



May 6, 2015

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

Re: Notice of Ex Parte Communication, MB Docket No. 15-53

Dear Ms. Dortch:

On Monday, May 4, 2015, Gordon H. Smith, President and CEO of the National Association of Broadcasters (NAB) and I participated in a meeting with Commissioner Michael O’Rielly and his legal advisor, Robin Colwell, concerning the Commission’s implementation of Section 111 of the STELA Reauthorization of 2014 (STELAR).¹

In the meeting, we discussed the potential ramifications of reversing the current presumption that cable systems do not face “effective competition” in all markets. We stated that the Commission’s proposal to adopt a new rebuttable presumption of effective competition for all cable operators, including the largest operators, is unlawful and goes well beyond STELAR’s limited directive to modify the petition filing process for small cable companies.

We observed that Congress just recently addressed the Commission’s implementation of the effective competition requirements, and elected not to alter the FCC’s longstanding approach to making its necessary effective competition findings. It is odd, indeed, for the FCC to go far beyond what Congress just instructed it to do; namely, make mere administrative changes for small cable operators. Moreover, the current proposal is inconsistent with Congress’s express statement that procedural reforms for small cable operators should have no impact on the substance of the effective competition process,

¹ *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Notice of Proposed Rulemaking, MB Docket No. 15-53, FCC No. 15-30 (Mar. 16, 2015)(NPRM).

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5300

which requires cable operators to prove effective competition.² Under the FCC's proposal, cable operators may never have to prove the existence of effective competition, as the Commission's presumption would, in most instances, do that work for them.

We reiterated that the Commission should instead adopt procedural reforms to the effective competition filing process consistent with those NAB and others have proposed in this proceeding.³

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal line extending to the right.

Rick Kaplan
Executive Vice President and General Counsel
Legal and Regulatory Affairs

cc: Commissioner O'Rielly, Robin Colwell

² Specifically, Section 111 states that: "Nothing in this subsection shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition under this section." The STELA Reauthorization Act of 2014 (STELAR), § 111, Pub. L. No. 113-200, 128 Stat. 2059 (2014), *codified at* 47 U.S.C. § 543(o)(2).

³ NAB Comments in MB Docket No. 15-53 (Apr. 9, 2015); Joint Ex Parte Letter of NAB, Alliance for Community Media, American Community Television, Common Cause, and Public Knowledge in MB Docket No. 15-53 (Apr. 17, 2015).