

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

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

**REPLY COMMENTS OF THE
JOINT TELEVISION NETWORK AFFILIATES**

Jennifer A. Johnson
Gerard J. Waldron
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-6000

*Counsel for the CBS Television Network
Affiliates Association and the NBC Television
Affiliates*

Wade H. Hargrove
BROOKS, PIERCE, MCLENDON, HUMPHREY &
LEONARD, LLP
1600 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27602
(919) 839-0300

*Counsel for the ABC Television Affiliates
Association*

John R. Feore
Jason E. Rademacher
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
(202) 776-2370

*Counsel for the FBC Television Affiliates
Association*

TABLE OF CONTENTS

SUMMARY	ii
I. INTRODUCTION	2
II. THE DMA SYSTEM IS AN INTEGRAL PART OF BOTH THE BUSINESS OF OPERATING TELEVISION STATIONS AND THE LOCAL SERVICES STATIONS PROVIDE.....	3
III. LOCAL TELEVISION STATIONS HAVE A LONG RECORD OF SERVING ALL VIEWERS IN THEIR MARKETS, REGARDLESS OF STATE LINES.....	6
IV. NO ALTERNATIVE TO THE DMA SYSTEM WOULD IMPROVE LOCAL SERVICE TO VIEWERS OR ADDRESS ANY ALLEGED “ORPHAN COUNTY” SITUATIONS.	10
A. MVPDs Have Options for Adding Additional Local Broadcast Stations To Improve Local Service to Their Viewers.	10
B. Procedures Already Exist for Adjusting DMA Boundaries To Suit Local Viewer Needs.	14
C. No Commenter Has Proposed Any Alternative to the Use of DMAs That Would Improve Viewer Access to Local Service.....	15
1. <i>Only One Commenter Suggested Alternatives to the DMA System, and Those Self-Serving Proposals Will Not Improve Local Service.</i>	15
2. <i>DirecTV Admits It Lacks the Technical Capacity to Implement any Alternative to the DMA for Defining Local Markets.</i>	18
V. CONCLUSION	19

SUMMARY

The Designated Market Areas (“DMA”) system, together with the associated television broadcast station carriage rules, provide substantial benefits to viewers, and Congress and the FCC should seek ways to support and protect this system. The FCC has before it ample evidence that stations provide all viewers in their markets with locally relevant news, emergency, weather, sports, and other programming regardless of state lines. Indeed, the record shows that frequently DMAs capture the spirit of localism and the cohesiveness of communities better than state lines. Any proposal the FCC recommends to Congress regarding increasing viewer access to in-state programming in so-called “orphan counties” must take account of this reality. Severe weather and other local emergencies are not dictated by state lines, but the DMA system, which objectively seeks to group people with common economic and social interests, ensures that TV stations have strong incentives to make certain that all their viewers remain safe and informed. Any proposed changes to the local market system must preserve these benefits of DMAs or risk causing bigger problems than any alleged “orphan county” issue.

The record in this proceeding further shows that many options for increasing access to in-state programming for viewers already exist and that recent Congressional actions to expand the statutory market modification procedures will create additional opportunities. Rather than considering options that would disrupt the DMA system, which is central to the economics of TV stations’ ability to provide local service, the FCC and Congress should give these mechanisms time to function to see the effect they have.

No parties have proposed any viable alternative to the use of DMAs to define local television markets, and DirecTV, the second largest MVPD in the country, has stated that it lacks the technical capability to implement alternatives to the DMA system. Under these

circumstances, there is no basis for proposing to Congress any changes to the DMA system or the carriage rules that govern local commercial television broadcasters. The FCC's report to Congress should reflect the importance and efficacy of the DMA system, the negative impact for viewers that significant changes could cause, and the alternatives that already exist for providing viewers with in-state programming where viewers need and desire it.

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

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

**REPLY COMMENTS OF THE
JOINT TELEVISION NETWORK AFFILIATES**

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the “Joint Television Network Affiliates”),¹ hereby file these reply comments in the above-captioned proceeding.² The record in this proceeding and the additional evidence provided below demonstrate conclusively that use of Designated Market Areas (“DMAs”) as the basis for defining the local markets of television broadcast stations continues to serve television viewers and the public interest. Viewers across the country continue to have access to localized, locally-responsible programming, including in-state programming where DMA boundaries cross state

¹ The ABC Television Affiliates Association is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are each affiliated with the ABC television network. The CBS Television Network Affiliates Association represents almost two-hundred independently-owned and operated television stations that are affiliated with the CBS Television Network. The FBC Television Affiliates Association is a non-profit trade association whose members consist of local television broadcast stations located throughout the country that are affiliated with the Fox television network. The NBC Television Affiliates is an association of broadcast television stations that are affiliated with the NBC Television Network. Members of the NBC Television Affiliates operate approximately 225 stations.

² See Media Bureau Seeks Comment for Report Required by the STELA Reauthorization Act of 2104, *Public Notice*, 30 FCC Rcd 1904 (Med. Bur. 2015) (the “*DMA Public Notice*”).

lines. The FCC should report to Congress that the DMA system as currently constructed is functioning as intended and that no changes are warranted.

I. INTRODUCTION

The Joint Television Network Affiliates continue to strongly support the existing DMA system, which forms the economic backbone of the local television business that provides the local services that viewers want and need.³ The Comments in this proceeding produced little opposition to continuation of the current system of using DMAs as the basis for defining television stations' local markets. Only a single commenter, WTA- Advocates for Rural Broadband ("WTA"), sought to identify any basis for changes, and, as shown below, its position is both self-serving and meritless.⁴ Indeed, DIRECTV filed comments solely to inform the FCC that it lacks the technical capability to adapt its satellite delivery system to accommodate significant changes to the DMA system.⁵ Based on this record, no basis exists for recommending to Congress changes to the DMA system.⁶

³ The ABC Affiliates Association, the CBS Television Network Affiliates Association, and the NBC Television Affiliates filed reply comments supporting the DMA system in the proceeding that produced the FCC's 2011 report to Congress. *See* Reply Comments of Joint Television Network Affiliates, MB Docket No. 10-238, filed Feb. 22, 2011 (the "2011 Joint Reply Comments"); *see also* In-State broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010, *Report*, 26 FCC Rcd 11919 (Med. Bur. 2011) (the "2011 Report").

⁴ Comments of WTA – Advocates for Rural Broadband, MB Docket No. 15-43, filed May 12, 2015 (the "WTA Comments").

⁵ Comments of DIRECTV, LLC, MB Docket No. 15-43, filed May 12, 2015 (the "DIRECTV Comments").

⁶ Several individuals and representatives of the public broadcasting community filed comments seeking greater carriage of in-state non-commercial broadcasting stations. *See, e.g.*, Comments of the Association of Public television Stations and Organization of State Broadcasting, MB Docket No. 15-43, filed May 11, 2015; Reply Comments of Celeste Colgan, MB Docket 15-43, filed May 15, 2015. This issue does not fundamentally impact the use of DMAs to define the local markets of commercial television stations, and the Joint Television Network Affiliates express no position on it.

Instead, the evidence the FCC has compiled in this proceeding and in its 2011 proceeding addressing similar issues shows that the DMA system functions smoothly and plays an important role in the economics of local broadcasting and the communities that broadcasters serve. As shown in the comments filed by the National Association of Broadcasters (“NAB”), the DMA system is a fundamental building block of the local television businesses.⁷ By defining each station’s geographic and economic market, the DMA system allows each station to identify and serve its audience and provide an outlet for local advertisers seeking to reach that audience. The result is a virtuous cycle leading to TV viewers nationwide receiving abundant local programming choices. The Joint Television Network Affiliates also agree with NAB that there is no viable alternative to using DMAs to define local television markets and urge the FCC to make this point clear in its report to Congress.⁸

II. THE DMA SYSTEM IS AN INTEGRAL PART OF BOTH THE BUSINESS OF OPERATING TELEVISION STATIONS AND THE LOCAL SERVICES STATIONS PROVIDE.

This proceeding arises from Congress’s apparent concern that some viewers – particularly those residing in DMAs that cross state lines – may not receive adequate local news and informational programming concerning their home states.⁹ While the Joint Television Network Affiliates certainly respect the concerns of Congress and the FCC about this issue, the relevant evidence indicates that the DMA system does an excellent job of defining local economic markets and areas of common social interest, which frequently are not defined by state boundaries. As NAB explains in depth, Nielsen designs DMAs to capture consumers’ actual

⁷ See Comments of the National Association of Broadcasters, MB Docket No. 15-43, filed May 12, 2015, at 8-16 (the “NAB Comments”).

⁸ See *id.* at 21-25.

⁹ See *DMA Public Notice*, 30 FCC Rcd at 1905 (citing U.S. Senate, Committee on Commerce, Science, and Transportation, Satellite Television Access and Viewer Rights Act (S. Rpt. 113-322), at 15 (2014)).

behavior – where they work, where they shop, where they spend their leisure time, and what TV stations they watch, for example – and to define economic areas based on these common needs and interests.¹⁰ Unsurprisingly, the communities of interest that Nielsen identifies sometimes cross state lines, and there are a number of multi-state DMAs throughout the country. In short, viewers elect their DMA through their viewing preferences.

In evaluating the DMA system, it is essential for the FCC to recognize that DMAs cross state lines because television signals (and the communities they serve) do not stop at state lines. No one would dispute that the Washington, D.C. community includes substantial parts of northern Virginia and central Maryland; that the New York City community includes parts of Connecticut and New Jersey; that Chicagoland includes part of northwest Indiana; or that the Memphis community, centered on a city in far southwestern Tennessee, also includes neighboring parts of Arkansas and Mississippi. This pattern is repeated across the country, with 98 of the 210 DMAs including counties from more than one state.¹¹ Television signals simply do not stop at state lines, and Nielsen’s DMA assignments reflect that. Nor do television stations confine their public service to communities in the state where they are licensed.

As NAB’s comments show, it is critically important to the business of local television that state lines are not used to artificially constrain DMA assignments.¹² The equation basically comes down to the following: TV stations depend on advertising to provide viewers with local news, weather, sports, and other services of interest; local businesses look to local broadcasters to help them advertise to customers in their geographic locales. American businesses don’t stop selling at state lines, and they don’t stop advertising there either. For broadcasters to maximize

¹⁰ See NAB Comments at 9-11 & Attachment A.

¹¹ See *2011 Report*, 26 FCC Rcd at n.147.

¹² See NAB Comments at 11-12 & Attachment A.

their local services, they need to be able to distribute advertising throughout the economic markets in which they are located. Since so many local economic markets in the U.S. are multi-state, it follows that television markets must be as well, and the current DMA system recognizes that. Because the efficiencies of matching local advertising markets to local television markets leads to improved local television service, viewers benefit greatly from this system.

Aside from the business justification for the DMA system, viewers have a strong and vested interest in the local service the current system provides. It is critical to TV viewers that they receive truly local news and information – particularly in emergencies – rather than news from a station that might be located in a viewer’s home state, but is actually far removed from the issues affecting that viewer. As the Joint Television Networks pointed out in 2011, a viewer located in a DMA that includes out-of-state areas often is nowhere near the communities served by TV stations in his or her state.¹³ For example, Boise City is located in Cimarron County, on the Oklahoma Panhandle, but it is assigned to the Amarillo, Texas DMA. Cimarron County might be described as an “orphan county,” but in reality, the closest Oklahoma television station to Boise City is located nearly 350 miles away. Amarillo station KVII-TV, on the other hand, is located just 118 miles away. KVII-TV operates both sales and news bureaus in Cimarron County and other parts of the Oklahoma Panhandle and covers the area’s weather, school closings, and other local matters of interest to TV viewers there. In this high-intensity weather region, KVII-TV operates six weather stations on the Panhandle, providing residents with crucial, real-time weather data relied upon by viewers and local officials. KVII-TV’s coverage of the Oklahoma Panhandle saves lives. The economics that support KVII-TV’s service to Oklahoma Panhandle would be undermined if viewers there were reassigned to an “in-state”

¹³ See Reply Comments of the Joint Television Network Affiliates, MD Docket No, 10-238, filed Feb. 22, 2011.

DMA. The service could decline and, in any case, viewers might lose access to the service in favor of a distant, in-state station. KVII-TV's Oklahoma viewers would suffer important The DMA system recognizes inter-state relationships like these and ensures they will persist.

For these reasons, the FCC should be skeptical of any proposal claiming that an alternative to the DMA system would better serve TV viewers. Any fundamental change to this system should be considered only if it can be shown that the use of DMAs has impaired quality local service and that any substitute would provide more and better local service to TV viewers. As described below, no commenter in this proceeding has provided any evidence that either of those tests can be satisfied.

III. LOCAL TELEVISION STATIONS HAVE A LONG RECORD OF SERVING ALL VIEWERS IN THEIR MARKETS, REGARDLESS OF STATE LINES.

Member stations of the Joint Television Network Affiliates have long demonstrated that state lines do not stand in the way of serving all viewers in their assigned DMAs. The following non-exhaustive set of examples demonstrate how successfully the combination of each TV station's local service obligations and the flexibility of the DMA system and its associated carriage rules have guaranteed that that all viewers receive relevant local services, regardless of state boundaries.

In many cases, DMA boundaries and TV station service areas define communities that transcend state divisions. One good example of that is the Delmarva Peninsula, which is predominantly covered by the Salisbury, Maryland DMA.¹⁴ The Delmarva region includes parts of Delaware, Maryland, and Virginia, but the area is defined far more by the geography of the peninsula than state lines. Located great distances from the nearest major population centers to

¹⁴ Parts of the Peninsula are assigned to the Norfolk-Portsmouth Newport News DMA, the Baltimore DMA, and the Philadelphia DMA.

the north like Philadelphia and Wilmington, Delaware, and separated by Chesapeake Bay from cities to the west and south like Washington, D.C., Baltimore, Richmond, and Norfolk, the Delmarva region functions as an integrated region largely irrespective of state lines. Delmarva businesses attract customers across state lines and many Delmarva residents live in one state but travel daily to another state on the peninsula for work or recreation. This commonality is reflected in the boundaries of the Salisbury, Maryland DMA, which includes Sussex County Delaware.

And where these types of multi-state, regional DMAs exist, local TV stations are there to serve them – regardless of state lines. WBOC-TV, which is located in Salisbury, Maryland, and is the CBS and Fox network affiliate for the Salisbury DMA, provides local news, sports, weather, and emergency information to the entire peninsula.¹⁵ WBOC-TV offers news, weather, sports, and other local programming that caters to residents of the Delmarva region. This includes two weekly local affairs programs, *Delmarva Life* and *Delmarva Outdoors*. In view of the fact that Delaware has no licensed full power network affiliate serving residents there, WBOC-TV has taken it upon itself the responsibility to keep residents across the Maryland/Delaware state line informed about events there. WBOC-TV operates two separate news bureaus in Delaware, one in Milton, which is located Sussex County and the other in Dover, Delaware, which is in Kent County, a part of the Philadelphia DMA. These bureaus include stand-alone news studios, and local reporters and photographers, to ensure that Delaware residents receive local news that truly serves their needs. WBOC-TV's exemplary service to the Delmarva region is demonstrated by the fact that MVPDs serving counties on the Delmarva

¹⁵ WBOC-TV offers CBS-affiliated programming on its primary over-the-air channel and Fox-affiliated programming on a digital multicast channel.

Peninsula that are assigned to the Philadelphia, Baltimore and Norfolk DMAs choose to carry WBOC-TV to assure that their customers receive the local service they need.

This pattern of local service regardless of state lines is repeated throughout the country. Another excellent example of this is the service provided by CBS-affiliated KRQE(TV) to the entire Albuquerque DMA, which includes portions of southwestern Colorado and northeastern Arizona. To ensure that its out-of-state viewers in Colorado receive the local service that they want and need, KRQE operates satellite station KREZ(TV), a full-power over-the-air station in Durango, Colorado. The station maintains offices and a public file in Durango, is a member of the Durango Chamber of Commerce, and conducts dedicated local advertising sales in the area, producing and airing local commercials on KREZ(TV). The station also airs public service announcements and political advertising for Colorado state and federal candidates for office there.

These efforts have produced real and substantial benefits for southeastern Colorado residents. In calendar year 2014 KREZ(TV) aired approximately 500 news stories covering news and events in Durango, Colorado, 350 other news stories covering general Colorado news and events, and 325 stories about the Colorado state legislature. The station also aired approximately 700 stories on the Denver Broncos, including the games themselves. When it comes to weather coverage, KRQE(TV)'s out-of-state, in-DMA viewers receive regionally focused forecasts, tracking, and reporting on southern Colorado weather separately from the station's Albuquerque weather coverage (the station's technical configuration allows it to offer a New Mexico feed to satellite customers and a Colorado feed to cable and over-the-air customers). KRQE(TV) and KREZ(TV) also offer regionally specific severe weather reporting, emergency reporting, and Amber alerts. Through these concerted efforts, KREZ(TV)'s viewers

certainly receive as much or more programming of local interest than they would if the area were assigned to the Denver DMA, which is centered on a city that is more than 300 miles away from the area. The reality is that shifting this area to an in-state DMA likely would lead to viewers receiving less local programming, not more.

