycle.<sup>7</sup> By contrast, 100% of respondents reported an increase of 20% or less for non-broadcast programming fees. Clearly, MVPDs and consumers have come to find the current retransmission consent framework untenable and the Commission should maintain the current comment deadlines in order to conclude this proceeding as soon as possible.

Additionally, all parties in this proceeding have had extended notice that changes to the current framework were being considered. Congress directed the FCC to review the totality of the circumstances test when it passed the STELA Reauthorization Act in December<sup>8</sup> and the Commission adopted the *Notice of Proposed Rulemaking* in September.<sup>9</sup> The summary of the *NPRM* was published in the *Federal Register* on October 2nd giving parties 60 days in which to

---

<sup>6</sup> *Id.* at 4-6 (detailing the negotiation challenges faced by survey respondents, such as network involvement, bundling and tier placement requirements)

<sup>7</sup> The results of the ITTA survey have not been formally published.

<sup>8</sup> The STELA Reauthorization Act of 2014 ("STELAR"), § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (enacted Dec. 4, 2014).

<sup>9</sup> *Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, Notice of Proposed Rulemaking, MB Docket No. 15-216, FCC 15-109 (rel. Sep. 2, 2015) ("*NPRM*").

submit comments.<sup>10</sup> The notice in the lead up to this proceeding has been more than sufficient for parties to gather information and prepare comments and an additional 60-day delay cannot be justified.

Consumers and the parties participating in this proceeding have waited long enough to engage in regulatory debate over how best to update the good faith negotiation framework, starting with the totality of the circumstances test. Here the Commission and the public interest would be best served by denying the request for an extension to the comment and reply comment deadlines and moving forward expeditiously to gather a complete and actionable record that will allow it to take meaningful steps to update the good faith negotiation framework for retransmission consent agreements.

Respectfully submitted,

*/s/ Micah Caldwell*

Micah Caldwell  
Vice President, Regulatory Affairs  
ITTA–The Voice of Mid-Size Communications  
Companies

*/s/ Angie Kronenberg*

Angie Kronenberg  
Chief Advocate & General Counsel  
Christopher L. Shipley  
Attorney & Policy Advisor  
INCOMPAS

*/s/ Jill Canfield*

Jill Canfield  
Vice President of Legal & Industry  
Assistant General Counsel  
NTCA–The Rural Broadband Association

*/s/ John Bergmayer*

John Bergmayer  
Senior Staff Attorney  
Public Knowledge

October 28, 2015

---

<sup>10</sup> FCC Public Notice, “Comment Deadlines Set for Notice of Proposed Rulemaking on Implementation of Section 103 of the STELA Reauthorization Act of 2014 Totality of the Circumstances Test,” MB Docket No. 15-216, DA 15-1124 (rel. Oct. 2, 2015).

## CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2015, I caused true and correct copies of the foregoing Opposition of INCOMPAS, ITTA–The Voice of Mid-Size Communications Companies, NTCA–The Rural Broadband Association and Public Knowledge to Motion for Extension of Time to be served electronically or by first-class mail, as noted, upon the following:

Rick Kaplan  
National Association of Broadcasters  
1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430  
[rkaplan@nab.org](mailto:rkaplan@nab.org)

Emily Barr\*  
Chair, ABC Television Affiliates Association  
Board of Governors  
President & CEO, Graham Media Group  
180 N. LaSalle, Ste. 2880  
Chicago, IL 60601  
(312) 917-6262

Michael J. Fiorile  
CBS Affiliate Board Chairman  
Vice Chairman & CEO  
The Dispatch Broadcast Group  
34 S. 3rd Street  
Columbus, OH 43215-4201  
(614) 460-3888  
[mfiorile@dispatch.com](mailto:mfiorile@dispatch.com)

Jeff Rosser\*  
Chairman, FOX Affiliates Board  
Group Vice President, Television  
Raycom Media, Inc.  
201 Monroe Street  
RSA Tower, 20th Floor  
Montgomery, AL 36104  
(334) 206-1421

Ralph Oakley  
NBC Affiliates Broad President  
President and CEO, Quincy, Inc.  
PO Box 909  
Quincy, IL 62306-0909  
(217) 221-3404  
[roakley@quincyinc.com](mailto:roakley@quincyinc.com)

\* Certificate of service sent via first-class mail

/s/ Christopher L. Shipley  
Christopher L. Shipley  
INCOMPAS  
1200 G Street, NW  
Suite 350  
Washington, DC 20005  
(202) 872-5746  
[cshipley@incompas.org](mailto:cshipley@incompas.org)