

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |                     |
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| In the Matter of                          | ) |                     |
|   | ) |                     |
|   | ) |                     |
| Media Bureau Seeks Comment for Report     | ) | MB Docket No. 15-43 |
| Required by the STELA Reauthorization Act | ) |                     |
| of 2014                                   | ) |                     |
|   | ) |                     |

**Comments of  
WTA – Advocates for Rural Broadband**

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## EXECUTIVE SUMMARY

The current DMA system, although with some merit, is flawed particularly when it concerns small, rural communities sporadically located throughout the country. Often these communities are assigned to DMAs that do not serve their local needs or interests. As a result, consumers in these communities are left with irrelevant “local” programming or paying for multiple broadcast stations in order to have their station of interest. The costly, inefficient, and often ineffective market modification process currently in place leaves cable operators serving these communities without a true remedy.

WTA urges the Commission to consider and recommend to Congress several common sense reforms to the use of DMAs. First, Congress should consider allowing cable operators to “re-associate” with a DMA that it believes better serves its customers. Second, Congress should consider taking steps to allow cable operators to negotiate for retransmission consent with two or more DMAs and for consumers to select and pay only for broadcast stations that meet their local programming needs. These reforms to the current DMA system would provide more consumer choice, would foster the development of local programming, and would better ensure that rural consumers that cannot receive free over-the-air broadcast signals are not unduly burdened by DMA assignments. These reforms would also have minimal effects on total broadcast viewership due to the relatively small number of viewers impacted by illogical DMA assignments, and could ultimately increase the value of advertising on broadcast stations because the local programming and advertising would be more relevant to the remaining (and potentially new) viewers.

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**Comments of  
WTA – Advocates for Rural Broadband**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits these comments in response to the Media Bureau’s Public Notice<sup>1</sup> seeking comment in preparation for a report to Congress required by the STELA Reauthorization Act of 2014 (“STELAR”)<sup>2</sup> on designated market areas (“DMAs”) and considerations for fostering increased localism. Although the use of DMAs provides for simple categorization of all American communities within one DMA for purposes of defining a local market, the rigid application of DMA designations has left consumers across the country—particularly in rural areas—without access to local programming that is relevant to their daily lives. Recognizing this dysfunction in the current system, Congress directed the Commission to report on the availability of out-of-market broadcast stations and to recommend technologically and economically feasible alternatives to the use of DMAs to

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<sup>1</sup> Media Bureau Seeks Comment for Report Required by the STELA Reauthorization Act of 2014, MB Docket No. 15-42, Public Notice, DA 15-253 (rel. Feb. 25, 2015) (“Public Notice”).

<sup>2</sup> STELA Reauthorization Act of 2014, Pub. L. No. 113-200 (“STELAR”), § 109, 128 Stat. 2059, 2065 (2014).

define markets that would provide consumers with more programming options.<sup>3</sup>

Congress also directed the Commission to make recommendations on how to foster increased localism in counties served by out-of-State DMAs.<sup>4</sup>

## **I. Introduction**

WTA is a national trade association representing more than 280 rural local exchange carriers (“RLECs”) across the country. WTA’s members provide voice, broadband and video services to consumers across rural America. WTA members use a variety of technologies to provide video services to their customers including traditional analog, hybrid, and digital cable systems and IPTV offerings over fiber optic facilities. Many of WTA’s members and their customers have been adversely impacted by the assignment of communities to DMAs with which they have no significant “community of interest.”

In many cases, rural communities are assigned to out-of-state DMAs whose television stations do not carry in-state government and public affairs programming of interest to their residents. In other cases, rural communities are assigned to a DMA in one portion of a state when they have a much greater “community of interest” with the news events, weather, local governments, sports teams, and retailers in another DMA within the state. In these instances, DMA assignments (and, as a result, network affiliation agreements relying on defined market classifications) limit the ability of cable operators to provide truly relevant local programming in response to their customers’ needs and demands. To remedy the lack of consumer choice in the current system governing the retransmission of broadcast signals by multichannel video programming

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<sup>3</sup> STELAR, §§ 109(a)(1)(A) and (B), 128 Stat. 2065.

<sup>4</sup> STELAR § 109(a)(2).

distributors (“MVPDs”) and related carriage negotiations, Congress should take steps to empower consumers and cable operators to determine what stations and programming are truly “local” based on their unique circumstances.