Indeed, examples of service from local stations to out-of-state, in-DMA areas are as common as such DMA assignments. Just a few examples include:

- Portland, Oregon station KPTV(TV) serves the southwest Washington portions of the Portland DMA, including Vancouver, the 4th largest city in Washington, which are a longstanding part of the Portland community. KPTV(TV) provides southwest Washington with local news, traffic and weather, community events like the Rose Festival's Grand Floral and Starlight Parades, and local sports, including Portland Timbers soccer matches and Seattle Seahawks football games;
- Providence, Rhode Island DMA station WNAC-TV provides special news coverage for Bristol Co., Massachusetts
- Raleigh, North Carolina station WRAL-TV provides weather and emergency information to viewers in Mecklenburg County, Virginia;
- Sioux City, Iowa DMA station KMEG(TV) provides local news, severe weather, and high school sports coverage to communities throughout its 3-state DMA covering parts of Iowa, Nebraska, and South Dakota;
- Memphis station WHBQ(TV) fully serves the tri-state DMA, that includes Tennessee, Arkansas, and Mississippi with dedicated news staff for areas like De Soto County, Mississippi to provide on-the-ground coverage of breaking news and other Mississippi events.

An exhaustive list of the local services that broadcasters provide to out-of-state areas of their DMAs would stretch on for many pages. And the record that the FCC developed in the 2011 proceeding considering DMA issues included dozens of examples of this type of service to in-DMA communities across state lines.¹⁶ The Joint Network Affiliates respect the concerns of

¹⁶ See e.g., Reply Comments of the Joint Network Television Affiliates, MB 10-238, filed Feb. 22, 2011, at 7-9; Comments of the Local television Broadcasters, MB Docket No. 10-238, filed Jan. 24, 2011, at 4-10; Letter from Joint Television Network Affiliates Association to Ms.

Congress and the FCC to ensure that viewers have access to in-state news and informational programming, but there is simply no evidence that changes to the DMA system are a necessary or desirable response to that concern.

IV. NO ALTERNATIVE TO THE DMA SYSTEM WOULD IMPROVE LOCAL SERVICE TO VIEWERS OR ADDRESS ANY ALLEGED “ORPHAN COUNTY” SITUATIONS.

The DMA system, together with related rules governing mandatory carriage, retransmission consent, network and syndicated exclusivity, and significantly-viewed status for individual television stations provide MVPDs with all the tools they need to ensure that their customers receive programming that is locally relevant. The recent Congressional direction to the FCC to allow satellite carriers to petition for market modifications is another enhancement.¹⁷ Further changes to this legal framework – let alone adoption of some alternative system – are simply not necessary to resolve issues related to “orphan counties” that are part of DMAs that cross state lines.

A. MVPDs Have Options for Adding Additional Local Broadcast Stations To Improve Local Service to Their Viewers.

In cases where MVPDs and their viewers believe they would be better served by an in-state, out-of-DMA television station, nothing about the DMA system or any associated rules prohibits an MVPD from retransmitting the non-duplicating local programming aired by an in-state station. As NCTA admitted in the 2011 proceeding, “[c]able operators already have the right in theory to carry any broadcast signal, local or distant, in-state or out-of-state, provided

Marlene H. Dortch, MB Docket No. 10-238, filed May 3, 2011, at 3-18. Copies of these filings are attached for inclusion in the record in this proceeding.

¹⁷ See Amendment of the Commission’s Rules Concerning Market Modifications, *Notice of Proposed Rulemaking*, 30 FCC Rcd 3039 (2015); see also The STELA Reauthorization Act of 2014 (STELAR), §§ 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (codified at 47 U.S.C. § 338(l)).

that they comply with certain carriage-related rules.”¹⁸ In other words, most of the solution to the “orphan county” issue is really just a question of MVPDs making that “theory” a reality by actually carrying the local programming that their customers want and need. Fortunately for viewers, many MVPDs across the country already are doing just that.

The record in the 2011 proceeding compiled dozens of examples where MVPDs and broadcasters were working within the signal carriage framework created by Congress and the FCC to ensure that viewers receive local programming that suit their needs.¹⁹ In 2015, this continues to be the case. Under the rules, MVPDs that wish to do so utilize a number of options for delivering relevant local programming to viewers that is produced by stations located outside their viewers’ DMAs.

First, many MVPDs carry the non-duplicating local programming of stations from neighboring DMAs, while blacking out duplicating network and syndicated programming. For example, in Bristol County, Massachusetts, which is part of the Providence Rhode Island DMA, Verizon FiOS airs local programming from Boston DMA FOX affiliate WFXT-TV. Likewise, American Broadband in Aiken County, South Carolina, which is located in the Augusta, Georgia-Aiken, South Carolina DMA, airs local programming from Columbia, South Carolina NBC affiliate WIS(TV) to supplement the local programming provided by in-DMA affiliates located in Georgia.

Second, and more commonly, MVPDs import duplicating network affiliates from neighboring DMAs in counties where those stations are significantly viewed under the FCC’s rules. Just a few representative examples of this common practice include the following:

¹⁸ Comments of the National Cable & Telecommunications Association, MB Docket No. 10-238, filed Jan. 24, 2011, at 6.

¹⁹ See n.16, *supra*.

- Cable systems in the Tallahassee, Florida DMA, which includes part of southern Georgia, carry WALB(TV), an NBC affiliate broadcasting from Albany, Georgia, to viewers in the Georgia counties of Seminole, Grady, Decatur, Thomas, Brooks, and Loundes, providing viewers there with their only source of Georgia news, sports and weather;
- Cable systems serving Beaufort County, South Carolina, which is assigned to the Savannah, Georgia DMA, carry WCSC-TV, out of Charleston, South Carolina, providing South Carolina news, sports, and other programming to residents there;
- Cable operators serving the South Carolina counties assigned to the Charlotte, North Carolina DMA import a number of significantly-viewed South Carolina stations, including Spartanburg, South Carolina CBS affiliate WSPA-TV, Florence South Carolina CBS affiliate WBTW(TV), and Columbia, South Carolina CBS affiliate WLTX(TV).
- Cable operators in Robeson County, North Carolina, which is assigned to the Myrtle Beach-Florence, South Carolina DMA, import the signal of Wilmington, North Carolina NBC affiliate WECT-TV to ensure viewers have access to North Carolina news and information;
- Cable systems in Hopkins County, Kentucky – located in the Evansville, Indiana DMA – carry significantly-viewed television in-state, out-of-DMA, NBC affiliate WPSD-TV, broadcasting from Paducah, Kentucky;
- In Lenawee, County, Michigan, which is assigned to the Dayton, Ohio DMA, cable operators retransmit significantly-viewed Detroit NBC affiliate WDIV-TV.
- Cable operators in Sequoyah and LaFlore Counties in Oklahoma, which are located in the Ft. Smith Arkansas DMA carry the programming of significantly-viewed Tulsa ABC affiliate KTUL(TV).

An exhaustive list of situations where MVPDs carry significantly viewed in-state stations across DMA boundaries would go on for many pages, but this abbreviated list demonstrates how simple and common it is for MVPDs to address any special needs in-state, out-of-DMA viewers might face in many, if not most, instances. And it shows that they are, in fact, implementing that solution where their customers want, need, and desire it.

Even WTA, which seeks changes to the DMA system, provides several examples of cases where its members are carrying in-state, out-of-DMA stations to their customers under the

existing rules.²⁰ Of the twelve (12) examples WTA cites as illustrating problems with the DMA system, at least eight (8) involve carriage of in-state TV stations, even where the WTA member is located in a DMA that crosses state lines. In a few of WTA's examples, WTA admits that the problem with carriage of in-state TV stations is not a problem with the DMA system or the associated carriage rules: the problem is that the local MVPD has made the choice not to enter into a retransmission consent agreement with the distant station for economic reasons.²¹

The practices of WTA's members are typical of MVPDs generally. One of the ABC Television Affiliates Association's members reports that it has offered, in at least 13 communities in DMAs that cross state lines, MVPDs serving those areas the opportunity to retransmit the in-state station's local news, weather, sports, and public affairs programming outside the station's DMA to viewers located in the station's home state. In many instances, the cable and satellite companies have rejected these offers for various reasons including lack of channel capacity, inability to receive a good signal from the station, and the fact the community may be outside the satellite carriers' local spot beam.

MVPDs' economic choices not to deliver local programming to their subscribers or their technical inability to do so are not an appropriate basis for revising the carefully calibrated DMA system or the FCC's carriage rules. Broadcasters provide free local television service to their markets, and broadcasters rely on the DMA system and the associated carriage rules to make that local programming a reality. If MVPDs choose not to deliver local programming, that is a matter between the MVPDs and their customers, and it does not call for regulatory intervention by the FCC.

²⁰ See WTA Comments at 5-6.

²¹ See *id.*

B. Procedures Already Exist for Adjusting DMA Boundaries To Suit Local Viewer Needs.

As described above, Nielsen carefully constructs its DMAs to ensure that they include communities with common economic and social interests. But if there is evidence that Nielsen DMAs fail to adequately define a television station's local market, sufficient procedures already exist to remedy that problem.

In the first place, as NAB points out, Nielsen annually considers shifting counties from one DMA to another to reflect changing patterns of television viewing.²² To the extent that existing DMA assignments do not reflect the stations to which viewers in a particular county look for local programming, Nielsen has a process for remedying that issue. Thus, when viewer preferences warrant, Nielsen will reassign counties from a primarily out-of-state DMA to an in-state DMA.²³

In addition, cable operators and television stations may ask the FCC to modify the carriage markets of a particular local station to include or exclude communities located within a station's Nielsen-assigned DMA.²⁴ Congress's requirement that the FCC institute a similar system for DBS providers will ensure that all major MVPDs can avail themselves of the market modification process to improve local service where appropriate.²⁵ And Congress's direction that the FCC consider access to in-state programming as one of the factors in the market modification process promises to make the market modification process an effective tool for addressing situations where that is a relevant consideration. These changes to the market

²² See NAB Comments at 10-11 & Attachment A.

²³ See *id.* at 10 & n.32.

²⁴ See 47 U.S.C. § 534(h)(1)(C); 47 C.F.R. § 76.59.

²⁵ See n.17, *supra*.

modification process should be given the opportunity to succeed before the FCC or Congress decides they are insufficient to address the question of access to local and in-state programming.

All these options demonstrate that the current DMA system provides substantial flexibility for the delivery of local programming to viewers that want and need it. And each of these options provides a potential solution to any local service problems that MVPDs or their viewers identify.

C. No Commenter Has Proposed Any Alternative to the Use of DMAs That Would Improve Viewer Access to Local Service.

Given the centrality of the DMA system to the business of delivering high quality local service to communities across the country and the flexibility MVPDs have to use that system and its associated rules to deliver local programming to their customers, any proposed alternative to using DMAs to define local networks must provide clear and substantial improvements to the availability of local service without undermining the economics of TV broadcasting. No commenter in this proceeding has proposed any such alternative. In fact, only two parties addressed alternatives to the DMA system – one, WTA, proposed a number of unworkable, self-serving alternatives; the other, DirecTV, noted that it is technically incapable of implementing any changes to the DMA system. On this record, there is simply no basis for the FCC to consider, let alone propose adoption of, alternatives to the current DMA system.

1. Only One Commenter Suggested Alternatives to the DMA System, and Those Self-Serving Proposals Will Not Improve Local Service.

WTA proposes two alternatives to the DMA system; first, that MVPDs be given the right to decide for themselves if their DMA assignment is appropriate and to select another in-state DMA if it is “more relevant;” or, second, that MVPDs be permitted to carry only those broadcast stations from the DMA the MVPD judges “most relevant.” Neither of these proposals would

improve access to local programming for any viewers or preserve the economic benefits produced by the current DMA system. Both should be rejected.

WTA's basis for both of its proposals is the supposed difficulty of using the FCC's market modification process to correct any perceived shortcomings to Nielsen's DMA assignments.²⁶ WTA, however, fails to specify any particular problems with the market modification system, merely complaining that the process is too expensive and victory too uncertain. In reality, Congress's market modification criteria, as interpreted by the FCC, simply require a thorough showing that changes to a television station's market are warranted based on common-sense criteria, including over-the-air signal coverage, historical cable carriage, the availability of local programming, and evidence of consumer viewing patterns.²⁷ In STELAR Congress added that additional criteria of whether a proposed market modification would enhance access to in-state programming.²⁸ WTA makes no effort to illustrate why these criteria are defective, incomplete, or overbroad. The fact that these criteria require MVPDs to make a factual showing to the FCC, and that there is no assurance that the FCC will accept that showing is not a flaw in the market modification process – it's a virtue. And WTA ignores the reality that the market modification process places burdens of production on both broadcasters and MVPDs in an even-handed way. Market modifications have very real impacts on TV viewers and TV stations. Changing the rules to favor MVPDs would serve no one but the MVPDs.

WTA's first suggested alternative to the current system is to allow a cable operator to freely switch from its current DMA to a DMA located in the same state in which it provides

²⁶ WTA Comments at 7-9.

²⁷ 47 U.S.C. § 534(h)(1)(C).

²⁸ See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

cable service.²⁹ WTA claims that this alternative is meant to help rural cable operators and their viewers, but it is in rural DMAs that WTA's proposal would lead to the most absurd results. In the Oklahoma panhandle example described above, WTA's proposal would permit cable operators to "re-associate" with the Oklahoma City DMA, even though viewers in those communities are hundreds of miles farther from Oklahoma City than they are from Amarillo, the home community of their current DMA.³⁰ Similarly, if cable operators in Malheur County, Oregon, which currently is assigned to the Boise, Idaho DMA, were permitted to "re-associate" with the neighboring Portland, Oregon DMA, viewers would be trading programming produced in Boise, which is approximately 75 miles away for "local" programming originating in Portland, which is nearly 400 miles to the west. It is difficult to believe that Malheur County residents would be well served by such a change, but if they would be, requiring WTA members to explain how through the traditional market modification process is far more fair reasonable than just accepting a cable operator's representation to that effect.

Another fundamental problem with WTA's proposal is that it would take the choice of what local programming viewers will receive away from broadcasters, who are required by law to serve the local programming needs of all viewers in their service area, and put that choice in the hands of cable operators with no such obligations. The FCC can expect WTA's members to make purely economic decisions when it comes to DMA "re-association." Regardless of whether its DMA crosses state lines, each broadcaster has a responsibility to provide local service to its entire service area. Cable operators have no such responsibility and almost none of them undertake this responsibility voluntarily. There is no reason for the FCC to expect cable operators to make responsible choices in terms of viewer needs when it comes to DMA selection

²⁹ WTA Comments at 9-11.

³⁰ See *supra*, n.13 and following text.

under WTA's proposal. The likelihood that such cable-operator DMA selection will lead to improved local service is practically zero.

WTA next suggests that cable operators should be permitted to allow subscribers to choose to "select and pay for only those stations that serve their local programming needs."³¹ This proposal is little more than a variation on past proposals that were briefly considered in the Senate last year in the context of discussions on the satellite reauthorization legislation and then quickly dropped. Congress recognized such proposals were unwise and unworkable, and the FCC should follow suit. A few of the many problems with this idea is that it would increase cable bills, decrease investment in locally-focused programming, drive high-value programming from free-over-the-air television to pay-only channels, and, ultimately, undermine the economic model on which free, local television is based.

WTA's proposal ultimately would not give customers more and better local programming or in-state news and information. It would deprive viewers of the high-quality local service that they have always enjoyed and leave them with fewer choices and a reduction in both localism and diversity. Far from a measured solution to alleged minor shortcomings in the DMA system, WTA's proposal could lead to a wholesale reorganization of local TV markets to the great detriment of viewers.

2. *DirecTV Admits It Lacks the Technical Capacity to Implement any Alternative to the DMA for Defining Local Markets.*

Though no MVPD has yet come forward with a viable alternative to the current DMA system, DirecTV provides a separate, technical reason why no such alternative could be implemented. As DirecTV explains, the company has designed its spot beams to accommodate the current DMA system, and it has no ability to modify its system to implement a new system

³¹ WTA Comments at 11-12.

for assigning local television markets.³² Presuming that DirecTV's technical issues cannot be resolved, the inability of the second largest MVPD in the country to adapt to a new DMA system is a strong reason not to change the current DMA system.

The position of DirecTV and the absence, at this point, of most other MVPDs from the comments in this proceeding generally is a marked contrast from the many MVPDs that participated in the FCC's 2011 proceeding. Then, MVPDs including DirecTV were unanimous that the solution to local service issues was to allow importation of additional distant signals.³³ As the Joint Television Network Affiliates pointed out at that time, such MVPD requests were little more than transparent efforts to get the FCC and Congress to alter the leverage in retransmission consent negotiations.³⁴ Both the FCC and Congress have wisely rejected that MVPD request, which would only distort the retransmission consent market in favor of MVPDs and against video consumers and broadcasters.

V. CONCLUSION

The record in this and past FCC proceedings conclusively demonstrates that the DMA system and associated rules governing carriage of broadcast television signals functions extremely well to support free over-the-air television and the distribution of local news, weather, sports, and other informational programming to the public. Changes to that system are not necessary. Mechanisms exist for MVPDs to provide their subscribers with additional local programming options, and Congress's introduction of market modifications for satellite

³² See DirecTV Comments at 1-3.

³³ See, e.g., Comments of DirecTV, Inc., MB Docket No. 10-238, at 2-7; Comments of DISH Network, LLC, MB Docket 10-238, at 6-8; Comments of Cablevision, MB Docket No. 10-238, at 1-2.

³⁴ 2011 Joint Reply Comments at 13-16.

providers with consideration of in-state programming will be another tool that MVPDs and broadcasters can use in appropriate circumstances to accomplish that goal.

