



The voice of mid-size communications companies

September 9, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Notice in MB Docket No. 10-71, Amendment of the Commission's Rules Related to Retransmission Consent

Dear Ms. Dortch:

Genny Morelli and I met separately with Alison Nemeth in Commissioner Pai's office and Maria Kirby in Chairman Wheeler's office on September 3 and September 9, 2015, respectively, to discuss the Commission's proposal to eliminate the program exclusivity rules.¹ We expressed our belief that the program exclusivity rules are unnecessary and have outlived their intended purpose. Changes in the video industry since the exclusivity rules were put in place have negated the basis for these protections and they should be eliminated.

We pointed out that the program exclusivity rules have a distorting effect on marketplace negotiations. By ensuring that the local station is the sole supplier of network and syndicated programming, the exclusivity rules shield broadcasters from competition, allow broadcasters to demand exorbitant retransmission consent fees through take-it-or-leave-it negotiation tactics, and enable broadcasters to block availability of programming even if negotiations fail, thereby increasing costs for consumers and preventing them from obtaining programming from alternative sources that may be more affordable.

We emphasized that repealing the exclusivity rules is a crucial first step but does not by itself go far enough. The Commission must also adopt measures to restrict behavior that functions as an end run around repeal of the rules, such as arrangements between and among networks and affiliates that limit an MVPD's ability to carry a distant signal. Such arrangements are inconsistent with the statutory duty to negotiate in good faith and the Commission's media

¹ See Tom Wheeler, "Upgrading Media Rules to Better Serve Consumers in Today's Video Marketplace," FCC Blog, available at: <https://www.fcc.gov/blog/upgrading-media-rules-better-serve-consumers-today-s-video-marketplace> (Aug. 12, 2015). This *ex parte* notification is timely filed pursuant to the Commission's Public Notice providing an extension of time until September 9, 2015 for certain filing deadlines in connection with the FCC's recent IT upgrade, during which many of the Commission's online databases, including ECFS, were unavailable. See "Certain FCC Databases Will Be Unavailable and Filing Deadlines Will Be Extended in Early September to Accommodate a Significant FCC IT Upgrade," Public Notice, DA 15-940 (rel. Aug. 20, 2015), at 2.

ownership policies, which preclude third-party influence or control over a local station's programming decisions and other core operating functions. The right to grant retransmission consent and to negotiate carriage with MVPDs in a market should rest exclusively with independent local broadcasters, free from outside intrusion.

We urged the Commission to move forward with repeal of the rules, coupled with these additional measures, as quickly as possible. Although the Commission is evaluating network interference and similar conduct during retransmission consent negotiations in the context of its rulemaking proceeding regarding the good faith standard, broadcasters' relinquishment of their right to grant retransmission consent to third parties is becoming more common.² Repeal of the program exclusivity rules is likely to lead to an increase in such arrangements, further impeding consumer choice in video programming options, including the ability to watch stations to which they have historically enjoyed access.

Finally, we observed that taking such action would not harm localism or result in a spate of distant signal importations. MVPDs would continue to have an incentive to reach an agreement with local stations that provide valuable local news and community affairs programming pursuant to their public interest obligations. Indeed, greater competition among broadcasters would incentivize them to respond to conditions in local markets by improving the quality of local programming, benefiting the public interest. To the extent there are concerns that repeal of the rules would negatively impact very small broadcasters with limited resources, the Commission could consider exceptions in appropriate circumstances.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



Micah M. Caldwell
Vice President, Regulatory Affairs

cc: Maria Kirby
Alison Nemeth

² See *In the Matter of Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, MB Docket No. 15-216, Notice of Proposed Rulemaking, FCC 15-109, ¶ 14 (rel. Sept. 2, 2015).