Congress could develop a regime in which an operator, on behalf of its customers, may elect to re-associate with a particular DMA that reflects what it determines to be the interests of the majority of the customers in that community and the affected broadcast stations would then have the burden of rebutting the presumption that such re-association is reasonable and appropriate. Establishing a presumption of validity for DMA re-association would better allow small cable operators for whom the formal market modification process is too costly and inefficient—and for whom the “orphan county” issue<sup>5</sup> is most relevant—to meet the local programming needs of their customers and potential customers in their service areas. Because the typical subscribership of cable operators and the size of rural communities impacted by illogical DMA assignments is generally a very small proportion of the larger DMA, the impact on broadcaster viewership and advertising revenue would be minimal and would be outweighed by the benefits to consumers of greater choice and access to more relevant and timely local programming.

Congress should also strongly consider allowing consumers to select and pay for broadcast stations that provide relevant local programming. This “a la carte”-style approach would reduce the need for strict adherence to DMA assignments and allow consumers to select and pay for only those stations that provide programming relevant to their needs and interests, instead of requiring consumers whose cable provider is able to

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<sup>5</sup> An “orphan county” is one that is assigned to an irrelevant DMA, such as a DMA of a different state.

negotiate carriage with out-of-market stations to pay for two stations affiliated with the same national network.<sup>6</sup> This regime would allow operators to negotiate carriage with what it believes to be “local” stations for its customer base and would provide consumers the choice of which DMA is most relevant to them and ultimately which broadcast stations they pay for.

**II. Case Studies are an Appropriate Approach for Analyzing Broadcast Station Availability in Rural Areas Due to the Dearth of Comprehensive Broadcast Station Carriage Data for Small Cable Operators.**

STELAR requires the Commission to conduct an analysis of the extent to which consumers in each local market have access to broadcast programming from television broadcast stations located outside their local market.<sup>7</sup> The Media Bureau’s Public Notice seeks comment on the availability of comprehensive data that would enable it to determine for each county in each DMA the out-of-market broadcast stations carried by each cable and telephone MVPD.<sup>8</sup> As the Public Notice points out, “many rural counties of interest to the STELAR Section 109 Report may be served by cable systems not subject to [the requirement to file FCC Form 325].”<sup>9</sup> Indeed, most if not all of WTA’s members providing cable services and negatively impacted by the current DMA assignment system serve fewer than 20,000 subscribers and are exempt from the Form 325 requirement. Beyond the reports noted by the Bureau in its Public Notice, WTA is

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<sup>6</sup> Although on occasion a cable operator is able to negotiate for retransmission consent to carry out-of-market broadcast stations without undergoing the market modification process, the increased compulsory copyright license fee for carriage of distant stations, third-party transport costs and the need to pay multiple affiliates of the same network substantially reduce the financial viability of such an option for most small operators and their customers. Furthermore, as a practical matter, many network affiliation agreements prevent broadcast stations from granting retransmission consent to out-of-market cable operators.

<sup>7</sup> STELAR § 109(a)(1)(A), 128 Stat 2065.

<sup>8</sup> *Public Notice* at 4.

<sup>9</sup> *Id.*

unaware of a comprehensive dataset that would provide insight to the availability of out-of-market broadcast stations. Accordingly, WTA believes a case study approach analyzing impacted areas as highlighted by commenters similar to the approach used in the 2011 STELA Report would be appropriate in this instance.<sup>10</sup>

**a. WTA’s Member Data for Case Studies**

Below is a sampling of examples where WTA members’ ability to provide relevant local programming is impeded by the DMA assignments:<sup>11</sup>

- Lincoln County, Montana
  - Assigned to the Spokane, Washington DMA
  - Cable operator located in Eureka, Montana
  - Carries Spokane stations
  - Successfully obtained carriage agreements with selected Missoula and Kalispell, Montana stations
- Boone County and Marion County, Arkansas
  - Assigned to the Springfield, Missouri DMA
  - Cable operator located in Diamond City and Bull Shoals, Arkansas
  - Carries Missouri stations
  - Cable competitor in Bull Shoals carries both Missouri and Arkansas stations
- Otter Tail County, Minnesota
  - Assigned to Fargo, North Dakota DMA
  - Cable operator located in Parkers Prairie, Minnesota
  - Carries one Minnesota station with the remainder being Fargo stations
- Hubbard County, Minnesota
  - Assigned to Minneapolis DMA
  - Cable operator located in Park Rapids, Minnesota
  - Carries Minneapolis stations and one Fargo station
- Dixon County, Nebraska
  - Assigned to Sioux City, Iowa DMA
  - Cable operator located in Nebraska
  - Carries Sioux City stations
- Cheyenne County, Nebraska
  - Assigned to Denver, Colorado DMA

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<sup>10</sup> See *In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10-238, Report, 26 FCC Rcd 11919, Appendix F (2011) (“*2011 STELA Report*”).