The FCC's report to Congress should include an explanation about the importance of maintaining the current DMA system and rules governing programming exclusivity and retransmission consent to ensure a strong future for the local television broadcasting model that has served America so well for decades. Any changes to those rules should be designed to ensure that stations continue to have the resources to serve all of the customer in their markets, regardless of the state the viewer lives in. Despite the many economic challenges faced by stations across the country, this system continues to serve all Americans. Any Congressional or FCC actions should be designed to support and improve this system, and the FCC should

recommend against piecemeal changes to the DMA system that might undermine the business model that supports the service provided by local TV stations.

Respectfully submitted,

**THE ABC TELEVISION AFFILIATES
ASSOCIATION
THE CBS TELEVISION NETWORK
AFFILIATES ASSOCIATION
THE FBC TELEVISION AFFILIATES
ASSOCIATION
THE NBC TELEVISION AFFILIATES**

/s/
Jennifer A. Johnson
Gerard J. Waldron
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-6000

*Counsel for the CBS Television Network
Affiliates Association and the NBC Television
Affiliates*

/s/
John R. Feore
Jason E. Rademacher
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
(202) 776-2370

*Counsel for the FBC Television Affiliates
Association*

/s/
Wade H. Hargrove
BROOKS, PIERCE, MCLENDON, HUMPHREY &
LEONARD, LLP
1600 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27602
(919) 839-0300

*Counsel for the ABC Television Affiliates
Association*

June 11, 2015

ATTACHMENTS

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of)
)
Report Required By the Satellite) MB Docket No. 10-238
Television Extension and Localism Act)
On In-State Broadcast Programming)

To: The Media Bureau

**REPLY COMMENTS OF THE
JOINT TELEVISION NETWORK AFFILIATES**

Wade H. Hargrove
David Kushner
BROOKS, PIERCE, MCLENDON, HUMPHREY &
LEONARD LLP
Wachovia Capitol Center, Suite 1600
150 Fayetteville Street
Raleigh, NC 27602
919-839-0300

*Counsel for the ABC Television Affiliates
Association*

Jonathan D. Blake
Jennifer A. Johnson
Eve R. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
202-662-6000

*Counsel for the CBS Television Network
Affiliates Association and the NBC
Television Affiliates*

February 22, 2011

TABLE OF CONTENTS

I. STATIONS PROVIDE BROAD SERVICE TO VIEWERS IN THEIR MARKETS, REGARDLESS OF THE LOCATION OF THOSE VIEWERS. 2

II. THE CURRENT REGULATORY FRAMEWORK PROVIDES CABLE AND SATELLITE OPERATORS WITH THE FLEXIBILITY TO PROVIDE VIEWERS WITH THE LOCAL PROGRAMMING OF IN-STATE BUT OUT-OF-MARKET STATIONS. 6

III. THE FCC SHOULD NOT ALTER ITS SIGNIFICANTLY VIEWED RULES. 11

IV. PRESERVATION OF PRIVATELY CONTRACTED PROGRAM EXCLUSIVITY FOR NATIONAL PROGRAMS IS ESSENTIAL TO THE CONGRESSIONAL MANDATE TO ESTABLISH AND SUPPORT A LOCAL TELEVISION BROADCAST SERVICE. 13

V. THE DMA SYSTEM SUPPORTS AND PROMOTES LOCAL MARKETS AND THEREBY CONTRIBUTES VITALLY TO THE HEALTH OF LOCAL ECONOMIES AND TO JOB RETENTION AND EXPANSION. 16

VI. CONCLUSION 18

SUMMARY

The Designated Market Area (“DMA”) system benefits viewers, and the government should not intrude on this free-marketplace system. The record in this proceeding shows that stations serve their viewers regardless of state lines. They provide local news, weather, sports, and emergency information on a comprehensive basis to viewers in their markets. In addition, the current legal framework already provides cable and satellite operators with the flexibility to import the local programming of in-state but out-of-market stations. There are numerous examples of operators doing so today, and further expanding viewers’ access to in-state local programming is within the power of cable and satellite operators. The legal changes sought by certain operators in this proceeding therefore are not necessary. In fact, they will harm viewers by undermining the DMA system that is the basis for the local television advertising market, the revenues from which underwrite stations’ investments in providing local news and other local programming.

DMAs reflect cohesive communities. They are shaped by market and economic realities, as well as social and geographic affinities and viewing patterns. Government intrusion into these natural markets would be harmful and destabilizing. It would undercut local economies, jeopardizing the health of local businesses and decreasing local employment opportunities, and would harm stations’ ability to provide local news, weather, sports, and emergency information. The Commission should reject calls to undermine this important, free-marketplace system. It also should preserve the significantly viewed rules, both because of statutory constraints on amending them and because gutting these rules ultimately would harm viewers.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of)
)
Report Required By the Satellite) MB Docket No. 10-238
Television Extension and Localism Act)
On In-State Broadcast Programming)

To: The Media Bureau

**REPLY COMMENTS OF
JOINT TELEVISION NETWORK AFFILIATES**

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, and the NBC Television Affiliates (collectively, the “Joint Television Network Affiliates”) reply to comments filed in the above-referenced proceeding. Based on the comments and data filed in the proceeding, it is clear that the Designated Market Area (“DMA”) system serves viewers and that viewers have broad access to local-market programming and to in-state programming. The FCC should report to Congress that viewers benefit from the DMA system and that the current system should not be modified.

As shown in the comments filed by the National Association of Broadcasters (“NAB”), consumers have over-the-air access to 12.2 in-state full-power television stations and 3.8 out-of-state full-power stations, on a weighted average basis.¹ The vast majority of viewers (97.8%) have access to at least one in-state full power station.² Further, the comments show that stations provide comprehensive service to their markets, regardless of state lines. For example,

¹ NAB Comments at 2 (January 24, 2011).

² *Id.*

the Local Television Broadcasters provided numerous examples to this effect.³ The Joint Television Network Affiliates endorse the positions set forth in the NAB Comments and also agree with the Local Television Broadcasters that stations provide in-market news and other coverage without regard to state lines. Undermining the DMA system, which is a free-market system, would imperil local television stations' advertising revenues, which are essential to support the production of local news, weather, public affairs, emergency information, and other local programming, and would in other respects disserve the public interest. It also would impair local economies, jeopardizing local businesses and local employment opportunities.

The Joint Television Network Affiliates reply here to several false assertions contained in the comments filed by certain cable and satellite companies. Among these are: (1) that stations do not provide "local" service to their viewers who reside across state lines; and (2) that, in the absence of a change in the DMA structure, cable and satellite operators lack the ability to provide the local programming of in-state broadcasters to viewers located in distant markets. As explained below, neither of these assertions is accurate.

I. STATIONS PROVIDE BROAD SERVICE TO VIEWERS IN THEIR MARKETS, REGARDLESS OF THE LOCATION OF THOSE VIEWERS.

Cablevision posits that viewers in DMA counties served by stations across state borders do not receive programming "that the subscribers really consider 'local'"—programming that Cablevision asserts can be provided only by in-state stations.⁴ And DIRECTV labels the DMA system an "anachronism."⁵ These views are mistaken.

³ See Comments of the Local Television Broadcasters (January 24, 2011).

⁴ Cablevision Comments at 1 (January 24, 2011).

⁵ DIRECTV comments at 3 (January 24, 2011).

The reality is that television service is not limited by state lines and that the markets defined by DMAs reflect cohesive communities. They reflect market and economic realities as they actually exist. They also reflect social and geographic ties and current viewing patterns. The government should not override the natural television markets that have been developed over decades by these ties and by effectively functioning, local economic markets. Government intervention will be harmful and destabilizing because government officials cannot arbitrarily define a market better than the market itself.

The economic and cultural affinities that underlie the definitions of DMAs, and the use of DMAs in the advertising market, provide stations with an economic incentive to serve all of their viewers. As illustrated in the comments filed by NAB and the Local Television Broadcasters, stations do not limit their service to areas defined by state lines. The service provided by stations to viewers in their markets is “local” in fact, not just in name.

Many of the comments filed in this proceeding recognize the reality that service provided by a station in the viewer’s market, regardless of the location of state lines, is genuinely local service and is more relevant to viewers than service provided by an in-state station that serves a distant market. For example, NCTA noted concerns that modifying the current system could cause subscribers to lose access to “out-of-state broadcast stations more local to the community – stations that might carry news, sports, and other programming more of interest to those viewers than programming carried on in-state stations more distant from that community.”⁶

DIRECTV also acknowledged that “one could only imagine, for example, the reaction of

⁶ See NCTA Comments at 5-6 (January 24, 2011), citing the disruptions that would be caused by a “wholesale change in the way that markets are defined.”

Arlington, Virginia residents to the news that Richmond stations are now ‘local’ to them but Washington, D.C. stations are not.”⁷

The Commission and other government entities have recognized that culturally and economically contiguous geographic areas regularly cross state boundaries. For instance, DMAs are not the only Commission-recognized markets that cross state lines. Since the inception of Cellular Market Areas in 1982, the Commission has assigned area-based licenses, a number of which include geographical territories that cross state lines.⁸ Additionally, for purposes of the Census, OMB appropriately recognizes that Metropolitan Statistical Areas can and do cross state lines.⁹

Moreover, Cablevision should not presume that providing viewers with the programming of distant, in-state stations would promote localism. In many cases, the nearest in-state station is very distant geographically and located in an area defined by different social, economic, and weather patterns. For example, the closest in-state station to Boise City in the Oklahoma Panhandle is in Oklahoma City, nearly 350 miles away, while KVII-TV is located in Amarillo, Texas, just 118 miles away. Reflective of the fact that they are in the same DMA as

⁷ DIRECTV Comments at 8.

⁸ Area-based licenses which cross state lines include those based upon, *inter alia*, Basic Trading Areas (for the Multipoint Distribution Service, Narrowband and Broadband Personal Communications Service, and the Local Multipoint Distribution Service); licenses based on Major Trading Areas (for the Narrowband and Broadband PCS as well as Specialized Mobile Radio); and licenses based upon Economic Areas (for the General Wireless Communications Service, Specialized Mobile Radio, and Location and Monitoring Service). *See* Market Boundary Files, http://wireless.fcc.gov/geographic/index.htm?job=market_boundary_files.

⁹ *See* OMB Bulletin 10-02, Update of Statistical Area Definitions and Guidance on Their Uses (2009), available at www.whitehouse.gov/sites/default/files/omb/assets/bulletins/b10-02.pdf (defining current Metropolitan Statistical Areas and other similar geographic areas); *see also* Census Bureau, *Geographic Areas Reference Manual* 13-1 to -12 (1994), available at www.census.gov/geo/www/garm.html (explaining role of Metropolitan Statistical Areas in census operations).

Boise City, the Amarillo stations have sales and news bureaus in the Oklahoma Panhandle and cover its weather, school closings, and other local matters of interest to Panhandle residents.

KVII-TV alone maintains six weather stations throughout the Oklahoma Panhandle, providing critical, real-time weather data relied upon by local officials and over 27,400 area residents.

Another example that illustrates well how broadcasters are driven to serve their entire television market, regardless of state lines, is the service KTBS-TV provides in the Shreveport DMA to its viewers located in seven counties in southwest Arkansas. The family-owned station has invested heavily in state-of-the-art news-gathering technology that allows the station both to cover news and sports in southwest Arkansas. KTBS has a full-time reporter dedicated solely to news in this straddle area, and can and does deploy additional personnel and resources as needed for coverage of major stories.¹⁰ The station also provides custom newscasts for southwest Arkansas viewers who subscribe to Cable One, the predominant cable operator in the area.¹¹ KTBS also engages in extensive community outreach in southwest Arkansas, because those areas are truly part of the local market,¹² and the station provides in-depth coverage of southwest Arkansas high school football every Friday night during football season.

The simple fact is that television stations provide service to viewers in their local

¹⁰ The reporter shoots video with a high-definition digital camera and produces news reports on her laptop. She can also e-mail, Skype, ftp, and edit stories remotely.

¹¹ These stories are made available on the station's website and are used in other newscasts as relevant.

¹² For example, two teachers in southwest Arkansas received \$1,000 from KTBS's One Class at a Time project. These teachers were able to implement projects in their classrooms that they could not have done without One Class at a Time. The KTBS 3 Community Caravan traveled to southwest Arkansas on numerous occasions during the year to meet with and listen to viewer concerns in communities throughout the region. KTBS has been running an annual blood drive in southwest Arkansas communities for more than 25 years. During the station's Spirit of Christmas project, the station established a Texarkana drop-off location for the Marines' Toys for Tots program.

market without regard to the state in which those viewers happen to reside.

II. THE CURRENT REGULATORY FRAMEWORK PROVIDES CABLE AND SATELLITE OPERATORS WITH THE FLEXIBILITY TO PROVIDE VIEWERS WITH THE LOCAL PROGRAMMING OF IN-STATE BUT OUT-OF-MARKET STATIONS.

Several multichannel video programming distributors (“MVPDs”) incorrectly assert that the current legal framework must be changed to permit them to provide out-of-market viewers with in-state stations’ local programming. The assertion is simply not true. It is belied by the facts. For example, Cablevision points to the example of Colorado’s La Plata and Montezuma counties, which are located in the Albuquerque, New Mexico DMA. It claims that “existing rules, such as the network non-duplication rules, prevent Cablevision from satisfactorily resolving this situation by carrying the Colorado broadcast stations of interest to many subscribers.”¹³ A number of other commenters also cited this example, with DIRECTV asserting that federal law “denies” certain subscribers in certain DMAs access to in-state programming.¹⁴ DIRECTV argues that, “under the current regime,” cable and satellite providers serving residents of Johnson and Campbell counties in Wyoming “cannot provide them with programming from Wyoming broadcast stations.”¹⁵ And DISH asserts that there are households that are “ineligible to receive in-state programming by satellite because of their orphan status.”¹⁶

As shown above and in NAB’s Comments, viewers across the country already have access to the programming of in-state television stations. The *only* reason that the *local*

¹³ Cablevision Comments at 1-2.

¹⁴ DIRECTV Comments at 6-7. *See also* Letter from Representative Scott Tipton *et al.* to Chairman Genachowski (Feb. 16, 2011) (stating that La Plata and Montezuma counties are “denied the ability to obtain in-state broadcasts”).

¹⁵ *Id.* at 5.

¹⁶ DISH Comments at 3.

programming of additional in-state stations is not carried more broadly on MVPDs' systems is that the MVPDs have declined to provide it—a situation that will not be resolved by the proposals of Cablevision, DISH, and DIRECTV to modify television markets to permit, but not require, carriage of in-state television signals. It is abundantly clear what the real interests of these three MVPDs are: to artificially redefine local television markets to allow MVPD importation of duplicating *national* programming and thereby secure a competitive negotiating advantage in retransmission consent negotiations for carriage of in-market stations. The loss by local stations of program exclusivity for *national* programming will undermine the economics of local television service and the vital (and expensive) local program services that these stations provide to their communities.

The current legal framework *already* provides cable and satellite operators with all the flexibility needed to carry the *local* programming of out-of-market, in-state stations. As NCTA recognizes, “[c]able operators already have the right in theory to carry any broadcast signal, local or distant, in-state or out-of-state, provided they comply with certain carriage-related rules.”¹⁷ For example:

- The Bresnan cable system serving Durango, Colorado (located in La Plata County and thus a part of the Albuquerque DMA) carries the local programming from *five* Denver stations: KUSA, KCNC, KWGN, KRMA,

¹⁷ NCTA Comments at 6. *See also* NAB Comments at 30-33 (explaining that pay-TV providers have the necessary tools under the Communications Act and the Copyright Act to retransmit local programming to distant, in-state viewers).

and KMGH.¹⁸ In fact, all of the cable systems in these counties import the news programming of the major Denver stations.¹⁹

- DIRECTV carries the local news, weather information, sports, and other programming from KATV (the Little Rock, Arkansas ABC affiliate) in the southern Arkansas Counties of Ashley, Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Sevier, and Union.²⁰ These counties are located in the Shreveport DMA and Monroe-El Dorado DMA.²¹
- The Local Television Broadcasters provided a non-comprehensive list of in-state, out-of-DMA carriage by MVPDs in their Comments, including the following examples²²:
 - * Comcast subscribers in the Chattanooga, TN market, which includes the Georgia counties of Dade, Walker, Catoosa, Whitfield, and Murray, receive the local newscasts of WXIA-TV and WGCL-TV, which are located in the Atlanta market.
 - * The Comcast cable systems in Abington, Glade Springs, and Saltville, Virginia (in the Tri-Cities TN-VA market) import the local newscasts of WDBJ-TV, which is in the Roanoke, VA, television market.
 - * Comcast imports the local news and weather programming of KOAT-TV, Albuquerque, New Mexico, into Las Cruces, New Mexico, in the El Paso, TX, television market.
 - * Time Warner Cable, in Robeson and Scotland Counties, North Carolina, both of which are located in the Myrtle Beach, SC, television market, imports into those two North Carolina

¹⁸ See, e.g., the channel line-up for zip code 81301, available at www.bresnan.com/services/digital_cable_with_on_demand/channel_line-up. The Denver stations are affiliated with ABC (KMGH); CBS (KCNC); NBC (KUSA); CW (KWGN); and PBS (KRMA). For zip code 81328 (part of Mancos, Colorado, located in Montezuma County), the Bresnan system carries all of these stations except for KMGH. *Id.*

¹⁹ See Comments of the Local Television Broadcasters at 12.

