VIA ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Written Ex Parte Communication, MB Docket No. 10-71, Amending the Commission’s Rule Governing Retransmission Consent

Dear Ms. Dortch:

The Mississippi Association of Broadcasters (the “MAB”), the trade association representing television and radio broadcasters in the State of Mississippi, and several of its member stations, respectfully submit this letter in the above-referenced docket. The FCC’s network non-duplication and syndicated exclusivity rules have been an important piece of the overall regulatory structure governing the relationship between broadcasters, MVPDs, and the public. They serve a vital purpose in protecting small market television stations and the localism they provide, and in balancing negotiations between broadcasters and MVPDs, which would otherwise have dominant market power, thanks to special copyright treatment and nationwide footprints. Removing these rules would undermine important Commission goals, harm viewers and the public at large, and rather than reducing the frequency and duration of retransmission consent battles, it may make such disputes worse.

Recently, Chairman Wheeler indicated in a blog post that he believes that the syndicated exclusivity and network non-duplication rules are “outdated” and need to be eliminated because they have been “rendered unnecessary by today’s marketplace.” The MAB respectfully disagrees with the Chairman and believes that, rather than being outdated and unnecessary in the modern TV marketplace, these rules are even more crucial to the promotion of local stations and the local programming they provide and fair negotiations between broadcasters and MVPDs.

Localism in programming is at the core of the FCC’s mission with regards to broadcast regulation:

As with competition and diversity, localism has been a cornerstone of broadcast regulation for decades. Broadcasters, who are temporary trustees of the public’s airwaves, must use the medium to serve the public interest, and the Commission has
consistently interpreted this to mean that licensees must air programming that is responsive to the interests and needs of their communities of license. Even as the Commission deregulated many behavioral rules for broadcasters in the 1980s, it did not deviate from the notion that they must serve their local communities.

See In The Matter of Broadcast Localism, 19 FCC Rcd 12425 (2004). The aim of decades of broadcast regulation has consistently been to disperse the production of content in order to ensure that all Americans have access to local voices and perspectives on their airwaves, whether through locally-produced programming or local news. Even in the 21st Century, when consumers have access to a nearly unlimited number of different sources of information through print media, broadcast radio and TV, MVPD-only TV channels, and the Internet, local broadcast television news remains a core element of the average American’s news and opinion consumption.

One of the likely results of the removal of the non-duplication and exclusivity rules is the increased importation of distant stations’ signals in lieu of local stations, a practice which is currently prohibited. This will lead to less money being invested in local programming, such as local news, and undermine the FCC’s important localism goals.

Another benefit of local programming comes in terms of public safety. Severe weather warnings and other public safety news delivered by local television broadcasters is a vital part of the alert system which keeps Americans safe. And almost as important as receiving relevant alerts is not receiving a surplus of irrelevant alerts. Allowing MVPDs to “import” programming from distant parts of the country could cause both problems: viewers in Mississippi who may not be aware that they are watching a network affiliate based in Chicago, rather than one from Jackson, will be confused to see winter storm warnings when the temperatures are in the 50s (which over time may lead them to ignore these warnings), and may miss out on vital tornado and hurricane warnings which would not be aired on those imported, distant stations.

Local news anchors, meteorologists, reporters, and producers are vital to keeping the public informed about their area, and there is no technical system which can replace the years of experience in and connection to local communities which local broadcasters bring. Undermining the ability of local news stations to reach viewers through MVPDs means reducing their ability to produce that high-quality local news programming, which the FCC has always believed to be vital to the public interest.
The Commission cannot trust the market alone to protect local programming. MVPDs, by virtue of their market power in many parts of the country, are not effectively constrained by competitive market forces, and cannot be relied upon to accurately reflect the preferences of consumers. Other than complaining (which consumers do, a lot, when it comes to MVPDs), the only recourse many members of the public would have if they opposed their MVPD’s decision to cease using their local broadcast station and replace it with an ‘imported’ station would be to cancel their MVPD service (which may be subject to a contract) and receive the signals over the air, where possible. It is often not an option for them to switch to a different MVPD in their area, and if it is, there are usually only one or two other choices. This is not the sort of dynamic, functioning market which can be relied on to protect the public interest.

It is also important to recognize that the current regulatory system governing MVPDs and local broadcasters is a complex one with many moving pieces. Removing only the syndicated exclusivity and network non-duplication rules would throw the system out of balance in favor of MVPDs, which already receive special treatment in the system, particularly in the area of copyright. The compulsory copyright system which applies to MVPDs effectively grants them a reduced, government-controlled rate on broadcasters’ intellectual property, and this grant was made as a part of the system in which broadcaster local exclusivity was a crucial piece. Removing these protections undermines the “grand bargain” that the current system represents, and the Commission would be severely disturbing the marketplace in the process, in contravention of Congressional intent.

One rationale for eliminating the syndicated exclusivity and network non-duplication rules appears to stem from a belief that such elimination will reduce the problems posed by retransmission consent disputes between MVPDs and broadcasters. However, this rationale is highly speculative, and such elimination may instead cause exactly the opposite: longer and more damaging retransmission fights leading to even more consumer harm. And insofar as such elimination does reduce the problem of retransmission consent disputes, it will be because the Commission has given the MVPDs a “trump card” in negotiations, as discussed above: if MVPDs don’t need local broadcasting, they will have little incentive to actually negotiate on fair terms with local broadcasters. If the FCC’s goal is to reduce the frequency and severity of these disputes, there are more effective ways to do so which do not risk causing such drastic problems in other important areas of the MVPD/broadcast/consumer relationship.
MAB urges the Commission not to upend the careful balance between MVPDs and broadcasters by eliminating the syndicated exclusivity and network non-duplication rules. Doing so would harm the public interest in many ways by reducing the ability of local broadcasters to bring high quality local programming and information to viewers via their MVPD. Instead, it would unfairly aid MVPDs in their retransmission consent negotiations, leading to further consolidation, consumer confusion, and reductions in public safety.

Respectfully Submitted,
Mississippi Association of Broadcasters

Karla Hooten, President

CC: (by email)
Chairman Tom Wheeler
Commissioner Mignon Clyburn
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