<sup>11</sup> This is not intended to be exhaustive list of areas where availability of relevant local programming is impacted by DMA assignments.

- Cable operator located in Gurley, Nebraska
- Closest in-state DMA only offers a couple affiliates
- Mills County, Iowa
  - Assigned to Omaha, Nebraska DMA
  - Cable operator located in Emerson, Henderson, & Imogene, Iowa
  - Carries Omaha stations
  - Previously obtained agreement with Des Moines, Iowa stations but those agreements were not extended
- Clinton County, Iowa
  - Assigned to Davenport, Iowa DMA
  - Cable operator located in Lost Nation/Elwood, Iowa
  - Carried Cedar Rapids stations in addition to the Davenport stations but no longer can due to retransmission consent/network affiliation agreements
  - Cable competitor carries stations from both DMAs
- Daniels, Roosevelt, and Sheridan Counties, Montana
  - Assigned to Bismarck, North Dakota DMA
  - Carries Bismarck broadcast stations
  - Receives customer complaints and requests for Great Falls or Billings, Montana stations
- Phillips, Smith, Jewell, and Republic Counties, Kansas
  - Assigned to Lincoln-Hastings-Kearney, Nebraska DMA
  - Carries Kansas stations in addition to Nebraska stations
- Kittitas County, Washington
  - Assigned to Yakima, Washington DMA
  - Cable operator located in Roslyn, Washington
  - Carries both Seattle and Yakima DMA stations to meet commuters' needs
- Saline and Pettis Counties, Missouri
  - Assigned to Kansas City, Missouri DMA
  - Carries Kansas City stations
  - Previously Columbia/Jefferson City DMA stations but no longer carry due to the cost involved

### **III. Recommendations on Alternatives to DMAs and Ways to Foster Localism in Counties Served by Out-of-State DMAs**

In developing its recommendations to Congress, Section 109(b) instructs the Commission to consider: (1) the impact DMAs that cross state lines have on access to local programming; (2) the impact that DMAs have on local programming in rural areas; and (3) the state of local programming in States served exclusively by out-of-State

DMAs.<sup>12</sup> It is clear from the legislative history that Congress specifically intended that the Commission adopt a consumer benefit driven approach to developing and analyzing proposed alternatives to the current DMA system as opposed to focusing primarily on the impact such alternatives may have on broadcast television stations.<sup>13</sup> Accordingly, although proposed alternatives may have a negative impact on broadcast station viewership totals and advertising revenues, the Commission should ensure to keep as its paramount concern the consumer experience under the current DMA system and how proposed alternatives can improve the consumer experience by providing increased choice and more relevant and timely local programming. Additionally, the Commission should include all aspects of programming provided by local broadcast stations in interpreting what programming options are to be considered “local programming” in the context of this report. This analysis should include looking at the availability of local news and community events, sports (including at the high school, college, and professional levels), weather, and coverage of State and local/municipal-level politics and government, as well as advertising from and about the State in which a consumer resides, not just programming from and about the DMA in which a consumer lives.<sup>14</sup>

**a. The Current DMA System and Market Modification Process Impedes the Ability for Cable Operators to Respond to Consumer Needs.**

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<sup>12</sup> STELAR § 109(b), 128 Stat. 2065.

<sup>13</sup> See U.S. Senate, Committee on Commerce, Science, and Transportation. Satellite Television Access and Viewer Rights Act (S. Rpt. 113-322), at 15 (2014) (stating that “[t]he Committee also intends that the analysis concerning alternatives to the DMA system should explore in detail the merits and advantages to those alternatives to consumers, and not just the impact those alternatives may have on broadcast television.”). Furthermore, in directing the Commission to implement changes to the market modification process the Committee instructed that the FCC should consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations.” *Id.* at 11.