²⁰ Given that DIRECTV currently carries this programming to viewers in Arkansas but outside of KATV's DMA, it is perplexing that it claims to need a "solution" to allow it to do so. See DIRECTV Comments at 7.

²¹ KATV, "KATV Now Available on DIRECTV in South Arkansas," (Oct. 19, 2010), *available online at*: www.katv.com/Global/story.asp?S=13349515.

²² See Local Television Broadcasters Comments at 11-12 and n.3.

counties the local news and weather programming of in-state WECT-TV, Wilmington, North Carolina.

- * Cable companies in Montezuma and La Plata counties, Colorado, in the Albuquerque, NM television market, import local news programming from Denver television stations.
 - * Time Warner Cable in Palm Springs, California, imports the local news of the Los Angeles stations.
 - * The Charter cable systems in Bristol, Johnson City, and Kingsport, Tennessee (in the Tri-Cities TN-VA market) import the local newscasts of WBIR-TV, which is in the Knoxville, TN, television market.
- Twelve cable providers in northwest Wisconsin, serving Wisconsin counties that are located in the Minneapolis-St. Paul DMA, carry the signal of WQOW, Eau Claire, Wisconsin (located in the La Crosse-Eau Claire DMA) for its local news, weather, and sports programming.
 - Ten cable systems in Oklahoma carry the local programming of KTUL, Tulsa, Oklahoma, outside of KTUL's Tulsa DMA. Seven cable providers in DMAs such as Wilkes-Barre-Scranton and Johnstown-Altoona-State College provide the local programming of WHTM, Harrisburg, Pennsylvania to viewers in Pennsylvania located in these other DMAs. WSET, Lynchburg, Virginia, in the Lynchburg-Roanoke DMA, is carried by cable systems in the Richmond-Petersburg and the Raleigh-Durham DMAs. Five cable systems in Alabama outside of the Birmingham DMA carry the local programming of stations WCFT, WJSU, and WBMA.

DISH advocates for “a state-wide license to permit satellite carriers to provide in-state local broadcast stations to residents of orphan counties.”²³ What DISH actually is requesting is the right to retransmit the *duplicating national* programming of in-state stations to in-state viewers that are in another station's DMA. For the reasons described above, current law already provides DISH (and cable companies) with the flexibility to carry *non-duplicating local* programming from in-state stations to out-of-market, in-state viewers. Further, it is striking that DISH's focus is directed to carriage of duplicating *national* programs, when, in fact, DISH has

²³ DISH Comments at 6.

been unwilling to carry the *non-duplicating local* programming offered by broadcast stations. The purported concern for in-state viewers is uncoupled from any proposal that MVPDs be *required* to carry the non-duplicating local programming of in-state stations to in-state viewers.²⁴

The references to the network non-duplication rules in comments such as Cablevision's are *non sequiturs*. The network non-duplication rules require operators to black out *national* programming that *duplicates* programming already available from the local affiliate. The network non-duplication rules apply only if a network has granted non-duplication rights and only within limited geographic areas. There is no public interest justification and no demonstrated need for a cable or satellite company to import a distant station's *duplicative* national network programming when a local station already broadcasts the very same programming, and there are many reasons why the importation of duplicative national programming would harm viewers.²⁵

DIRECTV's inclusion of a list of DMAs in which it retransmits significantly viewed signals—signals for which DIRECTV would not have to black out duplicative national programming—shows how little real interest these MVPDs have in actually providing in-state stations to subscribers located in DMAs that are primarily located in another state—except when it suits their purposes. DIRECTV's own half-page list shows that it exports but a handful of stations across state lines from only nine DMAs, even though current law plainly provides it with

²⁴ In any event, if the “license” that DISH proposes would give operators a right to carry a station beyond the scope of the station's grant of retransmission consent—this is not clear from DISH's comments—such a license would be contrary to the statutory provisions and policy judgments that underlie the retransmission consent regime. STELA is not intended to undermine retransmission consent, and the FCC should not recommend the creation of a statutory license that would do so.

²⁵ See NAB Comments at 27-29 and Local Television Broadcasters Comments at 2 and 12-13.

a compulsory copyright license to do so.²⁶

III. THE FCC SHOULD NOT ALTER ITS SIGNIFICANTLY VIEWED RULES.

DISH proposes that the FCC establish a presumption that an out-of-market, but in-state station is significantly viewed in distant counties belonging to markets containing no in-state stations. It proposes in the alternative that the FCC exercise its waiver authority to expand petitioners' ability to show that a station is significantly viewed in those counties on the basis of viewing data from all television households, not just over-the-air households.²⁷ The FCC should reject DISH's proposal, which is contrary to the governing statutory provision and the very concept of significant viewership.

By statute, the relevant standards for establishing significantly viewed status are the ones in effect as of April 15, 1976.²⁸ As the Commission has recognized, this provision “requires that the Commission use the same rules in considering such petitions that were in effect as of April 15, 1976.”²⁹ Thus, the Commission has rejected proposals to substantively modify the process for making significantly viewed determinations.³⁰ Even if DISH's proposals could be characterized as merely procedural—which they are not—they would be contrary to § 122(a)(2), which cites *all* of the “rules, regulations, and authorizations” in effect as of 1976, not just the “substantive” ones.

²⁶ See DIRECTV Comments, Appendix A.

²⁷ DISH Comments at 2 and 7-8.

²⁸ See 17 U.S.C. § 122(a)(2), formerly codified at § 119(a)(3)(A), referring to “a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976.”

²⁹ Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, *Report and Order*, 20 FCC Rcd 17278, at para. 24 (2005).

³⁰ See, e.g., *id.* at paras. 29 and 35-36.

Not only would adopting DISH's proposal be contrary to the Copyright Act, it would be inconsistent with the concept of significant viewership, and it would harm viewers.

First, the significantly viewed provisions are premised on the principle that a community should not be deprived of access to a program delivered over pay-TV if the program has a baseline level of over-the-air viewership in the community. A waiver mechanism that would permit a showing based on viewing data from all television households, as opposed to over-the-air households, would turn the rule on its head and completely gut what it means for a station to be "significantly viewed" in communities outside of its DMA.³¹ Further, the level of over-the-air viewership is a factual question that must be answered by a petitioner, and one that is highly dependent on the distance between the originating station and the county or community at issue. It would not be procedurally or substantively sound to "presume" significant viewership without any empirical showing. It would be a fiction.

Second, DISH's proposal would cause unnecessary harm to viewers. The ultimate effect would be to permit pay-TV providers such as DISH to import duplicating *national* programming, via the "significantly viewed" exceptions to the network non-duplication and syndicated exclusivity rules, which they will be incentivized to do in order to avoid or minimize retransmission consent payments to *local* stations.³² DISH's proposal also is

³¹ "The concept of significant viewing is directly related to whether an otherwise distant station's broadcast signal is viewable over-the-air in a cable community unit. The significantly viewed exception to the exclusivity rules is meant to insure that any programming that is available terrestrially in a community from an over-the-air station will not be blacked out on a community's cable system." *Implementation of the Satellite Home Viewer Improvement Act of 1999*, Notice of Proposed Rulemaking, 15 FCC Rcd 434, at para. 18 (Feb. 28, 2000).

³² See NAB Comments at 27-29 and Local Television Broadcasters Comments at 2 and 12-13 for a discussion of the harms that would arise under that approach.

unnecessary because the rules already provide flexibility to pay-TV operators to carry local programming in distant counties.

The underlying intent of DISH's proposal regarding significantly viewed showings and the other proposals made by MVPDs in this proceeding is artificially to improve pay-TV providers' leverage in retransmission consent negotiations. This is especially apparent given that the MVPDs' proposals to override program contracts negotiated in a free marketplace are unaccompanied by any corresponding commitment to carry the local programming that purportedly is of concern to them.

IV. PRESERVATION OF PRIVATELY CONTRACTED PROGRAM EXCLUSIVITY FOR NATIONAL PROGRAMS IS ESSENTIAL TO THE CONGRESSIONAL MANDATE TO ESTABLISH AND SUPPORT A LOCAL TELEVISION BROADCAST SERVICE.

The Commission's program exclusivity rules are designed to recognize the private contractual rights that broadcasters purchase in a competitive marketplace for the exclusive right to televise their programs in their local markets. The exclusive right to provide national programming is essential to the economics of local broadcast service and is the economic linchpin of localism. The Commission has long held that program exclusivity "insure[s] the continued supply of television programming" which, the Commission has noted, is "fundamental to the continued functioning of broadcast and cable television alike."³³ The Commission has observed:

For competition to maximize consumer benefits, it is important that a property rights framework be applied that permits markets to operate effectively. Failure to supply an appropriate structure of rules and regulations will lead to market failures in satisfying

³³ *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems*, Cable Television Report and Order, 36 FCC 2d 143 (1972), at para. 73.

consumer preferences. To ensure free and efficient functioning of competitive market processes, the Commission seeks to permit equality, to the extent possible within our regulatory framework, of contractual opportunity among competing modes of distribution. In the instant setting, that means permitting broadcasters to acquire and enforce the same kinds of exclusive performance rights that competing suppliers are now permitted to exercise. Failure to supply parity in contractual freedom will bias the nature of competitive rivalry among competing suppliers in ways not grounded in operating efficiencies but instead based on artificial handicaps exacerbated by disparate regulatory treatment.³⁴

Indeed, the Commission has stated that broadcasters' "inability to enforce exclusive contracts puts them at a competitive disadvantage relative to their rivals who can enforce exclusive contracts; their advertisers' abilities to reach as wide an audience as possible are impaired; and consumers are denied the benefits of full and fair competition: higher quality and more diverse programming, delivered to them in the most efficient possible way."³⁵

³⁴ *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, Notice of Inquiry and Notice of Proposed Rule Making, 2 FCC Rcd 2393 (1987), at para. 12.

³⁵ *Cable Television Syndicated Program Exclusivity Rules*, Report and Order, 79 FCC 2d 663 (1980), at para. 62. The Commission found the illogic of the lack of syndex protection particularly telling:

Normally, firms suffer their most severe losses to competitors when they fail to offer the services most desired by the public. In the absence of syndicated exclusivity, extensive duplication reverses this relationship for broadcasters—they suffer their most severe loss precisely when they offer programming most desired by audiences; thus diversion is an indication of a competitive imbalance that results from the absence of the rules. Firms that choose to exhibit programming on an enforceable exclusive basis (e.g., cablecasters) generally do not face the problem of audience diversion to duplicative product. The fact that only broadcasters suffer this kind of diversion is stark evidence, *not* of inferior ability to be responsive to viewers' preferences, but rather of the fact that broadcasters operate under a different set of competitive rules. All programmers face competition from alternative sources of

(continued...)

This is a key consideration in assessing the merits of market modification proposals. To rule affirmatively that television broadcast stations cannot contract for program exclusivity, or to create a system that has that effect, would undermine the Commission’s stated goal of “permitting broadcasters to acquire and enforce the same kinds of exclusive performance rights that competing suppliers are now permitted to exercise.”³⁶ In turn, this would lead to the migration of national programming to pay-TV platforms, and viewers would be left with little choice but to subscribe to pay-TV service—a result hardly in the interest of viewers.

Beyond ensuring parity in contractual freedom, program exclusivity constitutes an essential component of the network-affiliate system and, more importantly, the American broadcasting system’s structure of licensing free, over-the-air television stations to serve *local* communities.³⁷ Congress has found that exclusivity “is an integral part of today’s network-affiliate relationship”³⁸ and that:

historically and currently the network-affiliate partnership serves the broad public interest. It combines the efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public. It also provides a highly effective means whereby the special

programming. Only broadcasters face, and are powerless to prevent, competition from the programming they themselves offer to viewers.

Id. at para. 42 (emphasis in original).

³⁶ *Amendment of Parts 73 and 76 of the Commission’s Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, *supra* n. 34, at para. 12.

³⁷ *See, e.g.*, FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004* (Sept. 8, 2005) (“2005 FCC Retransmission Consent Report”), at para. 50; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Memorandum Opinion and Order, 9 FCC Rcd 6723 (1994), at para. 114; S. REP. NO. 102-92 (1991), at 38. *See also* NAB Comments at 27.

³⁸ H.R. REP. NO. 100-887, pt. 2 (1988), at 20.

strengths of national and local program services support each other. This method of reconciling the values served by both centralization and decentralization in television broadcast service has served the country well.³⁹

Without the ability to contract in a competitive market for program exclusivity, the economic foundation of local, over-the-air television service would be undermined, thereby threatening free, over-the-air, local news, local emergency information, local weather and public safety information, local political debates, local public affairs programming, local public service announcements, local political advertising for local candidates, and local commercial advertising for local merchants. We fail to see how this result would serve the public interest.

Plainly, the importation by cable and satellite of duplicating programming does not contribute to program diversity. Superimposing state boundaries on top of natural television market boundaries would deprive free, local, over-the-air television stations of the right to enter into exclusive programming television contracts for national network and syndicated programming. Such an asymmetrical and anti-competitive regulatory scheme cannot be squared with the public interest.

V. THE DMA SYSTEM SUPPORTS AND PROMOTES LOCAL MARKETS AND THEREBY CONTRIBUTES VITALLY TO THE HEALTH OF LOCAL ECONOMIES AND TO JOB RETENTION AND EXPANSION.

Local-area broadcast advertising is vital for local businesses to provide information about their goods and services to consumers. The DMA system is the foundation for local television advertising. Alternatives to the present system “would result in less rational and less useful markets, ones essentially untethered to viewing and population patterns and the

³⁹ H.R. REP. NO. 100-887, pt. 2 (1988), at 20.

economics of the television marketplace.⁴⁰ Modifying or eliminating the current system would disrupt local advertisers' ability to reach consumers, thus diminishing their economic vitality, ability to launch innovative new products and services, and employment of local workers. One concrete example is that of Kansas City, Missouri, and Kansas City, Kansas, which for most purposes constitute a single economic market. If MVPDs had their way, television advertisers would have to purchase two flights of commercial spots, one on Kansas stations and one on Missouri stations, in order to cover that unitary commercial market, whereas today, they need only to purchase spots in a single DMA. Such an irrational intrusion by the government in today's free marketplace cannot be justified, and certainly would not be contemplated for the newspaper, cable, or Internet advertising marketplace.

Earlier this year, the President began an initiative to reduce burdensome regulation, noting that the federal government's regulatory system should promote "economic growth, innovation, competitiveness, and job creation."⁴¹ Chairman Genachowski has endorsed this initiative, stating that the FCC "will continue our work to promote innovation inside and outside government and to spur economic growth and job creation, while ensuring that the benefits of our rules outweigh the costs and burdens."⁴² The Commission should not adopt or recommend any measure that would substitute government-defined markets for existing, natural markets and that would undermine the DMA-based advertising system that is so important for local businesses and local jobs.

⁴⁰ NAB Comments at 23.

⁴¹ Executive Order, "Improving Regulation and Regulatory Review," at § 1 (Jan. 18, 2011).

⁴² Howard Buskirk, Jonathan Make, and Adam Bender, "Genachowski Endorses Obama Stance on Regulation," *Communications Daily*, at 1 (Feb. 7, 2011).

VI. CONCLUSION

As ACA has stated, “Congress is most concerned” about *local* programming.⁴³

We agree. Increasing access to in-state local programming, however, is within the power of MVPDs today, under the existing legal framework, and it will not be facilitated by the proposals of certain MVPDs in this proceeding. In fact, the proposals suggested by certain MVPDs would impose a host of harms on viewers.

Operators that purport to be concerned about providing local, in-state programming to out-of-market viewers have: (1) failed to provide a single example of a situation in which they have sought and been denied the right to provide in-state programming to “orphan counties” in order to serve this need; (2) have in certain circumstances refused offers to allow them to carry such programming; and (3) have in no circumstance suggested or accepted that the right to import out-of-market but in-state stations be coupled with any corresponding carriage obligations. For the reasons described above, creating such a right or obligation would be harmful to local broadcasters, but these facts do expose that the real interest of commenters such as Cablevision, DISH, and DIRECTV is not in importing *local* in-state programming, but in importing duplicative *national* programming. They want this right because they can and will use it to undercut local stations’ ability to bargain for fair and reasonable retransmission consent compensation for their programming services, which in turn supports the production of local news, sports, weather, and emergency programming. This issue is not about in-state programming, which can be imported under current law and which is provided by local television stations whose service is not defined by state lines. It is about the local stations’

⁴³ ACA Comments at 3.

ability to enforce their programming rights, for which they have negotiated in good faith and in a free marketplace.

