

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable Consumer
Protection and Competition Act of 1992)

MM Docket No. 92-259

REPLY COMMENTS OF THE
NETWORK AFFILIATED STATIONS ALLIANCE

The Network Affiliated Stations Alliance ("NASA") is an informal alliance of the ABC, CBS and NBC Television Affiliate Associations whose membership consists of over 600 television broadcast stations that are affiliated with either the ABC, CBS or NBC broadcast networks.

NASA hereby submits these reply comments in the above-referenced proceeding.

Implementation Of The
Exceptions To Retransmission Consent

1. We support the proposal of the National Association of Broadcasters ("NAB")¹ for implementation of the exceptions to the retransmission consent requirement which appear in Section 325(b)(2) of the Act.² NASA is concerned, in particular, with the exception in Section 325(b)(2)(C) which exempts from the retransmission

¹See, NAB Comments, pp. 40-42.

²47 U.S.C. §325(b)(2). The Cable Consumer Protection and Competition Act of 1992 is referred to herein as the "Act" or the "Cable Act."

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should uphold the Cable Act's more comprehensive must carry rules, then no useful purpose would appear to be served by the carriage and channel positioning rules adopted for network-owned cable systems, and we believe that repeal of those rules would then be appropriate. It would be premature, however, to repeal the carriage and channel positioning rules for network-owned cable systems until the constitutionality of the Act's must carry and channel positioning rules is established. We, therefore, urge the Commission, for the moment, to leave those rules in place.

**Applicability Of Network Non-Duplication Rules
If Retransmission Consent Is Elected**

7. The National Cable Television Association ("NCTA") argues that the Commission's network non-duplication rules should not apply to a network affiliate that elects retransmission consent.⁹ Not only is NCTA's argument expressly at odds with the legislative history of the Cable Act, it is based on an apparent misunderstanding of the network non-duplication rules. NCTA states that the Commission's network non-duplication rules "automatically" afford an affiliate the right to require a cable system to delete a duplicating distant network station.¹⁰ That is not true. The network non-duplication rules afford non-duplication protection to an affiliate only if it is provided for by agreement between the network and the affiliate. The Note to Section 76.92 states:

⁹See, NCTA Comments, pp. 34-36.

¹⁰Id. at p. 35.

"With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority shall be that geographic area agreed upon between the network and the television station." [Underlining supplied]

Thus, NCTA's argument is premised on an apparent misconception of the nature of the network non-duplication rules.

8. NCTA argues that the existence of the network non-duplication rules (and presumably, by analogy, the program exclusivity rules)¹¹ would somehow be unfair to local cable systems and to the viewing public in the absence of must carry. There is presently no must carry rule in place nor has there been in recent years, and the network and syndicated program exclusivity rules have in no way imposed a hardship on cable systems or the viewing public.

9. The effect of the Commission's non-duplication (and syndicated program exclusivity rules) is to constrict, rather than enlarge, the rights of television stations to contract for network non-duplication and program exclusivity protection. The rules, inter alia, limit the territorial scope of exclusivity, provide an exception for distant stations that are "significantly viewed" in the community, and contain specific procedures and notification requirements for implementation of the rules. NCTA's fairness argument is without merit and should, therefore, be rejected.

¹¹While NCTA does not challenge the applicability of the syndicated program exclusivity rules, the rules work the same way. The syndicated program exclusivity rule, like the network non-duplication rule, is triggered only by agreement of the parties. See, Sections 73.151 and 73.153.

10. More importantly, it is clear from the Cable Act's legislative history that Congress did not intend to confine the network non-duplication protection (or the syndicated program exclusivity) rules to stations electing must carry status. The Report of the Committee on Commerce, Science and Transportation expressly acknowledged the efficacy of these rules both in the case of a Section 614 or 615 must carry election and a Section 325 retransmission consent election. The Committee, at p. 38, stated as follows with respect to this issue:

"In that connection, the Committee has relied on the protections which are afforded local stations by the FCC's network non-duplication and syndicated exclusivity rules. Amendments or deletions of these rules in a manner which would allow distant stations to be submitted on cable systems for carriage or local stations carrying the same programming would, in the Committee's view, be inconsistent with the regulatory structure created in S. 12."¹²

Application Of Retransmission Consent To Distant Signals

11. PrimeTime 24 urges the Commission to limit the retransmission consent rights of network stations to "must carry situations" and argues that a failure to do so could somehow result in a loss of network service. It is clear beyond dispute that Section 325's retransmission consent provisions apply both to distant and must carry signals, and the Commission is without authority to construe Section 325 otherwise. Even if the Commission could restrict retransmission consent as PrimeTime 24

¹²S. Rept. 102-92, Cable Television Consumer Protection Act of 1991 (S. 12), 102nd Cong. 1st Sess., June 28, 1991.

CERTIFICATE OF SERVICE

I, Brenda Fillman, do hereby certify a true and correct copy of the foregoing "Opposition to Petition for Rulemaking of the National Cable Television Association, Inc. to Revise the Network Non-Duplication Rules" was sent, via first class mail, on this date, February 8, 1993, to the following:

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Brenda Fillman