<sup>14</sup> *Id.* at 15.

As discussed above, the current DMA and market modification regimes impede the ability of cable operators to respond to the needs of their customers and for consumers themselves to have a voice in the programming to which they subscribe, particularly for small cable operators and consumers in rural areas. The issues entailed in defining local markets are inexorably complex, particularly in areas of the country where consumers live in small towns and cities removed from major metropolitan business centers, and it is difficult to identify the number and relative importance of the “communities of interest” of such consumers. For example, consumers might live in one DMA yet commute to work in an adjacent DMA, making both the assigned market and adjacent market or one or the other more relevant to consumers in that area. Consumers might also believe that the weather programming provided from an adjacent DMA is more relevant to them, particularly if the DMA to which they are assigned does not provide important weather alerts before a weather event occurs.<sup>15</sup> Additionally, consumers in one part of a geographically large county might choose to associate with a different DMA than those on the far side of the same county.<sup>16</sup> Furthermore, rural areas often suffer from the inability to receive quality, viewable broadcast signals over-the-air—a challenge that is particularly pronounced as a result of the digital television transition and one that makes relying on over-the-air broadcast signals for relevant local programming an untenable solution for most rural consumers.

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<sup>15</sup> Many of WTA members impacted by this issue stated that their customers believe weather is an important component of “local programming.” In many instances members indicated that customers would rather receive broadcast programming from the west when weather patterns move from west-to-east.

<sup>16</sup> For example, one WTA member provides video services in the Kansas City, MO DMA when his customers also identify the Columbia/Jefferson City, MO DMA as a relevant community of interest.

The current market modification process is costly for small, rural cable operators and several WTA members have noted that they have been advised by their respective attorneys against pursuing a modification due to the low chance of success and the fact that others who have pursued the expense of seeking a modification were unsuccessful. Companies opting not to pursue a formal market modification often attempt to negotiate carriage with out-of-market stations but often face resistance stemming from provisions in network affiliation agreements. Even if an operator is successful in negotiating carriage rights, it must then pay retransmission consent fees to two network-affiliated stations instead of one. Although STELAR extended the current market modification process to DBS providers, as a practical matter national DBS providers are unlikely to respond to the demands of a few residents in a small rural community to undergo the expensive market modification process.

Given the impacts the current market designation system has on the availability of truly relevant local programming in rural communities and the fact that the market modification process as it exists today does not suffice as a solution for small, rural cable operators and their customers, Congress and the Commission should develop an alternative to the current DMA system and/or a more workable modification process that would provide the market assignment flexibility particularly important for cable operators serving rural America.

**b. Alternative 1: Retain Current DMA System and Allow Cable Operators to Re-Associate with a More Relevant DMA**

Although the current DMA system is imperfect, it works relatively well for a large proportion of the country and the broadcast and advertising industries have long relied on Nielsen's DMAs. In light of existing industry reliance on the current system,

Congress could retain the current system and establish a market modification process that is more effective for small, rural cable operators. Such a system would allow cable operators to “re-associate” with a DMA in the same state within which it provides cable service without requiring cable operators to meet the high level of proof in the current market modification process. Congress could establish a presumption that a cable operator’s re-association is in the best interests of its customers and place the burden of disproof on affected broadcast stations in the disassociated DMA. Providing the ability for cable operators serving orphan counties to select the most appropriate DMA would eliminate the need to negotiate with and pay for retransmission consent from multiple broadcast stations providing the same network content in order to fulfill customer demand for relevant local programming.

Consumers, broadcasters, and advertisers alike would benefit from more relevant programming being provided to consumers. A streamlined re-association process would allow consumers (via their cable operators) more control and choice over what content they are paying for and watching with their cable subscriptions. The impact on broadcasters likely would be negligible because the cable operators and rural communities needing relief generally serve a tiny and often immaterial portion of a broadcast station’s total audience (for example, one WTA member who decided to forgo the market modification process serves fewer than 200 subscribers in a DMA comprised of over 1.5 million television households). Furthermore, just as a cable operator might elect to disassociate with a DMA, another cable operator might re-associate with that DMA. Advertisers and broadcasters could also benefit by reaching the *right* viewers rather than viewers that do not find the programming or advertising on a broadcast station

to be relevant. More relevant programming and advertising for viewers would make advertising more effective and more valuable, potentially leading to increased advertising revenues as well as benefits for consumers and businesses.

