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322

Congress of the United States
House of Representatives
Washington, DC 20515-1705

May 2, 2018

The Honorable Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Pai:

This letter serves to follow up on my January 26, 2018 correspondence expressing my strong support for the petition WYMT-TV (CBS), and its parent company Gray Television, filed with the Federal Communications Commission (FCC) on January 16, 2018 under proceeding number 18-8 to be carried by satellite television providers. Subsequent to my correspondence, over 2,300 of my Eastern Kentucky constituents registered their support for this petition with the FCC. Mr. Chairman, while this may seem like a merely inconsequential administrative proceeding to you and your colleagues at the Commission, the issue gets to the very heart of culture and our identity as Appalachians. Ensuring that rural American have access to local broadcast and media content is also the precise reason that Congress amended the Satellite Television Extension and Localism Act Reauthorization (STELAR) Act of 2014.

Unfortunately, I have received word that the FCC now plans to deny this petition for reasons both inapplicable to the governing statute and adverse to congressional intent. I write to express my profound disappointment, to urge immediate reconsideration, and to request approval of this petition in accordance with federal law by the statutory deadline of May 16, 2018.

It is my understanding that, as basis for the denial, the FCC will rely on 47 USC 338(c)(1), which states that satellite carriers are not required to carry two stations in the same local market if the stations are affiliated with the same network. However, this very provision also explicitly includes an exception stating that this section does not apply if the "stations are licensed to communities in different States." This petition falls squarely within this unequivocal exception. As you are aware, the petition seeks to gain satellite carriage rights in the following counties: Bell, Floyd, Harlan, Johnson, Leslie, Letcher, Martin, and Pike. As evidenced by the information supplied with the petition, in every single one of these counties, the CBS affiliate is from a different state, namely West Virginia or Tennessee. As such, Section 338(c)(1) should absolutely not be a bar to WYMT from gaining carriage.

As aforementioned, stations like WYMT – those that do not neatly conform to Nielsen-measured designated market area boundaries – are the precise reason and motivation behind Congress' bipartisan amendments to the Communications Act. My colleagues and I in Congress recognized that some satellite television viewers, such as those in Eastern Kentucky, are not able to access their local news, politics, sports, and emergency programming because of the way television stations are defined as "local" for satellite carriage purposes. We enacted the STELAR Act to address this exact problem by adding flexibility to the current definition of a local television market for satellite carriage. As we delegated authority to the FCC to oversee this market

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modification process, we trusted the agency would follow our intent for passing this legislation. I am deeply disappointed this appears not to be the case.

In my January letter, I clearly laid out the importance of WYMT to the region, but I am compelled to reiterate the importance of this issue. Due to the terrain in Eastern Kentucky, satellite is often the preferred, and sometimes only, option for my rural constituents. Satellite subscribers constitute more than 50 percent of the viewers in WYMT's viewing area. Without access to WYMT, satellite customers in many counties receive "local" news from other small markets in Tennessee and West Virginia. Eastern Kentucky communities are as unique as the mountains that paint their skylines. Local news from Tennessee and West Virginia are simply not acceptable alternatives to our proud culture. A viewer in Harlan, Kentucky has absolutely no utility for a weather report detailing Knoxville's seven-day forecast. Eastern Kentuckians deserve access to a news station that provides the services the rest of the nation enjoys, and local news stories that actually impact and share the daily lives of its residents. Let me be absolutely clear – no other station can provide this service other than WYMT.

The vital importance of WYMT on satellite should have been visibly apparent to the FCC during its review, based on the abundance of positive public comments. In an astounding public show of support, the residents of Eastern Kentucky desperately attempted to gain the attention of the FCC, seemingly to no avail. Southern and Eastern Kentucky has long felt ignored by bureaucrats in Washington, and this is another prime example of that. I share their deep disapproval of this decision and I sincerely urge you to reconsider and reverse your preliminary and unofficial decision.

It is the constitutional privilege of Congress to make certain delegations of power to federal agencies, when appropriate. However, it does so in good faith that those powers will be executed in accordance with the law and in line with congressional intent. As Chairman Emeritus of the House Appropriations Committee, and purveyor of federal resources, I will closely monitor FCC funding streams to ensure money is or is not appropriated in a manner that ensures the laws dutifully passed by the United States Congress and delegated to the agencies, are adhered to the letter and intent of such law. I eagerly await your decision on the pending petition and certainly welcome any questions you might have.

Sincerely,


HAROLD ROGERS
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 15, 2018

The Honorable Harold Rogers
U.S. House of Representatives
2406 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rogers:

Thank you for your letter regarding the pending petition filed by Gray Television seeking a satellite market modification for WYMT-TV. I appreciate your longstanding representation of the area in question, as well as your particular interest in this matter. Unfortunately, I am unable to address specific issues related to the petition as it is a restricted proceeding under our *ex parte* rules. Specifically, under 47 C.F.R. § 1.1208, "*ex parte* presentations . . . to or from Commission decision-making personnel are prohibited . . . until the proceeding is no longer subject to administrative reconsideration or review or judicial review." The petition about which you have written falls into this category of proceeding.

Please be assured that the Commission staff will appropriately apply the relevant statutory provisions and applicable Commission regulations, and it will act on the petition within the statutory deadline. Your letter will be entered into the record of the proceeding and served on all of the parties in order to comply with Commission rules.

Please let me know if I can be of any further assistance.

Sincerely,


Ajit V. Pai