Respectfully submitted,

THE ABC TELEVISION AFFILIATES
ASSOCIATION
THE CBS TELEVISION NETWORK AFFILIATES
ASSOCIATION
THE NBC TELEVISION AFFILIATES

By:

/s/

Wade H. Hargrove
David Kushner
BROOKS, PIERCE, MCLENDON, HUMPHREY &
LEONARD LLP
Wachovia Capitol Center, Suite 1600
150 Fayetteville Street
Raleigh, NC 27602
919-839-0300

*Counsel for the ABC Television Affiliates
Association*



Jonathan D. Blake
Jennifer A. Johnson
Eve R. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
202-662-6000

*Counsel for the CBS Television Network
Affiliates Association and the NBC
Television Affiliates*

February 22, 2011

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of)
)
Report Required By the Satellite) MB Docket No. 10-238
Television Extension and Localism Act)
On In-State Broadcast Programming)

To: The Media Bureau

**COMMENTS OF
THE LOCAL TELEVISION BROADCASTERS**

**BARRINGTON BROADCASTING GROUP, LLC
BELO CORP.
BONTEN MEDIA GROUP, LLC
GANNETT Co., INC.
GRAY TELEVISION, INC.
MEREDITH CORPORATION
POST-NEWSWEEK STATIONS, INC.
RAYCOM MEDIA, INC.**

Jonathan D. Blake
Eve R. Pogoriler
Elizabeth H. Canter
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
202-662-6000

*Counsel for the Local Television
Broadcasters*

January 24, 2011

TABLE OF CONTENTS

I.	THE DMA SYSTEM REFLECTS MARKET AND SOCIETAL REALITIES.....	3
II.	LOCAL STATIONS ARE WELL POSITIONED TO SERVE ALL OF THE COMMUNITIES IN THEIR SERVICE AREAS, WHETHER OR NOT THEY ARE ACROSS STATE LINES.	7
III.	REPLACING THE CURRENT DMA SYSTEM WOULD BE AN UNWARRANTED REGULATORY INCURSION AND WOULD HARM THE PUBLIC INTEREST.....	11

SUMMARY

The Local Television Broadcasters, eight broadcast television station groups that collectively operate 160 full-power television stations in 107 markets across the country, file these comments to illustrate the benefits of the Designated Market Area (“DMA”) system and the harms that would occur if this system were undermined or replaced.

Ninety-eight out of the nation’s 210 DMAs cross state boundaries. Each DMA reflects social and economic realities, geographic affinities, and current viewing patterns—and the DMA definitions evolve as these underlying ties evolve. These comments include numerous, non-comprehensive examples of the ways in which these ties bind together cohesive markets which are not defined by state boundaries. The Media Bureau should reject the false premise that local service depends on state lines. The Local Television Broadcasters describe in these comments just a few of the many ways in which local stations provide comprehensive service to their markets, regardless of state lines—service unlikely to be replaced by distant, in-state stations, particularly for rural communities. Changes to the current system are unnecessary because local stations serve all of their viewers, including those that reside in other states. (In addition, the current legal framework already provides flexibility for cable and satellite carriers to import a distant but in-state station’s local news and its weather, sports, political, and public affairs programming.)

These Comments also explain why changing the current DMA system would be harmful. Any proposal that would allow cable and satellite carriers to import a distant affiliate’s duplicative national network and syndicated programming would undermine the service that local broadcasters provide to the public. Importation of duplicative national programming would fragment the station’s local, in-market audience for such programming, thereby diminishing

advertising revenues that support the production of local programming, and would permit cable and satellite carriers to drop the local affiliate's signal after the present retransmission consent agreement expired, harming the local station and ultimately harming viewers.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554**

In the Matter of)
)
Report Required By The Satellite) MB Docket No. 10-238
Television Extension and Localism Act)
On In-State Broadcast Programming)

To: The Media Bureau

**COMMENTS OF
THE LOCAL TELEVISION BROADCASTERS**

The undersigned (collectively referred to as the “Local Television Broadcasters”) respectfully respond to the Media Bureau’s request for comments in connection with the report to Congress required by Section 304 of the Satellite Television Extension and Localism Act (“STELA”).¹ The Local Television Broadcasters are eight broadcast television station groups that collectively operate 160 full-power television stations in 107 markets across the country.

The television markets that are defined by Designated Market Areas accurately reflect social and economic realities, geographic affinities, and current viewing patterns. Regardless of whether they cross state lines, DMA boundaries reflect geographic and economic ties that connect the viewers in a particular market. The DMA definitions are not static, but are subject to fine-tuning each year as these geographic, economic, and social ties evolve. Through these ties that define DMAs, local stations have an economic incentive to provide comprehensive service throughout their markets. The Local Television Broadcasters file these comments to illustrate how current DMA definitions reflect geographic, economic, and social ties and to

¹ See Public Notice, “Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming,” MB Docket No. 10-238, DA 10-2227 (rel. Nov. 23, 2010).

demonstrate that television stations serve all of their local markets, including their viewers in other states. These examples are not comprehensive and are intended to be merely illustrative. Changing the market definitions would pull apart these communities and the local service that they receive from their television stations. Moreover, in many cases, particularly for viewers in smaller, rural communities, this localized service is dependant on the existing system, and local service simply would not be replaced by distant, in-state stations.

These comments also explain why changing the current DMA system would cause widespread and substantial harms. Ninety-eight out of the nation's 210 DMAs cross state boundaries; thus, nearly half of all markets would lose substantial portions of their service areas (and in some cases, a majority) if market definitions were constrained by state lines. And changes to the current system are unnecessary, both because local stations do, in fact, serve their markets comprehensively (including viewers residing across state lines) and because the current legal framework already provides flexibility for cable and satellite carriers to import a distant but in-state station's local news, weather, sports, political coverage, and public affairs programming. (Indeed, a number of the Local Television Broadcasters have provided their consent to cable and satellite carriers for such arrangements in order for them to do so. Moreover, in many cases cable and DBS operators have declined to accept a broadcasters' offer of consent to such retransmissions.) Any proposal that would allow cable and satellite carriers to import a distant affiliate's duplicative national network and syndicated programming, however, would undermine the service that local broadcasters provide to the public. Importation of duplicative national programming would fragment the station's local, in-market audience for such programming, thereby diminishing advertising revenues that support the production of local programming, and

would permit cable and satellite carriers to drop the local affiliate's signal, harming the local station and ultimately harming viewers.

I. THE DMA SYSTEM REFLECTS MARKET AND SOCIETAL REALITIES.

The 210 Designated Market Areas ("DMAs") defined by Nielsen are accurate reflections of social and economic realities, geographic affinities, and current viewing patterns. Updated every year, the DMA definitions are designed to stay current with social and economic behavior and viewing practices.

Because metropolitan areas and economic and cultural centers often cross state lines, so do many DMA definitions. Viewers residing over state lines share geographic and economic ties with their local station's market, as many viewers commute daily across state lines to work or shop. Many of the markets described below illustrate this point. Further, the local station may be geographically closer than any in-state station. For example, consider KVII-TV, Amarillo, Texas, which provides localized services to viewers in the Oklahoma Panhandle region located just over the state line. The viewers in the Oklahoma Panhandle are 300 miles from the stations in Oklahoma City, the nearest Oklahoma DMA. Often, viewers live in a suburb that is part of a station's metropolitan area and just across the state boundary. For example, WRDW-TV's viewers in North Augusta, South Carolina have much more in common with their colleagues and neighbors in Augusta, Georgia than with viewers more than an hour away in Columbia, South Carolina. Likewise, viewers in northern Kentucky that work in Cincinnati and literally walk into Cincinnati for baseball games consider themselves part of the Cincinnati, Ohio metropolitan area and want local news, weather, and sports coverage that reflects that association, just as the stations in the Cincinnati market serve these viewers as a part of their core communities.

Additionally, the DMA may cover a cross-border region that experiences the same or similar weather. The coastal Georgia viewers of WJXT, Jacksonville, Florida, for example, are concerned about the same tropical storms and hurricanes that affect Jacksonville viewers but rarely reach other Georgia DMAs. Accordingly, if these viewers relied on Georgia stations, they would be at risk of not receiving important life-saving information. And the North Carolina viewers of WHNS, Greenville, SC, live in a mountainous region that is two and a half hours—and a different weather pattern—away from Charlotte, North Carolina.

This section provides concrete examples demonstrating that the programming provided by local stations is more relevant and responsive to viewers' needs than that provided by distant but in-state stations. The stations described in these examples provide coverage of local issues important to viewers—such as local news, weather, emergencies, sports, public affairs, and political developments and elections—that is far more relevant to viewers than the programming provided by the closest in-state station, which may be hundreds of miles away. The specific stations and the specific services described below are merely some of the many examples that could be provided.

1. **Amarillo.** KVII-TV, Amarillo, Texas, serves a DMA that includes three Oklahoma counties and six New Mexico counties, representing a total of approximately 20.3 percent of the total TV households in the DMA². The station is located in close proximity to the over 10,000 out-of-state but in-DMA viewers in the Oklahoma Panhandle. By contrast, the major Oklahoma City stations are located 300 miles away from that region, and they neither reach nor serve these viewers, who rely on KVII-TV and other Amarillo stations for news, weather, school closings, and life-saving emergency information. The station provides important news and other information to its viewers in eastern New Mexico, including unique coverage of regional issues not provided by New Mexico stations. The station's coverage is important for

² The numbers of affected counties and households were determined by reference to Warren Communications News, *Broadcasting & Cable Factbook 2010*, which derives data from the *Nielsen Local Television Universe Estimates for 2008-2009*.

public safety. In 2007, several tornados threatened the eastern New Mexico area. KVII-TV's coverage and emergency alerts served as a main source of information for these households.

2. ***Cincinnati.*** WXIX-TV, Newport Kentucky, serves the Cincinnati metropolitan area and neighboring counties, with about nineteen percent of its viewers resident in the ten Kentucky counties in its DMA and another five percent of its viewers resident in the six Indiana counties within its DMA. Residents of the DMA identify with the metropolitan area, regardless of what side of the Ohio River they live on. That geographical affiliation makes sense in light of the fact that huge numbers of Kentucky and Indiana viewers commute to downtown Cincinnati for work and to do business, to shop, and to attend Cincinnati Reds and Bengals games. (It is common for those going to Cincinnati Reds games—Ohio and Kentucky residents, among others—to park in Newport, Kentucky and walk across a bridge to the Reds stadium.) In turn, Newport, Kentucky, is an entertainment destination for those living in the metropolitan area. WXIX's coverage of this metropolitan area is extremely valuable to all who consider it home. For example, the Brent-Sprence Bridge Project is underway to replace the bridge over the Ohio River that is part of I-75. This project is a major development for those in both the Kentucky and Ohio portions of the DMA, as well as for the metropolitan area generally, and WXIX has provided extensive coverage of it.

3. ***Quincy, IL-Hannibal, MO-Keokuk, IA.*** KHQA-TV, Hannibal, Missouri, serves viewers in three states: Missouri, Illinois, and Iowa. Its viewers in Illinois and Iowa collectively represent approximately 71.43 percent of the total TV households in the DMA. The major cities of the DMA create a distinct, contiguous, and interdependent economic trade zone bordering the Mississippi River. The DMA is an accurate and longstanding reflection of this marketplace. The station's main studio, in Quincy, Illinois, lies at the geographic center of the market. The station maintains an extensive telecommunications infrastructure in all three states of the DMA in order to facilitate its news gathering for and about the states it serves. KHQA-TV regularly provides news for the market's viewers in Missouri, Illinois, and Iowa. The station's Missouri viewers reside in an active severe weather zone. The nearest Missouri stations are located in Kansas City, a distance of over 200 miles, and St. Louis, a distance of 125 miles out of the relevant weather path, and the Kansas City and St. Louis stations provide less relevant and less complete information on emergency weather events for the viewers in Missouri. The region shares strong economic ties, and KHQA-TV has been an important catalyst for the Quincy/Hannibal/Keokuk area's progressive regional economic development effort. The Tri-State Development Summit, which began in the mid-1990s, brings together community and government leaders from 35 counties in the region in order to define common issues and to improve the quality of life through economic development. KHQA-TV and other local television stations are a voice for Tri-State Summit projects in job creation, infrastructure, transportation, and workforce development.

4. ***Augusta.*** WRDW-TV, Augusta, Georgia serves a market in which 36 percent of its viewers are located in South Carolina, and it regards these viewers as a core part of the station's market. Indeed, WRDW's main studio and offices are located in South Carolina. Many Aiken County, South Carolina viewers commute to Augusta—home to large employers like the Medical College of Georgia—for work. This shared commercial center means that much of the same coverage is critical to viewers on both sides of the state line. Recently, for example, WRDW provided coverage of an expansion at Plant Vogtle, a nuclear power facility. This

expansion will create thousands of jobs for both Georgia and South Carolina residents in the DMA. WRDW devotes significant coverage to these sorts of important community and economic events. During a recent snowstorm, WRDW provided emergency weather coverage and information about road and school closings for all the viewers in this market. WRDW views its coverage of the South Carolina counties in its market as integral to its news schedule. It provides regular coverage of the Aiken and North Augusta, South Carolina Chambers of Commerce and is active in covering the South Carolina legislature. WRDW recently covered events in Graniteville, SC to commemorate the five-year anniversary of a train accident that killed nine people. At the time of the accident, in 2005, WRDW provided 48 hours of coverage of the accident, which involved a train carrying liquid chlorine and that released a poisonous chlorine cloud in the Graniteville community when it crashed.

5. **Omaha.** WOWT, Omaha, Nebraska provides local news, weather, and public affairs programming to a market that includes 14 Nebraska counties and nine Iowa counties. Many of WOWT's Iowa viewers commute to Omaha to work, and the region is bound together by common economic ties. For example, Omaha recently imposed an annual \$50 "Wheel Tax" on the significant number of commuters that work in Omaha but commute from outside the city. WOWT provided coverage of its enactment and subsequent protests by Iowa commuters. Interest in this story straddles state lines, like much of WOWT's coverage. WOWT provides life-saving, severe weather coverage for every corner of its DMA. In 2008, WOWT provided non-stop coverage for twelve hours of the Little Sioux Tornado, which caused devastating damage to a small area in Iowa—the Little Sioux Scout Range—and killed four boy scouts and injured dozens. WOWT's extensive coverage of that story, which received national coverage, was of enormous importance to Iowa viewers and their close neighbors in Nebraska. During the November 2010 elections, WOWT provided extensive coverage of Iowa's gubernatorial race and other issues on the Iowa ballot, including the continued operation of a casino in Council Bluffs, Iowa, frequented by Nebraska patrons. WOWT's coverage reflects the common economic and social ties within WOWT's market, and stations in Des Moines, Iowa do not provide comparable coverage of these local political, community, and school events.

6. **Jacksonville.** WJXT, Jacksonville, Florida, provides coverage to a market that includes six Georgia counties, which are much nearer to Jacksonville than many of the Florida counties in its DMA. These coastal communities in southern Georgia share weather patterns with coastal Jacksonville and are far more impacted by tropical storms and hurricanes than Atlanta or even Savannah, Georgia. Accordingly, when Tropical Storm Fay ripped through WJXT's coastal market in 2008, viewers in southern Georgia's coastal communities relied on WJXT for coverage. There is a large military installation in Jacksonville and a Department of Homeland Security facility in Brunswick, Georgia, both of which are economically important to communities on both sides of the Georgia-Florida border. WJXT provides detailed coverage of military and defense issues to serve its Georgia and Florida viewers.

7. **Myrtle Beach-Florence, SC.** WPDE-TV, Florence, South Carolina, provides important coverage to viewers in Robeson and Scotland counties, North Carolina. These North Carolina counties account for 20.6 percent of the total TV households in this DMA. The station provides daily news, weather coverage, and high school sports information to viewers in these counties. Its transmitter is located within 10 miles of the North Carolina border. The nearest in-state television stations are located in Raleigh and Wilmington, North Carolina, approximately

70 miles away. Robeson and Scotland counties lie in an active hurricane zone, and WPDE-TV provides information on approaching severe weather and emergency precautions, information that the distant stations would be unlikely to provide.

8. *Memphis.* State lines are meaningless for WMC, Memphis, Tennessee when it provides emergency weather coverage of a tornado traveling through its market. It is typical for a weather pattern to start in Arkansas, in the western part of the market and travel to Memphis and northwestern Mississippi. While WMC's market crosses state lines, the severe weather coverage it provides is life saving to its viewers in all three states.

II. LOCAL STATIONS ARE WELL POSITIONED TO SERVE ALL OF THE COMMUNITIES IN THEIR SERVICE AREAS, WHETHER OR NOT THEY ARE ACROSS STATE LINES.

The stations in the nearly half of all DMAs that straddle state lines do not allow state lines to limit their coverage to the whole DMA area. As noted above, the in-state and the out-of-state counties in a market often share common economic geographic ties, and in many cases the in-market station is much closer to viewers than an out-of-market but in-state station. Further, because advertising revenue is tied to robust, DMA-wide coverage, broadcasters would hurt their own economic interests if they served only those viewers within the in-state portions of their DMAs.

This section provides concrete examples of the locally responsive service provided by the Local Television Broadcasters to all viewers in their home markets. These examples are not comprehensive, but help to illustrate the many ways in which stations serve their entire DMAs, regardless of the state in which a station's viewers are located.

1. *St. Louis.* KMOV, St. Louis, Missouri, is located in a DMA that includes fifteen Illinois counties, with a population that represents approximately 26.9 percent of the total TV households in the DMA. This station is committed to serving these viewers. For example, on October 2, just before 10 p.m., a series of explosions occurred at a magnesium plant in Venice, Illinois. The explosion and subsequent fire released dangerous chemicals into the air, causing the evacuation of nearby residents and the closure of an area school. KMOV provided live coverage of the incident in an expanded 10 p.m. newscast and in its newscast the following morning, including evacuation details and information on the school closure. The station provided detailed coverage about what took place at the facility and the danger level, both on-air and on the station's website and mobile platforms. The state of Illinois recently was locked in a budget battle that impacted many people in the viewing area. Numerous local residents and

businesses had not received payments from the state, causing them to cut their own budgets which, in turn, caused a number of local businesses to close. The station provided continuing coverage of the issue and made frequent trips to the state capital to hold lawmakers accountable for their actions. After a competitive election season and contentious legislative session, lawmakers recently voted to pass a dramatic increase in the state income tax. KMOV covered these stories on an almost daily basis.

