September 9, 2015

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

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

Dear Ms. Dortch:

   On Wednesday, September 2, 2015, local broadcasters Sandy Breland of Raycom Media; Rich Howe of KAZT, Prescott/Phoenix, AZ; Randy Ingram, WBTW, Myrtle Beach/Florence, SC; Bill Huggins, WPDE/WWMB, Myrtle Beach/Florence, SC; Jimmy Cromwell, WJTV, Jackson, MS; and the undersigned, met separately with Chanelle Hardy, Chief of Staff and Media Legal Advisor, and Kyla Gardner in Commissioner Clyburn’s office; Valery Galasso, Policy Advisor to Commissioner Jessica Rosenworcel; Alison Nemeth, Interim Legal Advisor to Commissioner Ajit Pai; and Maria Kirby, Legal Advisor to Chairman Tom Wheeler. All the broadcasters expressed the urgent need to maintain the FCC’s network non-duplication and syndicated exclusivity rules.

   The local broadcasters took the opportunity to highlight the unique role they play in local communities across America each and every day. They pointed out that their stations’ local newscasts are often among the highest rated television programs of all types, including broadcast and cable network programming, in their local markets. With the 10th anniversary of Hurricane Katrina on August 29, the attendees that serve communities in Louisiana and Mississippi shared stories of riding out the hurricane to report vital information about the storm and recovery efforts. They asked what other media would step in to serve local communities if local stations are weakened by FCC regulatory actions, including elimination of the exclusivity rules. Certainly, cable operators eager to import distant signals containing no locally relevant news and emergency information would not fill this void.

   In response to questions about the necessity for the FCC’s rules, the broadcasters explained that it would be very difficult to enforce contractual exclusivity rights via the courts. Local broadcasters would face standing problems due to an absence of contractual privity. Those parties most likely to import distant signals with duplicating programming (cable operators) are not parties to local stations’ exclusivity agreements, nor are the out-of-market stations whose network and syndicated programs would be imported. The only party that could enforce contractual exclusivity is the network (or syndicated programmer), which may well be reluctant to bring suit against the affiliated station whose signals are being imported into distant markets. Thus, broadcast stations do not have direct recourse in the courts to enforce exclusivity. The broadcasters, moreover, explained that even if they could overcome the

1 Rich Howe did not attend the meeting with Chanelle Hardy. Jerianne Timmerman of the National Association of Broadcasters (NAB) accompanied the local broadcasters to the meeting with Ms. Hardy. Justin Faulb of NAB accompanied the broadcasters to the meetings with Ms. Galasso, Ms. Nemeth, and Ms. Kirby.
privity problem, the cost and length of court proceedings make it unlikely that small broadcasters could successfully pursue a court challenge to its conclusion. The courts are simply not a realistic option for local broadcasters to protect their bargained-for exclusivity rights in the absence of FCC rules.

In particular, one broadcaster shared his past experience when EchoStar illegally imported out-of-market signals into various local markets across the country. Virtually overnight, his station's audience decreased dramatically. Others shared stories of consumers calling their stations asking why they were seeing weather reports for New York City and commercials advertising electronics stores located in Manhattan. Eventually, EchoStar lost a court case challenging its behavior brought by the networks and affiliate associations, but only after a long and costly process.

The broadcasters also described the important role they play in facilitating local business advertising. They stated that local advertisers that rely on broadcasters to reach local audiences – their potential customers – are harmed when distant stations are imported. These advertisers are blocked from reaching local consumers, and they cannot afford to advertise on imported stations from major media markets, such as New York City or Los Angeles.

In sum, the broadcasters see no reason for the Commission to eliminate the exclusivity rules, which help local stations earn the revenues needed to serve local viewers. They strongly disagreed with any suggestion that the rules are outdated or unnecessary, stating that revoking the rules would have a significant, potentially fatal impact on small local stations. They observed that large national cable operators have the incentive and the ability, under their compulsory copyright licenses, to import distant signals into local markets, which would increase the cable operators' already considerable leverage in retransmission consent negotiations with small local stations and undermine the competitiveness of those stations.

The broadcasters respectfully ask the Commission to retain the exclusivity rules and enable local broadcasters to continue to serve local communities. We are ready to help if you have any questions about local broadcasters.

Sincerely,

/s/ Polly Prince Johnson

Polly Prince Johnson, President/CEO
Louisiana Association of Broadcasters

cc: Chanelle Hardy
Valery Galasso
Alison Nemeth
Maria Kirby
Kyla Gardner