May 18, 2015

EX PARTE COMMUNICATION BY ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: **Amendment to the Commission's Rules Concerning Effective Competition and Implementation of Section 111 of the STELA Reauthorization Act**
MB Docket No. 15-53

Dear Ms. Dortch:

On behalf of KVMD Licensee Co., LLC, the licensee of Station KVMD(TV), Twentynine Palms, California, and Rancho Palos Verdes Broadcasters, Inc., the licensee of Station KXLA(TV), Rancho Palos Verdes, California (collectively, the "Broadcasters"), we submit these *ex parte* comments in connection with the Commission's consideration of new rules for determining effective competition for cable television operators.[1]

The NPRM was issued pursuant to the terms of Section 111 of the STELA Reauthorization Act of 2014 ("STELAR"). Section 111 provides that the "Commission shall complete a rulemaking to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas" and that there was nothing in the legislation that "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."

Broadcasters read this language as directing the Commission only to establish a streamlined processing procedure for small cable operators and especially for small cable operators located in rural areas. To this end, Broadcasters agree with the analysis offered by the National Association of Broadcasters ("NAB").[2] It is not only the NAB and the broadcasting community that is of this opinion. A number of prominent members of the United States Senate have written

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[1] *In the Matter of Amendment of the Commission's Rules Concerning Effective Competition, Implementation of Section 111 of the STELA Reauthorization Act, FCC 15-30 (released March 16, 2015)* (the "NPRM")

[2] Letter from National Association of Broadcasters to Marlene H. Dortch, Esq. (May 15, 2015) ("NAB Letter").

Barry.Friedman@ThompsonHine.com Fax: 202.331.8330 Phone: 202.973.2789 bf

to the Commission and argued that the Commission, in taking any action beyond providing a streamlined process for small rural cable operators, is reaching a result beyond that which the Congress intended in including Section 111 in the STELAR. The Senators are entirely correct and the Commission should not turn a provision intended for small rural cable operators into a relief act for the large cable operators that predominant in the highly concentrated cable television industry.

Were the Commission's intention to deem the entire nation as one where there is "effective competition" for cable operators, only applicable to the wholesale deregulation of the industry from local rate regulation, Broadcasters would not necessarily be concerned. There is significant deregulation of the cable industry on the local and state levels, including in the state of California where Broadcasters operate.

What concerns Broadcasters are the unintended consequences of the Commission adopting the wholesale deregulation of the cable market through the adoption of a presumption of effective competition. In this regard, Broadcasters agree with the concern expressed by the National Hispanic Media Coalition ("NHMC") in its letter, dated May 12, 2015, to the Commission ("NHMC Letter"). In the NHMC Letter, the NHMC contends as follows:

> Also of particular concern to NHMC is the potential for Latinos to lose access to Latino programming currently available on the basic tier. Longer term, we fear that a potential unintended consequence could be an overall reduction in the availability of Latino programming on cable television. If cable operators are allowed to move Latino programming to more expensive cable tiers, it is very likely that viewership and revenues of Latino networks would drop, making it more difficult to finance and produce programming that serves Latino audiences.

Broadcasters are independent broadcasters and serve Latino and other minority groups with the multicultural programming available on their Stations. In most instances, Broadcasters' Stations are carried by cable operators on a must-carry basis. As a result, Broadcasters are not in a position, like most network affiliated stations, to negotiate retransmission consent agreements that prescribe the channel positions for their Stations. As a result, Broadcasters' Stations are dependent on how cable operators position them.

As the argument contained herein indicates, the directive from the STELAR to the Commission is only for it to enable small rural cable operators to have a streamlined track to securing effective competition relief. In spite of this, the Commission is proposing, albeit unintentionally, to use Section 111 as a mechanism for all cable operators no longer to have a basic tier where local broadcast stations are available to local residents at the lowest possible price. Instead, local

residents will be forced to purchase additional tiers of cable channels and to pay the additional price just to receive local broadcast stations. Once again, the NHMC Letter is correct when it notes that "many Latino consumers are struggling" and the Commission's proposed actions, raising their cable television charges, could have a "disastrous effect" on them. Broadcasters agree that if local residents have to purchase higher and more expensive tiers to secure local, must-carry broadcast stations this is a potential disaster for local residents and especially for minorities, the poor and the elderly that are dependent on local broadcast stations and their programming geared to minorities and religious communities.[3]

Considering the underlying law and the consequences of the action the Commission proposes to take, Broadcasters submit that the Commission is poised to take an erroneous action. All that needs to be done is to provide the required mechanism for small rural cable operators to secure effective competition qualification. Beyond that the Commission should not tread. If it chooses to do so, the Commission should make clear that its action is only intended to deal with local rate regulation and no more. In particular, the Commission should explicitly provide that a cable operator may not use the new presumption as a weapon to remove local broadcast stations including, but not limited to, must-carry stations, from mandatory positioning on the cable operators' basic tiers. Such a result should only occur after there is an opportunity for such a result to be the subject of a notice and comment rulemaking proceeding.

Respectfully submitted,

Barry A. Friedman

[3] The NAB has provided evidence of cable subscribers and whether they are able to afford higher rates in a PowerPoint presentation attached to the NAB Letter.