2. **Portland.** KGW, Portland, Oregon, provides important coverage to viewers in southwest Washington. The station's DMA includes five Washington counties, which collectively represent 17.4 percent of the total TV households in the DMA. Its close geographic proximity to the viewers in these counties has been a major advantage in the station's ability to cover important local developments. In August 2010, the station sent crews to cover a major wildfire and related evacuations in the Columbia River Gorge near Lyle, Washington. The fire occurred hundreds of miles from the television stations in Seattle and Yakima, Washington. KGW provided extensive live coverage of a tornado that tore through Vancouver, Washington two years ago, and the damage that it caused. It would have been difficult for the Washington stations located outside of the Portland DMA to respond as quickly as KGW did, or to stay with the story as long as it did. KGW is committed to covering political developments that affect its Washington viewers. For example, the station's current affairs show, "Straight Talk," aired the only face-to-face meeting of the opposing candidates in the recent race to represent Washington's 3rd Congressional District (which covers southwest Washington); it broadcast a discussion with Washington Governor Christine Gregoire in October 2010 that focused on issues facing southwest Washington; and, it has hosted the mayor of Vancouver, Washington for a discussion on issues facing his city. The station has provided continuing reporting on the proposal to build a bridge over the Columbia River, between Portland and Vancouver.

3. **Charlotte, NC.** WCNC-TV, Charlotte, North Carolina, is located in a DMA that includes four South Carolina counties, which collectively represent approximately 11.9 percent of the total TV households in the DMA. The station has committed significant resources to serving its South Carolina viewers. For example, during the 2010 election cycle, WCNC-TV provided in-depth coverage of the race to represent South Carolina's 5th Congressional District. The station covered the race aggressively in its newscasts and in its weekly public affairs/political show, "FlashPOINT." Charlotte is the closest major television market for the majority of the people who live in the 5th Congressional District.

4. **Norfolk-Portsmouth-Newport News, VA.** WVEC, Hampton, Virginia, is a primary source of news and weather information for the Outer Banks of North Carolina. (The station's DMA includes eight North Carolina counties, with a total population that represents approximately 8.21 percent of the total TV households in the DMA.) This past hurricane season, as Hurricane Earl threatened the North Carolina coast, WVEC responded by sending news crews to this region of North Carolina, providing live updates and giving the residents of the Outer Banks the information they needed to keep themselves and their properties safe. The station provided live reports for four days, becoming one of the main conduits by which the local government communicated evacuation and post-storm clean-up status. During other weather emergencies, including a snow-storm after Christmas 2010 and more snow in early January 2011, WVEC provided area North Carolina school, government, and private industry closure information on-air and on its website. The station recently interrupted regularly scheduled

programming to disseminate information about tornadoes potentially threatening viewers resident in the northern North Carolina portions of its DMA. WVEC consistently reports on non-weather events in this area. It has produced ongoing coverage of an Outer Banks bridge in need of major repairs. It provided continuing coverage of a story about a serial killer in 2007. And its reporters make daily beat check calls to North Carolina cities and counties in the DMA. The station reports on local elections in the North Carolina portions of its DMA.

5. *Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC.* WHNS, Greenville, South Carolina, has viewers in fourteen North Carolina counties and four Georgia counties, and it invests heavily in providing local news, weather and public affairs programming to these viewers, which comprise 38.2 percent of its market. When a North Carolina State Trooper was murdered in 2008, WHNS provided live coverage from Asheville for two days, and it continues to cover this case, including regular updates on the criminal proceedings and the deceased's family. When there was an explosion at a school in Spruce Pine, North Carolina in 2009, WMC sent a crew. WMC was the only station to cover the story of a missing child in Rutherford County, North Carolina last year; it provided extensive coverage of an escaped inmate in Swain County, North Carolina; and WMC sent a news crew to cover a police brutality investigation in Harwell, Georgia. The parts of Western North Carolina in WMC's market would otherwise have to depend on Charlotte, North Carolina stations for news and weather. In contrast, WMC has invested hundreds of thousands of dollars in transmitters and four-wheel drive vehicles to serve the mountainous region in western North Carolina. The residents of these hilly North Carolina areas have far greater affinity (for example, with respect to weather) with some of the South Carolina counties also served by WHNS and WMC than they do with the nearest North Carolina market, which is located in Charlotte.

6. *Louisville.* WHAS-TV, Louisville, Kentucky, serves a DMA primarily located in Kentucky. Ten of the counties in the DMA, however, representing approximately 24 percent of the population, are located in Indiana. WHAS-TV aggressively covers those counties, and the amount of Indiana news is proportionate to that state's share of the DMA. Along with regular news coverage, the station is an essential provider of severe weather information to viewers living in southern Indiana, and it provides information on school closings, such as those brought on by winter storms. During the election season, WHAS-TV provided special coverage of the issues facing Indiana voters. It broadcasts Amber Alerts for missing children in Indiana.

7. *Tri-Cities, TN-VA.* WCYB-TV, Bristol, Virginia, is located in a DMA where the majority of the population is not in the station's state: seven counties, representing approximately 62.2 percent of the population in the DMA, are in Tennessee, and two counties, representing another 4.4 percent of the DMA, are in Kentucky. WCYB-TV provides local coverage not only for its in-state Virginia viewers but also for viewers in Tennessee (where a majority of its viewers reside) and, as appropriate, to its viewers in Kentucky. For example, the station provided ongoing coverage of the recent Tennessee governor's race, reporting on policy announcements and candidate visits to the area; producing and hosting an hour-long live candidate debate; and covering other events, debates, the election results, and the transition of leadership to the new governor. WCYB makes weather coverage a priority, and the station provides extended weather coverage, interrupting programming when necessary, to cover threatening or severe weather in the area. The station does not limit its carriage of Amber Alerts to the Virginia portions of its DMA. For example, the station aired Amber Alerts from March 31

to April 1, 2010 to help in the effort to find two teenagers who left a Unicoi County, Tennessee high school with a wanted man, and from July 11 to July 13, 2010 concerning a missing infant from Greene County, Tennessee. The station aired Endangered Child Alerts from May 19th through 29th when a 10-month old girl in need of regular medical treatment was taken from Hawkins County, Tennessee by her parents, who had lost their custodial rights to the child because of drug convictions. WCYB's sports reporters regularly cover high school and college athletics in eastern Tennessee, including local high school football games and college football and basketball. The station covers other matters of local interests in its newscasts, including city council meetings, proposed legislation, and interviews with members of the Tennessee General Assembly. WCYB airs Appalachian Diary, a program produced at East Tennessee State University which covers topics ranging from mountain medicine to preserving veterans' stories for the Archives of Appalachia. The station is producing and airing a public service announcement about the "Feeding America Pound for Pound Challenge," which raises money for the Second Harvest Food Bank.

8. *Ottumwa, IA-Kirksville, MO.* KTVO, Kirksville, Missouri devotes significant effort to serving the interests of viewers throughout its market. Its DMA includes four counties in Iowa that collectively represent approximately 53 percent of total TV households in the market. The station maintains full studios and news bureaus in both Kirksville and Ottumwa. News coverage includes in-depth coverage of Missouri and Iowa issues on a daily basis. Reporters assigned to the Kirksville facility regularly present stories emanating from the state capital in Jefferson City, while those in the Ottumwa studio cover Iowa state news from Des Moines. In election years, the station produces and broadcasts debates featuring state candidates from both sides of the border. The station produces and airs on a multicast channel a daily 30-minute newscast originating from the Ottumwa studio that is devoted exclusively to Iowa news. KTVO's Iowa viewers are located in a region that is prone to severe weather. The closest Iowa stations are located in Des Moines and do not provide complete information on weather emergencies affecting these viewers.

9. *Sherman, TX-Ada, OK.* KXII is licensed in Sherman, Texas, but ten of the eleven counties in its DMA (62.7 percent of the viewers), its transmitter, and an office facility for the station are located in Oklahoma. Accordingly, it operates across state lines in nearly every aspect of its operation. News, weather, and sports programming relevant to southern Oklahoma and northern Texas residents is found each and every night on KXII. KXII covers nearly all the local and state political races in the Sherman-Ada market, including local mayoral, district attorney and judicial races. For each primary and general election, KXII assigns a person to physically travel to each county seat in southern Oklahoma to report race results back to the newsroom. That coverage is not provided by any Oklahoma City television stations or the Associated Press. Indeed, much of the local news, weather, and sports programming aired by KXII would not receive comparable coverage by stations in the Oklahoma City or Dallas/Fort Worth DMAs (107 miles and 85 miles away, respectively).

III. REPLACING THE CURRENT DMA SYSTEM WOULD BE AN UNWARRANTED REGULATORY INCURSION AND WOULD HARM THE PUBLIC INTEREST.

Not only is changing the current system unnecessary, it would harm broadcasters and the public and would be inconsistent with localism. As shown above, stations serve their DMAs, including viewers residing across state boundaries. Moreover, cable systems, DBS operators, and other MVPDs may, under present law and FCC rules, negotiate with broadcast stations for the rights to import the local programming broadcast by distant stations located in the state. Thus, where there is viewer demand for in-state but out-of-DMA stations, targeted solutions are possible under the present regime.³

For example, there are two counties in southwest Colorado, Montezuma and La Plata, that are part of the Albuquerque-Santa Fe, New Mexico DMA. Station KUSA, Denver, Colorado negotiated with the cable systems that serve Montezuma and La Plata counties so that the local information broadcast by the station could be delivered to subscribers in those communities, even though they were located outside of the station's DMA. Because of KUSA's

³ A non-comprehensive list of areas where this occurs are as follows: Comcast subscribers in the Chattanooga, TN market, which includes the Georgia counties of Dade, Walker, Catoosa, Whitfield, and Murray, receive the local newscasts of WXIA-TV and WGCL-TV, which are located in the Atlanta market; the Comcast cable systems in Abington, Glade Springs, and Saltville, Virginia (in the Tri-Cities TN-VA market) import the local newscasts of WDBJ-TV, which is in the Roanoke, VA, television market; Comcast imports the local news and weather programming of KOAT-TV, Albuquerque, New Mexico, into Las Cruces, New Mexico, in the El Paso, TX, television market; Time Warner Cable, in Robeson and Scotland Counties, North Carolina, both of which are located in the Myrtle Beach, SC, television market, imports into those two North Carolina counties the local news and weather programming of in-state WECT-TV, Wilmington, North Carolina; cable companies in Montezuma and La Plata counties, Colorado, in the Albuquerque, NM television market, import local news programming from Denver television stations; Time Warner Cable in Palm Springs, California, imports the local news of the Los Angeles stations; and the Charter cable systems in Bristol, Johnson City, and Kingsport, Tennessee (in the Tri-Cities TN-VA market) import the local newscasts of WBIR-TV, which is in the Knoxville, TN, television market.

efforts, which included coordination with political leaders and outreach to the viewers in those counties, the station reached private agreements with these cable systems so that its local news could be made available to viewers in those areas. These cable systems also import the news programming of other Denver stations. Likewise, station WXIA-TV, Atlanta, Georgia, has made an effort to serve out-of-DMA but in-state viewers, and it has achieved carriage on cable systems serving over 43,000 such viewers.

Undermining the present DMA system would harm broadcasters and viewers. It is better for the Oklahoma viewer in the Amarillo, Texas DMA to receive the *local* news from the Amarillo station than from an in-state station that is over 300 miles away. Local stations have invested substantial resources—such as setting up weather and news bureaus that cover the counties in their markets that are in other states—to provide these viewers with critical local television service, including emergency alerts, weather reports, school closing information, and local political information. The FCC should not undercut stations' ability to make these investments. A separate very important public interest benefit relates to the provision by stations of local advertising that is relevant to viewers. The current DMA system ensures that stations provide to their viewers relevant information from local advertisers, and it ensures that advertisers can reach the local communities that are relevant to them.

Allowing cable and satellite carriers to import the distant affiliate's duplicative national and syndicated programming would cause great harms. It would fragment the local station's audience, impairing its ability to reach local viewers. With its access to local viewers diluted, the station's ability to attract advertisers would be reduced. Local advertisers would be discouraged from purchasing advertising on the local station, and distant advertisers would not step in as replacements because the local viewers are not relevant to them.

Diminished advertising revenues would jeopardize the local station's ability to provide local television service, including local news programming and coverage of severe weather, school closings, politics and elections, and local public affairs. Modification proposals also would undermine the ability of local stations to negotiate for fair retransmission consent fees. If a cable operator in Arlington, Virginia is permitted to carry the CBS affiliate from the Richmond market, it will be strongly tempted to do so in the event of a retransmission consent dispute with WUSA, Washington, DC. Alexandria viewers will lose access to local news, weather, and sports—a significant public interest harm. Retransmission consent payments are an important part of the economic foundation used by stations to provide local service to their communities.

Any modification to the current system would have a widespread impact. Almost half of all DMAs straddle state lines. (A total of 98 out of the 210 DMAs are cross-border DMAs.) In some cases, very substantial portions of the market—or even a majority of the market—are located across state lines from the community of license of the station serving that DMA. For example, in the Shreveport market, as much as 75% of the market is not located in Louisiana. Any arbitrary redrawing of DMAs or provision allowing for the importation of duplicative national network and syndicated programming would hurt many stations and substantial parts of the population. It also would disrupt thousands of existing commercial agreements (*e.g.*, network affiliation agreements, syndicated programming agreements, advertising sales agreements) and undermine the foundation of the television advertising market.

* * *

The FCC should protect localism by reporting to Congress that the current DMA system should be preserved.

Respectfully submitted,

LOCAL TELEVISION BROADCASTERS

BARRINGTON BROADCASTING GROUP, LLC
BELO CORP.
BONTEN MEDIA GROUP, LLC
GANNETT CO., INC.
GRAY TELEVISION, INC.
MEREDITH CORPORATION
POST-NEWSWEEK STATIONS, INC.
RAYCOM MEDIA, INC.

By:



Jonathan D. Blake
Eve R. Pogoriler
Elizabeth H. Canter
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
202-662-6000

*Counsel for the Local Television
Broadcasters*

January 24, 2011

May 3, 2011

Via Electronic Comment Filing System

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

**Re: Written *Ex Parte* Submission
Report Required by the Satellite Television Extension and Localism Act
On In-State Broadcast Programming
MB Docket No. 10-238**

Dear Ms. Dortch:

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, and the NBC Television Affiliates (collectively, the “Joint Television Network Affiliates”) submit these additional written materials to aid the Commission in preparing the report to Congress required by Section 304 of the Satellite Television Extension and Localism Act of 2010.¹

In their reply comments, the Joint Television Network Affiliates showed that the current DMA system supports and promotes local “natural” economic markets and their economies.² Since then, a number of local advertisers, advertising agencies, and economic development organizations have expressed their concern to local television stations about various pending proposals to alter the current nature and structure of DMAs and the economic significance to local economies of the current DMA structure. The comments contained in this submission for several markets are offered for illustrative purposes. Similar concerns and comments would be expressed, in our opinion, by local stations, local advertisers, local business, and economic development organizations in every DMA throughout the country that crosses state lines.

¹ See Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, § 304, 124 Stat. 1218, 1256 (2010).

² See Reply Comments of the Joint Television Network Affiliates, MB Docket No. 10-238 (filed Feb. 22, 2011), at 16-17.

The Commission is well-aware that DMAs form the basis for advertising sales that support local television station local program production and national and regional program purchases.³ Congress has consistently found the existing advertiser-supported free broadcast system to be of central importance in providing “information from diverse and antagonistic sources” that is “essential to the welfare of the public.”⁴ In order for local television stations to create, produce, and televise the news, public affairs, and informational programming that is critical to the working of a democratic society, as well as sports, entertainment, and other programming, television stations are dependent on local commercial advertisements that, in turn, provide information about goods and services available to local consumers.

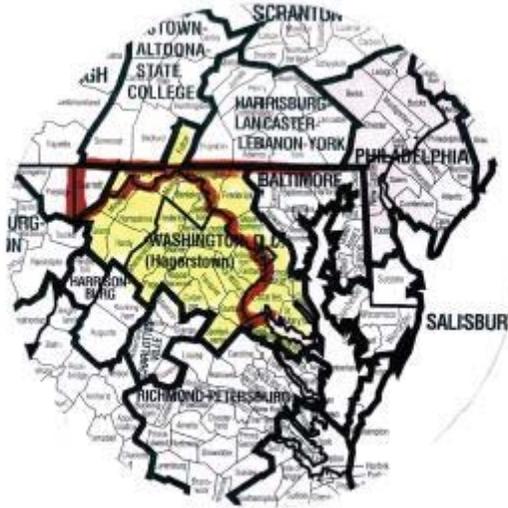
DMA boundaries not only reflect *actual* viewing patterns, they also reflect cohesive *local* advertising and retail markets. In other words, DMAs reflect *natural local* markets. Artificial manipulation of those markets to allow the importation of duplicating national network and syndicated programming will disrupt and fragment those markets and adversely affect not only local television stations, but local economic development, local economies, and local viewers. The following information, provided by various stations throughout the country whose DMAs cross state lines, demonstrates why this is the case.

*

³ See Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming, Public Notice, DA 10-2227 (Nov. 23, 2010), at 3 n.8.

⁴ *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 192 (1997) (quoting *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663-64 (1994) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668, n.27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945))).

A.
Market: Washington, D.C.-Hagerstown (DMA 9)



The Washington, D.C.-Hagerstown DMA consists of the District of Columbia, 16 counties in Virginia, eight counties in Maryland, seven counties in West Virginia, and one county in Pennsylvania.