**c. Alternative 2: Allow Cable Operators to Provide Choice and Let Consumers Select and Pay for Only Broadcast Stations From the Most Relevant DMA**

A second alternative to strict adherence to DMAs could be adoption of a policy that permits consumers to select and pay for only those stations that serve their local programming needs. While cable operators would likely still need to negotiate with duplicative affiliates providing the same network content but different local content in order to provide the most relevant content to their customers, allowing consumers to select and pay on an a la carte basis only for those stations that they believe serve their local programming needs would relieve the need for cable operators and consumers in out-of-State or otherwise irrelevant DMAs from having to pay for multiple versions of a broadcast affiliate in order to obtain relevant local news and other programming as in the case now in many areas.<sup>17</sup> Under this regime, consumers affected by imperfections in the current DMA system would have more choice and control by allowing them to support investment in news and other local programming relevant to them. Such an approach would also be in the public interest because it would provide a more accurate gauge of demand for local broadcast stations which in turn would have positive free-market effects

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<sup>17</sup> Under this regime, a broadcast station would be prevented from charging a cable operator for retransmission consent for those subscribers that opt not to select to receive that broadcast station in favor of the “more relevant” broadcast station from another DMA. Under this approach it would be permissible for a consumer to elect to subscribe to two “same network” affiliates if they find both affiliates provide relevant local content, thereby implicating the Commission’s rules relating to network non-duplication. The cable operator and customer in that instance would be required to pay the per-subscriber retransmission consent fee for both broadcast stations, and the operator, to the extent it is not exempt from the rules pursuant to 47 C.F.R. § 76.95(a) or the broadcast signal is not significantly viewed, would be required to blackout duplicative network and syndicated content.

for consumers through alleviating the cable bill increases caused in part by ever-increasing and duplicative retransmission consent fees charged to those cable operators that are able to successfully negotiate for carriage of relevant out-of-market broadcast stations in addition to in-market stations.

Despite authorization from the Commission or Congress to provide out-of-market broadcast stations, network affiliation agreements are likely to preclude broadcast stations from granting retransmission consent to out-of-market cable operators. Indeed some of WTA's members have experienced national networks interfering with renewals of retransmission consent agreements with out-of-market broadcast stations,<sup>18</sup> leading to the operator no longer carrying the out-of-market station and customer complaints resulting from the loss of relevant local content. Congress would need to take steps to prohibit national broadcast networks from interfering with the grant of retransmission consent in order to effectively implement a policy that allows cable operators to negotiate for carriage of broadcast stations from two DMAs in order to achieve the goal of providing consumers with the most relevant and timely local programming possible. This approach would better meet the needs of consumers, particularly those in rural areas, while still protecting broadcast stations from cable operators merely looking for leverage in retransmission consent negotiations.

#### **IV. Conclusion**

The current DMA system, although with some merit, is flawed particularly when it concerns small, rural communities sporadically located throughout the country. Often these communities are assigned to DMAs that do not serve their local needs or interests.

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<sup>18</sup> See *2011 STELA Report*, 26 FCC Rcd 11919, n 22 (noting that carriage arrangements may be limited by network affiliation agreements).

As a result, consumers in these communities are left with irrelevant “local” programming or paying for multiple broadcast stations in order to have their station of interest. Cable operators serving these communities are also left without a true remedy due to the costly, inefficient, and often ineffective, market modification process.

To remedy the harms to consumers resulting from illogical DMA assignments particularly in rural areas, WTA urges the Commission to consider and recommend to Congress several common sense reforms to the use of DMAs. Congress should consider allowing cable operators to “re-associate” with a DMA that it believes better serves its customers. Additionally, Congress should consider taking steps to allow cable operators to negotiate for retransmission consent with two or more DMAs and for consumers to select and pay only for broadcast stations that meet their local programming needs. These reforms to the current DMA system would provide more consumer choice, would foster the development of local programming, and would better ensure that rural consumers that cannot receive free over-the-air broadcast signals are not unduly burdened by the DMA assignments. Such reforms would have a minimal effect on total broadcast viewers due to the relatively small number of impacted viewers and could ultimately increase the value of advertising on broadcast stations because the local programming and advertising would be more relevant to the remaining viewers. Furthermore, one could foresee some broadcast stations experiencing increased viewership from DMA re-association.

Respectfully Submitted,

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