July 24, 2015

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

Re: Notice of Ex Parte Communication, MB Docket No. 10-71

Dear Ms. Dortch:

On Thursday, July 23, Rick Kaplan of the National Association of Broadcasters met with Maria Kirby of the Office of Chairman Wheeler to discuss the Commission’s network nonduplication and syndicated exclusivity rules.

The issues raised by Mr. Kaplan are summarized in the attached slides, which were presented at the meeting.

Respectfully submitted,

Erin L. Dozier
Senior Vice President and Deputy General Counsel
Legal and Regulatory Affairs

Enc.

cc: Maria Kirby, Bill Lake, Michelle Carey, Nancy Murphy, Mary Beth Murphy, Steven Broeckaert, Diana Sokolow, Raelynn Remy, Kathy Berthot
Network Non-Duplication & Syndicated Exclusivity:

If the FCC eliminates its exclusivity rules, consumers pay the price
What Is “Exclusivity”?  

Two rules: 

• **Network Non-Duplication**  
  – Protects a local broadcast TV station’s right to be exclusive distributor of network programming within specified zone  
  – Allows local broadcast TV stations to protect exclusive distribution rights they negotiated with broadcast networks in geographic zone not to exceed 35 miles (55 miles in smaller markets)  

• **Syndicated Exclusivity**  
  – Similar to the network non-duplication, but applies to exclusive contracts for syndicated, rather than network, programming
Why Exclusivity Rules Matter

What is the impact of the FCC’s exclusivity rules?

• Without them, localism fades
  – Stations need a meaningful remedy as litigation not practical
    ▪ Contractual remedies fall short, given a lack of privity, litigation expense and conflicting incentives for enforcement
  – Without rules, larger stations have ability to expand reach to detriment of small-market stations

• Serve as counterweight to government’s significant compulsory copyright subsidy to cable industry

• Protect consumers from disruption, confusion
The Exclusivity Rules

Make a Meaningful Difference
Effective Remedy

- Exclusivity rules are an essential enforcement mechanism; boundary enforcement far less practical without FCC mechanism.
Small Market Issues

- Today, FCC rules protect local TV exclusivity within a geographic zone of 35 miles (or 55 miles in smaller markets)

- Broadcasters have incorporated this geographic limitation into their contracts and, because of the rules, stations do not negotiate for coverage beyond those distances

- Eliminating the rule may incentivize stronger, large-market stations to seek to expand their exclusive service areas
Government’s Cable Subsidy

- Compulsory licenses are an exception to copyright owners’ exclusive right to choose whether and on what terms to license their content.
- It is widely understood that the cable industry pays below market rates, with almost no transaction costs, for the underlying broadcast content.
- The cable distant signal license thus acts as a significant, government-granted subsidy for cable industry.
- Government should not, on one hand, make it incredibly convenient and inexpensive for cable to import distant signals while, on the other, make it more difficult for broadcasters to find a way to enforce their market-negotiated exclusive rights.
Pay TV Seeking To Use Consumers As Pawns
Consumers will be harmed without FCC enforcement of exclusivity rules. Their repeal would lead to, among other things:

- More frequent and protracted retransmission consent disputes
- More consumer confusion
- More of the same rising cable bills they’ve been saddled with for decades
Protracted Retrans Disputes

• By making distant signal importation easier, the FCC will facilitate longer, more frequent disruptions
  – Cable operators will have a tremendous advantage over local broadcasters, and will threaten to import out-of-market signals
  – Broadcasters will be forced to hold out and engage local viewers to stop the importation of distant signals
  – Cable operators will feel emboldened to leave in place the distant signal as viewers will still be receiving national content

• Viewers are caught in the crosshairs more than ever as a result
Protracted Retrans Disputes

• Cable companies have an economic incentive for consumer disruption through importing distant signals
  – Cable operators compete head-to-head with local television broadcasters for advertising dollars
  – Creating an atmosphere of uncertainty about whether local broadcasters can consistently reach their entire local markets gives advertisers an incentive to choose outlets other than local broadcasting
  – Thus, importing distant signals in lieu of carrying local stations can place new advertising dollars directly into the pockets of MVPDs through their interconnects
Consumer Confusion

• When distant signals are pulled into the local market, consumers ultimately suffer
  – What happens if emergencies arise in the distant or local market? How will viewers receive timely, accurate information?

• If distant signals could be imported absent FCC’s exclusivity rules, the FCC would have to put in place new rules to require cable operators to protect consumers from harm due to out-of-market signal importation
Cable Price Hikes Nothing New

- Cable prices have long been outpacing the price of inflation, but now cable wants the FCC to believe that its high prices are related to retransmission consent fees.
- Has the FCC explored what makes up a consumer’s cable bill?
  - A tiny percentage would be attributable to broadcast TV, by far the most-watched stations across the board.
- Has the FCC explored questionable cable billing practices?
  - Cable industry consumer failings are well documented; that is the place for FCC involvement if consumers really matter.
Cable’s Longstanding Rate Rise

If cable truly believes that eliminating exclusivity will help them lower rates, then FCC should ensure that any cost savings go to consumers and not cable operators:

- Cable operators that import distant signals should be required to identify the amount they “saved” on consumer bills as a result of exclusivity rules changes and reduce consumer bills by that amount.
- FCC should require such disclosure as a matter of truth-in-billing.