Mr. Allan Horlick, general manager of Gannett's WUSA(TV), Washington, D.C., received numerous communications from advertisers, advertising agencies, and the largest regional organization of businesses expressing their concerns about the negative repercussions of proposals to artificially manipulate DMA boundaries.

James C. Dinegar, President and Chief Executive Officer of the Greater Washington Board of Trade, notes that "Greater Washington functions as a fully integrated region and should be treated as such." Mr. Dinegar states that applying artificial borders to broadcasting

would not only be disruptive to broadcast organizations and their current business models, but it would harm the local economy as well. Local businesses with multiple locations, such as car dealers, supermarkets, and various retailers could lose their ability to easily execute marketing plans and purchase local television as they have for decades. This new impediment to advertising will dramatically impact these businesses as well as advertising agencies.

See Letter in Exhibit 1.

According to Tamara C. Darvish, Vice President of DARCARS Automotive Group, a family-owned group of 34 automotive franchises in the greater Washington area, modifying the Washington DMA's boundaries would cause

disruption not only to retail businesses and media outlets but would also create great confusion and disadvantage to the residents and consumers in this market. . . . The Greater Washington region clearly requires a continued collaboration throughout the District of Columbia, Suburban Maryland, and North Virginia as they are all interdependent upon each other for residential, employment, retail, traffic, education and many other industries that affect our communities.

See Letter in Exhibit 2.

Michael Burke, Director of Operations for Janjer Enterprises, Inc., a franchisee of 29 Popeyes restaurants in the Washington DMA, states that his company's business model would be negatively impacted if the local market became separated into three different markets, and that market modification would

inhibit the benefits of DMA advertising that currently enhances the traffic and sales for all of our locations, despite the variances of locations per state. By advertising separately in 3 distinct marketplaces, I will not have the ability to yield the best results for my business. Nor would my budgets allow the exposure necessary to impact all locations due to those variances. We would spend an inordinate amount of time and money to plan, place and maintain duplicate buys in 3 different states. This would be impossible an[d] ineffective.

See Letter in Exhibit 3.

In addition, Donna Lee Peters, Media Director for Pivec Advertising in Timonium, Maryland, which represents the Toyota Dealers Association of the Central Atlantic region, which in turn is the largest local advertiser in the Washington DMA, states:

I want to speak out against the ridiculous idea to have our local market chopped up into 3 distinct marketplaces, rather than keeping it as [the] one large local DMA that it is.

. . . This change would present enormous problems for any commerce with multiple locations! It would certainly harm any company's success, and essentially damage our local economy.

I see this would create false information for measurement, and gross over-duplication of audiences. . . .

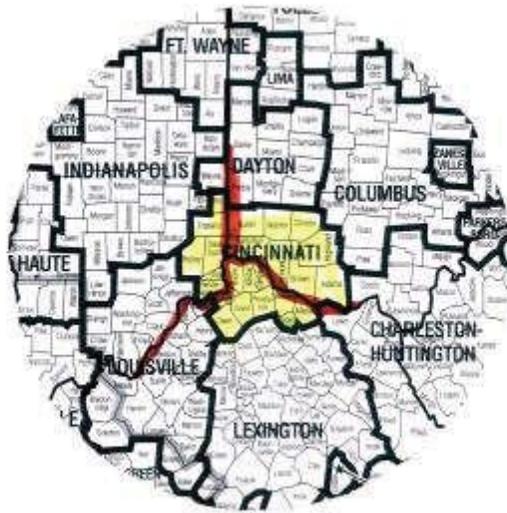
See Letter in Exhibit 4.

For those members of the greater Washington community who live in Arlington,

Virginia, another question to ask is do you really want to get “local” emergency information from Richmond in the event of another attack on the Pentagon? For those who live in Bethesda, Maryland, do you really want your local emergency evacuation information from Baltimore in case of a Potomac flood? For those sports fans in the Maryland suburbs of the District of Columbia, do you want information primarily focused on the Orioles and Ravens or the Nationals and Redskins? The reason residents of the greater Washington area subscribe to the *Washington Post* and not the *Baltimore Sun* or *Richmond Times* covering the Washington community is that there *is a distinct greater Washington community*—the area is *not* carved into separate markets for Virginia, the District, and Maryland. Natural markets are natural markets and, although the Washington stations are licensed to the District, only 11% of the DMA residents actually live in the District of Columbia. Importing duplicating signals from Maryland and Virginia would eviscerate the financial base that permits serving the whole, real community.

*

B.
Market: Cincinnati (DMA 33)



The Cincinnati local DMA consists of eight counties in Ohio, ten counties in Kentucky, and six counties in Indiana.

According to Richard Dyer, the general manager of Hearst Television's WLWT-TV, Cincinnati, Ohio:

The Cincinnati DMA serves the tri-state market of Southwestern Ohio, Northern Kentucky, and Southeastern Indiana. This natural trading area is bordered to the North by Dayton, Ohio, to the south by the Louisville and Lexington markets and to the west by counties in Southeastern Indiana. While the largest segment of the market is Ohio at 80%, our service to Northern Kentucky's 15% and Southeastern Indiana's 5% provides a crucial connection that no other station in their respective states could provide.

Our Northern Kentucky and Southeastern Indiana viewers have been ably served by Cincinnati television stations for over 60 years. These markets seamlessly create a vibrant economic market of 2 million people that are effectively served by the five commercial television stations. Importing distant in-state signals would essentially create unnecessary duplicate programming, retailer strategy upheaval, and exposure to inaccessible retailers for consumers. Distant stations would be allowed access into new markets without the key commitment that distinguishes local broadcasting, localism.

Geographically, our Northern Kentucky viewers are virtually five minutes away and the next closest Kentucky markets, Louisville

and Lexington, are both nearly 90 minutes away. This tri-state region is viewed by every business category as one cohesive, trading region, from advertisers and ad agencies to our Cincinnati USA Regional Chamber.

According to Sue Inkrot, Senior Local Buying Strategist with Empower Media Marketing:

Retail promotions tend to be in the surrounding area, not the nearest city in the state. For example, a bank's advertised lending rate might be different in Cincinnati/Northern Kentucky than in Lexington and Louisville. Also, a grocery or furniture group could have different promotional offers for those in the Cincinnati DMA vs Lexington and Louisville.

Mr. Dyer further observes:

Importing distant signals would unnecessarily complicate the business practices of retailers who have defined their business strategies to appeal to customers of a particular market. Cincinnati's largest employer, Kroger, operates throughout the states of Ohio, Kentucky, and Indiana with customized marketing and pricing strategies for each. Advertising the Kentucky Wildcats March Madness in-store section that would fit in Lexington, Kentucky, would likely not be carried in Cincinnati area stores, thus frustrating customers seeing those commercials from a distant signal.

And Lynn Cortelezzi, Vice President of Local Broadcast Strategy, Empower Media Marketing, states:

DMAs represent the focus of a likeminded city. People living across the Ohio River in Covington and Newport will be more interested in the happenings of Cincinnati rather than that of Lexington or Louisville which is an hour away. Most of their business concerns/needs would relate to Cincinnati rather than a city farther away, thus making Ohio stations best suited to serve their needs. Importing signals from Lexington or Louisville does not make sense.

*

C.
Market: El Paso-Las Cruces (DMA 97)



The El Paso-Las Cruces DMA consists of three counties in Texas and one county in New Mexico.

Mr. Kevin Lovell, general manager of News-Press & Gazette Broadcasting's KVIA(TV), El Paso, Texas, received communications from an advertising agency based in Las Cruces, New Mexico, a resident of Las Cruces who is a former television news director, and a university professor at New Mexico State University attesting to the economic integration of Las Cruces with the much larger city of El Paso.

According to Professor Christopher Erickson, New Mexico State University, Las Cruces and El Paso "are highly integrated economically." Prof. Erickson states:

Economic growth in El Paso is a major determinate of the economic dynamics of Las Cruces. The expansion at Fort Bliss, for example, added about 1% per annum to growth in Las Cruces over the last five years. Much of the growth in our county has occurred in the southern part of the county, near the Texas-New Mexico border and is in response to developments in El Paso.

See Letter in Exhibit 5.

According to Ken Binkley, a partner at Wilson Binkley in Las Cruces, the largest full-service advertising agency in southern New Mexico:

The geography and sparse population of New Mexico and West Texas have created a unique market with a closely tied, common economy. The existing DMA correlates to the area's natural and

long-established retail patterns. Unwarranted government manipulation of these patterns will negatively impact the ability of regional businesses to market their products and services effectively and efficiently.

Las Cruces and Doña Ana County have over 209,000 residents (2010 U.S. Census Data), which makes it the second-largest county and city in New Mexico. However, as Las Cruces is located approximately 40 miles north of El Paso, residents of both El Paso and Las Cruces move freely between the two communities. These consumers go to the same restaurants, shop at the same stores and buy cars from the same dealerships. . . .

Albuquerque is located approximately 225 miles north of Las Cruces. The vast majority of the time, for most decisions, local consumers do not interact with businesses that far away. Las Cruces viewers would not only be subject to messages primarily addressed to the Albuquerque DMA, the local advertisers would have to buy media in both El Paso and Albuquerque to reach the local audience, which is not economically feasible.

. . . [T]he[] marketing efforts [of local businesses] do not take the state line into consideration, just as their customers don't. We place media buys with local stations within the DMA, because it wouldn't make sense to pay higher rates in big broadcast markets hundreds of miles away delivering an audience that is largely wasted.

. . . Las Cruces would be most affected [by a change in DMA boundaries]. . . . Many [advertisers] would be forced to abandon the local market, seek alternative (and less efficient) media, or "go dark" to cut costs. As advertising is reduced, the business will slow, and jobs are likely to be lost at both the retail level and at local media properties. At a time when small business is struggling to face the new economic realities, this would represent another roadblock to growth.

See Letter in Exhibit 6.

And, Udell Vigil, a Las Cruces resident and former television news director, states:

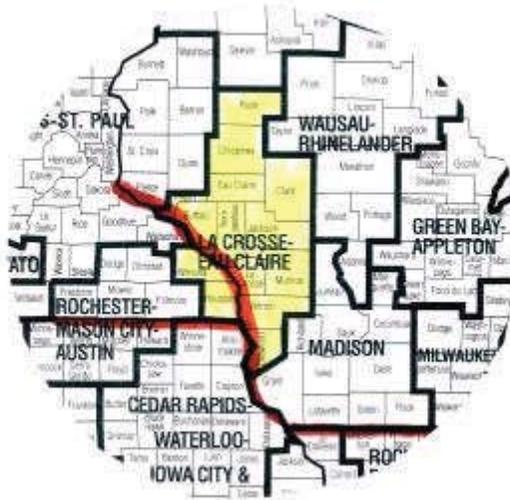
I can attest that when it comes to TV news coverage of southern New Mexico, we here depend almost exclusively on El Paso TV stations. KVIA-TV in particular, which has a full-time news bureau in Las Cruces, provides excellent coverage of southern New Mexico, unlike stations in Albuquerque that focus primarily on the northern part of the state. Little to no southern New Mexico

news appears on Albuquerque TV newscasts. Allowing carriage of TV stations outside our area would be of no benefit to residents here.

See Letter in Exhibit 7.

*

D.
Market: La Crosse-Eau Claire (DMA 128)



The La Crosse- Eau Claire DMA consists of 12 counties in Wisconsin and two counties in Minnesota.

According to David Booth, general manager of Quincy Newspapers' WXOW-TV, La Crosse, Wisconsin:

Even though WXOW-TV is licensed to La Crosse, Wisconsin, our transmission site and studios are located across the Mississippi River in La Crescent, Minnesota. Due to the nature of television transmissions, a TV station located on the border of two states cannot direct their entire signal into their state of license. In the case of my station, In-State Market Modification would result in approximately 40% of my station's signal being wasted.

With regard to the business community, many of this area's largest employers draw employees and customers from three states (Wisconsin, Minnesota and Iowa). If my station was only available in Wisconsin, they would need to seek news coverage and commercial space from television stations in three separate television markets. This would substantially increase the costs for their marketing and public relations efforts. (With the ongoing financial stress in the health care and financial industries, this hardly seems like the appropriate time to burden these organizations with this unnecessary expense.)

Even Wettsteins, a 67-employee, family-owned appliance and electronics store in Downtown La Crosse, Wisconsin, generates 20-30% of their gross annual sales from customers in Minnesota

and Iowa. According to Dan Wettstein (owner): “We’d be out of business if customers didn’t come from across that river” (the Mississippi).

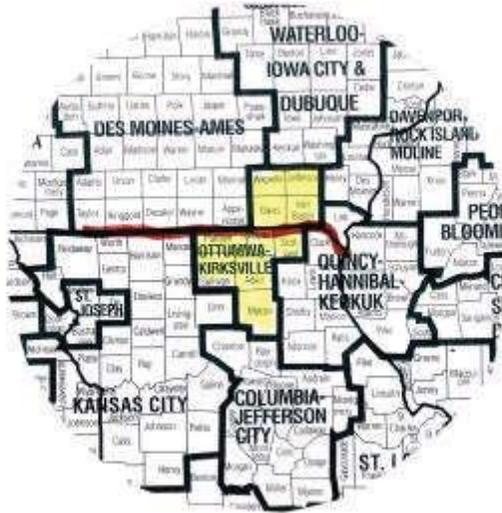
Due to the unique nature of our region and the interdependence of institutions and business in these three states, a decade ago local leaders created the 7 Rivers Region Alliance. The stated Mission of The 7 Rivers Region Alliance is as follows:

The 7 Rivers Alliance is a regional leadership group that boosts economic growth by fostering collaboration in western Wisconsin, southeast Minnesota, and northeast Iowa. We are persistent and consistent advocates for keeping communication open and developing regional networks in the Upper Mississippi Valley through regional meetings and networking events. The 7 Rivers Alliance brings together public and private resources to forge entrepreneurial growth and serves as a clearinghouse of vital information to enhance quality of life in the region.

Television markets should not be constrained by lines on a map. The current system of defining television markets is truly a democratic process. Viewers decide which stations they prefer to watch based on that station’s news, information and entertainment offerings. They vote with their remote controls. The economic success of this region could potentially be damaged by not listening to the votes of those viewers.

*

E.
Market: Ottumwa-Kirksville (DMA 199)



The Ottumwa-Kirksville DMA consists of four counties in Iowa and six counties in Missouri.

According to Chris Cornelius, Chief Operating Officer of Barrington Broadcasting Group, KTVO(TV), Kirksville, Missouri maintains full studios/news bureaus in both Kirksville and Ottumwa, Iowa. News coverage on the station's primary channel includes in-depth coverage of both Missouri and Iowa issues on a daily basis. Reporters assigned to the Kirksville facility regularly present stories emanating from the state capital in Jefferson City, while those in the Ottumwa studio cover Iowa state news from Des Moines. In election years, the station produces debates featuring state candidates from both sides of the border.

The station received comments from several local businessmen expressing concern about altering the DMA boundary to reflect so-called state interests. According to Randy Zorn, the Plant Manager for Cargill in Ottumwa, Iowa:

I have grave concerns about this Market Modification idea as an employer and as a viewer. I rely on local television to recruit employees, and we pull from both sides of the state line. It matters little to me that KTVO's main studio is in Kirksville, Missouri. That station serves this region. Forcing us to rely on stations from Des Moines would make it impossible to recruit. What about coverage for Southeast Iowa? Do we really think that Des Moines stations are going to bother with news and weather coverage this far away? We'd be left in limbo.

Mark Kruger of Kelly's Furniture in Kirksville, Missouri, states:

We rely on our local channels to target consumers in Missouri and Iowa and bring us relevant, localized news. This is what helps us push our product. We depend on our local stations to deliver our message. I'm not sure who would benefit from this taking place but most, if not all, local businesses in our market will be affected as we would face the pull of larger businesses in the Des Moines area. We would not be able to advertise on those stations as the cost would increase significantly.

And Gary Coberly of Wapello Tire in Ottumwa, Iowa, adds:

I don't see the benefit to viewers or advertisers. This plan would be an arbitrary decision without determining how it affects the people who watch or the businesses who are trying to market themselves in this region.

*

F.
Market: Quincy-Hannibal-Keokuk (DMA 172)



The Quincy-Hannibal-Keokuk DMA consists of six counties in Illinois, seven counties in Missouri, and one county in Iowa.

Leo T. Henning, Senior Vice President of Barrington Broadcasting Group, who has nearly 40 years of broadcast management experience in the Quincy-Hannibal-Keokuk market, states with respect to KHQA-TV, Hannibal, Missouri, and its market:

The Quincy-Hannibal-Keokuk marketplace was defined long before the advent of television. Indeed, this distinct trading zone was already developing before the States of Illinois, Iowa and Missouri came into existence.

Governments drew the boundaries of the States. But, here, those borders are defined not so much by law as by nature. The Mississippi and Des Moines Rivers may be the limits of State influence, but for those who live and work in this area the rivers are not boundaries. They are central arteries drawing in citizens on all sides together to drive a regional economic engine. Citizens in this trade zone have more commonweal across these State boundaries than they have with fellow citizens in their resident State.

If the River is the historical center of gravity for the economic trading zone, then, currently, local television is the heart of its communication system. Local television is the only media that

reaches the entire trade zone and all constituents. It is the catalyst of the regional economic engine.

Market Modification would neutralize this catalyst, severely weaken it and dilute its effectiveness. It would replace a natural trade zone, established by a free market long ago, with an artificial construct of modern day politics.

