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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Chairman Reed E. Hundt
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 94-123/NTIA July 20 Filing

Dear Chairman Hundt:

Today is July 21, 1995, the day the Commission's sunshine notice is scheduled to be issued for the July 28 meeting. We have only today obtained a copy of the NTIA's 30-plus page submission to you of late yesterday.¹ We are obviously disturbed by the fact that we will have no opportunity to analyze the submission in an in-depth fashion before the Sunshine Notice issues.

If the Commission is inclined to rely on any part of the NTIA filing, fundamental fairness requires the Commission allow all commenters to respond to the arguments presented in that filing. Specifically, the Commission could invite commenters to respond to the NTIA filing pursuant to § 1.1204(b)(7) of the Commission's Rules, even during the sunshine period. Alternatively, if it intends to rely on the filing, the Commission should delay voting on the item to allow a reasonable period for parties to respond.

Given that the Coalition has had only a couple of hours to review the 45 page NTIA filing, the Coalition has not had an opportunity to adequately review the filing.

¹ NTIA evidently mailed a copy, but that copy has not even arrived.

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Even a cursory reading of the filing, however, demonstrates that it is fundamentally flawed.

For example, NTIA argues that the Coalition² has not presented a rationale for distinguishing between the off-network and network restrictions. This is simply false. The Coalition has stated that the off-network restriction has prevented willing sellers, *i.e.*, producers, from selling their programs to willing buyers, the network affiliates. On the other hand, the network restriction prevents the networks from forcing unwilling buyers, the affiliates, to accept network programming during the access hour.

In addition, Dr. Bykowsky argues that Professors Williamson and Woroch have not explained how the network restriction enhances viewer welfare. He argues that viewer welfare is not enhanced by the restriction because network affiliates "typically exhibit syndicated programming" in the access hour. This argument simply misses the point. What the network restriction does is allow network affiliates to air programming in the access hour that is tailored to local needs, be it syndicated programming or locally produced programming. In the Top 50 markets in November 1994, network affiliates programmed 52 half-hours of local news and local programming and 11 half-hours of national news.³ Moreover, network affiliates in the Top 50 markets aired 18 different syndicated programs.⁴

Finally, NTIA advocates the retention of PTAR in its entirety with another Commission review in five years, arguing that this will prevent disruption in the industry.

2 Actually, NTIA refers to Disney, not the Coalition. It is unfortunate, however, that NTIA ignores the many other producers who are part of the Coalition -- the very producers who contribute to the diversity that this Administration is concerned about. Similarly, NTIA ignores the network affiliates who are also members of the Coalition.

3 See Comments of the Coalition to Enhance Diversity, p. 22 n.63.

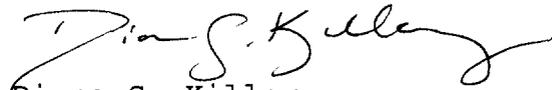
4 *Id.* at Figure 8.

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NTIA's scheme will create, however, exactly the opposite effect. The industry will be left to guess what outcome will occur in five years; uncertainty will prevail. On the other hand, elimination of the off-network restriction today will not create any disruption because of the way programs are syndicated. Syndication of off-network programs typically occurs two years before the programs are aired. If the off-network restriction were lifted today, all industry participants will have two years in which to adjust to that change. Indeed, the Commission could guarantee this result by specifying that, although the off-network restriction is repealed immediately, affiliates in the Top 50 markets may not air such programs during prime time until September 1997.

Sincerely,



Diane S. Killory
Counsel for the Coalition to
Enhance Diversity

cc: William F. Caton, Acting Secretary
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Julius Genachowski, Counsel to the Chairman
William Kennard, General Counsel
Barry Levin, Chief of Staff
Jane Mago, Senior Legal Adviser to Commission Chong
Maureen O'Connell, Legal Adviser to Commissioner Quello
David Siddall, Senior Legal Adviser to Commissioner Ness
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