The efficacy of the Quincy IL/Hannibal MO/Keokuk IA Television DMA is already tested four times each year. The market definition has expanded and contracted many times through the “vote” of viewers in their response to the quarterly Nielsen Station Index. The marketplace definition remains fluid and is continually redefined by consumer choice.

All television stations in the marketplace provide extensive coverage of important state news. With the advent of multicast capability, all have added additional network programming giving regional viewers the full range of free over-the-air network offerings. Any assertion that in-state viewers in this DMA are underserved by their bordering out-of-state television stations is simply inconsistent with the facts.

KHQA-TV, WGEM-TV, and WQEC-TV are licensed to serve the public convenience and necessity of the citizens within reach of their signals. No distinction is made for state, county or municipal borders. These stations meet their responsibility with distinction.

But while their service to the region has been substantial, it is often easy to forget in some quarters that these licensees are, in fact, small businesses. They are susceptible to the same market volatility as any small shop on Main Street USA. In most respects, the continued vitality of their public mission rests solely on the revenue from local advertising.

Market Modification would significantly devalue network and syndication franchise agreements and greatly harm the ability to deliver a mass audience. Without a mass audience the revenue stream would diminish, resulting in reduced service. This would do irreparable damage to localism in a marketplace where it has meant so much.

There is ample evidence of the public good arising from the current definition of the marketplace. It can be seen in an interdependent and diversified economy, inter-governmental cooperation, ample employment across state borders, a cohesive

and highly beneficial transportation infrastructure, cooperative interstate educational and workforce development efforts, regional tourism initiatives and mutual aid from tri-state first responders in times of emergency. All of this is bound together by our mutually shared regional interests and the community conversation fostered by local television.

Station KHQA received comments from several local business people expressing concern about the effects of altering the structure of the local DMA. According to Richard Poe of Shottenkirk Chevrolet-KIA, in Quincy, Illinois:

We look at two components in our advertising messages: (1) Whether the person lives within a driving distance to my dealership so that it makes sense for them to shop here, and (2) whether or not the message they see in my advertising will be perceived as a value to them. Over 40% of my business comes from the two bordering states—Iowa and Missouri. Artificial market realignment would inhibit our ability to effectively target advertising to customers within our immediate geographic area.

Brownie Brown, owner of Brown's Furniture in Palmyra, Missouri, states:

The very essence of our business lies in our ability to cater to a geographic region that includes three states in this market. This region was a well defined marketplace long before television DMAs came along. Fifty percent or more of our business comes from the two neighboring states. [Altering the DMA] could give an unfair advantage to larger advertisers in larger in-state TV markets, and that would have a devastating effect on our business.

And Charles A. Craven, of Heintz Electric Company in Quincy, Illinois, comments:

Market Modification could be a game changer for many small businesses. It would allow businesses to cross long-established trade areas via the media and I believe all the advantage would go to bigger businesses. Small businesses would suffer; local communities would suffer. As a viewer I rely on the local television stations as my primary source for news and weather, which I don't believe would be covered from St. Louis or Kansas City. This would not be a positive change for this area.

According to Carlos Fernandez, general manager of Quincy Newspapers' WGEM-TV, Quincy, Illinois, Blessing Health System ("Blessing"), which includes a cancer center, a heart and vascular center, numerous rural health clinics, and a hospital in Quincy which is the largest medical center within a 100-mile radius, would face increased costs to educate consumers about

healthcare issues and services if the structure of the Quincy-Hannibal-Keokuk DMA were artificially manipulated.

Mr. Fernandez reports that Michael Gilpin, Vice President, Marketing for Blessing Corporate Services, does not view the healthcare system's service area as stopping at the Mississippi River. The Blessing Health System provides service to all those who need and seek it. For example, in northeast Missouri, an area that has a large underserved population, Blessing looks for the potential needs of the area and how it can be served with the healthcare services that Blessing provides.

Mr. Gilpin believes that if Blessing had to go to St. Louis to inform/educate the local population about the services available to them, then the healthcare system's overall costs would increase—but without any commensurate increase in the government's reimbursement for specific services. Mr. Gilpin also noted that Accountable Care Organizations, in which health care providers are assigned a population of patients they must serve in order to receive reimbursement, cross state lines.

Finally, Jim Mentesi, President of the Great River Economic Development Foundation, states that “[t]here is no question in my mind that the existing television market system is of significant benefit economically to our region.” Mr. Mentesi further states:

Both WGEM-TV, the NBC affiliate, and KHQA-TV, the CBS affiliate, play an integral role in the tri-state region of western Illinois, southeast Iowa and northeast Missouri. They provide leadership, public service, news and weather coverage and emergency alerts. . . .

Without these stations, our area would not be able to maintain a regional mentality and economic growth at its current level. Anything that negatively impacts the existing television market system would have significant negative economic and quality of life consequence for us.

See Letter in Exhibit 8.

* * *

The Joint Television Network Affiliates believe the information presented herein demonstrates further the necessity to preserve the current DMA framework for local television stations and the local communities they serve. The Joint Television Network Affiliates respectfully request that the Commission include this information in its report to Congress and recommend that the DMA system of television markets be maintained as it is.

Please contact any of the undersigned if you have any questions concerning the information provided herein.

Sincerely,

/s/

Wade H. Hargrove
David Kushner
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD LLP
Wachovia Capitol Center, Suite 1600
150 Fayetteville Street
Raleigh, NC 27602
919-839-0300

*Counsel for the ABC Television Affiliates
Association*

/s/

Jonathan D. Blake
Jennifer A. Johnson
Eve R. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
202-662-6000

*Counsel for the CBS Television Network
Affiliates Association and the NBC
Television Affiliates*

cc: William T. Lake
Hillary DeNigro
Marcia Glauberman

Index of Exhibits

Letter from James C. Dinegar, President & CEO of Greater Washington Board of Trade (Washington, D.C.-Hagerstown DMA)	Exhibit 1
Letter from Tamara C. Darvish, Vice President, DARCARS Automotive Group (Washington, D.C.-Hagerstown DMA)	Exhibit 2
Letter from Michael Burke, Director of Operations, Janjer Enterprises, Inc. (Washington, D.C.-Hagerstown DMA)	Exhibit 3
Letter from Donna Lee Peters, Media Director, Pivec Advertising (Washington, D.C.-Hagerstown DMA)	Exhibit 4
Letter from Professor Christopher Erickson, Associate Professor of Economics, New Mexico State University (El Paso-Las Cruces DMA)	Exhibit 5
Letter from Ken Binkley, Partner, Wilson-Binkley Advertising & Marketing (El Paso-Las Cruces DMA)	Exhibit 6
Letter from Udell Vigil, Las Cruces, New Mexico, Resident (El Paso-Las Cruces DMA)	Exhibit 7
Letter from Jim Mentesi, Tri-State Development Summit Facilitator and President, Great River Economic Development Foundation (Quincy-Hannibal-Keokuk DMA).....	Exhibit 8



GREATER WASHINGTON
Board of Trade

Growing Business, Building Community.

April 1, 2011

To Whom It May Concern:

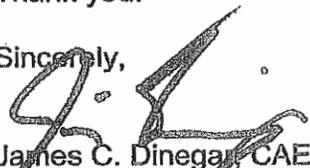
I write to express my concern about any move to apply artificial borders to broadcast transmissions when the regional approach has served the American people very well. Our population centers are not restricted by state borders, nor are the radio and television operations restricted in their community outreach to a simple state by state approach. Greater Washington functions as a fully integrated region and should be treated as such.

This move would not only be disruptive to broadcast organizations and their current business models, but it would harm the local economy as well. Local businesses with multiple locations such as car dealers, supermarkets, and various retailers could lose their ability to easily execute marketing plans and purchase local television as they have for decades. This new impediment to advertising will dramatically impact these businesses as well as advertising agencies.

I strongly encourage special consideration of this market modification before you move forward with this unwise and shortsighted approach to changing the community-based broadcast industry.

Thank you.

Sincerely,



James C. Dinegar, CAE
President & CEO



12210 Cherry Hill Road • Silver Spring, Maryland 20904
(301) 622-0300 • Fax: (301) 622-4915
1-800-DARCARS
www.DARCARS.com

1 April 2011

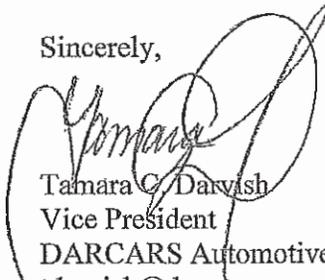
To Whom it May Concern:

My name is Tamara Darvish, and I am Vice President of DARCARS Automotive Group (a private family owned and operated chain of 34 automotive franchises in the Greater Washington area. Briefly, our company was founded in 1977, and currently we employ 1950 people in the area including Montgomery, Prince Georges, Fairfax, Baltimore, Frederick, and St. Mary's counties. Our total gross payroll in the area exceeded \$87 million in 2010. Annually, we serve over 500,000 "Washingtonians" who live and or work in one of the many counties that we serve.

We are writing with great concern of the proposed "Market Modification" which would only artificially change the make up of our local markets. Greater Washington, including the counties listed above in addition to others, truly comprises of only one "region," and therefore this proposal would cause great economic impact and disruption not only to retail businesses and media outlets but would also create great confusion and disadvantage to the residents and consumers in this market. More specifically, this action would be a detriment to our business community and the community at large. The Greater Washington region clearly requires a continued collaboration throughout the District of Columbia, Suburban Maryland, and Northern Virginia as they are all interdependent upon each other for residential, employment, retail, traffic, education and many other industries that affect our communities.

Please know that we would be pleased to participate in formal presentation of our statements complete with full accountability of our concerns. Please let us know if we can provide you with any additional information. In the meantime, we appreciate your attention to this most serious matter.

Sincerely,



Tamara C. Darvish
Vice President
DARCARS Automotive Group
tdarvish@darcars.com
Cell: 202/374-8321

DARCARS Chevrolet • Auto Outlet of Fairfax • DARCARS Chrysler Jeep of Rockville • DARCARS Chrysler Jeep Dodge of Silver Spring
DARCARS Chrysler Jeep Dodge of Marlow Heights • DARCARS Chrysler Jeep Dodge of New Carrollton • DARCARS Ford
DARCARS Kia • DARCARS Lincoln Mercury • DARCARS Nissan • DARCARS Toyota Scion of Baltimore • DARCARS Toyota Scion of Frederick
355 Toyota Scion • DARCARS Toyota Scion of Silver Spring • DARCARS Volkswagen Nissan of College Park • DARCARS Volvo
Lexus of Silver Spring • Orange Park Dodge • DARCARS Pre-Owned Westside • Waldorf Chrysler Jeep



Jerome Friedlander
Jan Strompf

April 1, 2011

My company is Janjer Enterprises Inc, and we own and operate Popeyes restaurants, one of the the largest local franchises of Popeyes in the Washington DC DMA. Our company owns and operates 29 locations; 21 (twenty-one) in Maryland, 7 (seven) in Virginia and 1 (one) in the District of Columbia. I am concerned and opposed to the proposition our local market becoming separated into 3 marketplaces in lieu of the existing combined tri-state DMA.

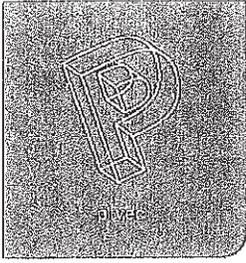
Our industry business model would be negatively impacted due to the overall goals inhibit the benefits of DMA advertising that currently enhances the traffic and sales for all of our locations, despite the variances of locations per state. By advertising separately in 3 distinct marketplaces, I will not have the ability to yield the best results for my business. Nor would my budgets allow the exposure necessary to impact all locations due to those variances. We would spend an inordinate amount of time and money to plan, place and maintain duplicate buys in 3 different states. This would be impossible an ineffective.

It is imperative to maintain our DMA to assure companies the coverage they need to be successful for multiple locations throughout the Washington DC, metro area.

Yours truly,


Michael Burke
Director of Operations

POPEYES



Dear Sirs:

My company is Pivec Advertising, and we represent the Toyota Dealers Association of the Central Atlantic region, which is the largest local advertiser in the Washington DC DMA. Our Toyota group is vastly spread out over many different states, with no dealers in The District itself.

I want to speak out against the ridiculous idea to have our local market be chopped up into 3 distinct marketplaces, rather than keeping it as one large local DMA that it is.

Our industry business model would be so negatively impacted in so many, many ways. This change would present enormous problems for any commerce with multiple locations! It would certainly harm any company's success, and essentially damage our local economy.

I see this would create false information for measurement, and gross over-duplication of audiences.

We would spend an inordinate amount of time and money to plan, place and maintain duplicate buys in 3 different states. This would be impossible.

The need to keep our market as a DMA is exactly the reason why the local cable interconnects were formed, in order to make it easier, affordable, and reduce the time spent for companies to buy larger areas they required.

Thank you,

Donna Lee Peters

Media Director

PIVEC ADVERTISING

2219 YORK ROAD, SUITE 201

TIMONIUM, MD 21093



College of Business
Department of Economics and International Business
New Mexico State University
P. O. Box 30001 / MSC 3CQ
Las Cruces, NM 88003-8001
Tel: 575-646-2113
Fax: 575-646-1915

Kevin Lovell
General Manager—KVIA
4140 Rio Bravo
El Paso, TX 79902

Dear Mr. Lovell

I was contacted by Adrian Medina regarding the relationship between Las Cruces and El Paso. The general answer is that the two cities are highly interrelated economically. Economic growth in El Paso is a major determinate of the economic dynamics of Las Cruces. The expansion at Fort Bliss, for example, added about 1% per annum to growth in Las Cruces over the last five years. Much of the growth in our county has occurred in the southern part of the county, near the Texas-New Mexico border and is in response to economic developments in El Paso.

According to the 2000 census, about 15% of Las Cruces workers commute to El Paso for work. More people commute to work in El Paso than work for any one employer in Dona Ana County. In some sense, one could say that the largest employer in Las Cruces is El Paso. About 2% of El Paso workers commute to Las Cruces. In total, more than 20,000 people commute between the two cities.

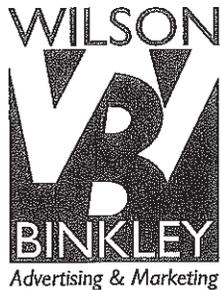
Commuter data from the 2010 census is not yet available, but the pattern observed in 2000 is likely to have continued or even strengthened. While currently El Paso and Las Cruces are considered separate MSA, there is a good chance that when the 2010 commuting data is released, that El Paso and Las Cruces will be merged into a single MSA. (In the past the critical commuter rate for merging two metros into one statistical area has been 25%.)

I hope you find this information useful. If I can be of further help, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Erickson', written over a horizontal line.

Christopher A. Erickson
Associate Professor of Economics
New Mexico State University



March 31, 2011

Kevin Lovell
General Manager, KVIA-TV
4140 Rio Bravo
El Paso, TX 79902

Dear Mr. Lovell:

We have a professional responsibility to our clients in expressing our opposition to any modification currently being considered by the Federal Communications Commission (FCC) in regard to the DMA boundaries currently in place for the El Paso (Las Cruces), TX, television market.

The geography and sparse population of New Mexico and West Texas have created a unique market with a closely tied, common economy. The existing DMA correlates to the area's natural and long-established retail patterns. Unwarranted government manipulation of these patterns will negatively impact the ability of regional businesses to market their products and services effectively and efficiently.

Las Cruces and Doña Ana County have over 209,000 residents (2010 U.S. Census Data), which makes it the second-largest county and city in New Mexico. However, as Las Cruces is located approximately 40 miles north of El Paso, residents of both El Paso and Las Cruces move freely between the two communities. These consumers go to the same restaurants, shop at the same stores and buy cars from the same dealerships. Businesses can advertise and promote their services and products to the combined market by buying a single television market: El Paso (Las Cruces).

Albuquerque is located approximately 225 miles north of Las Cruces. The vast majority of the time, for most decisions, local consumers do not interact with businesses that far away. Las Cruces viewers would not only be subject to messages primarily addressed to the Albuquerque DMA, the local advertisers would have to buy media in both El Paso and Albuquerque to reach the local audience, which is not economically feasible.

Wilson Binkley Advertising and Marketing is the largest full-service advertising agency in Southern New Mexico. We represent a wide range of regional advertising clients, including a large automotive group and a major financial institution. Both of these businesses attract customers from El Paso, Las Cruces

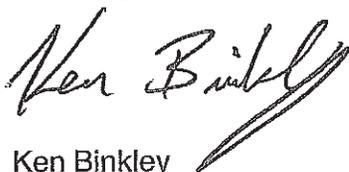
and the surrounding area, and their marketing efforts do not take the state line into consideration, just as their customers don't. We place media buys with local stations within the DMA, because it wouldn't make sense to pay higher rates in big broadcast markets hundreds of miles away delivering an audience that is largely wasted.

The effects of such an arbitrary decision would promise long-term harm to Las Cruces, Doña Ana County, and even El Paso. Advertisers would have to look at more efficient ways to promote their businesses, and abandon their television media budgets. Las Cruces would be most affected, with Las Cruces advertisers faced with having to buy both El Paso and Albuquerque television to reach the same DMA as before. Many would be forced to abandon the local market, seek alternative (and less efficient) media, or 'go dark' to cut costs. As advertising is reduced, the business will slow, and jobs are likely to be lost at both the retail level and at local media properties. At a time when small business is struggling to face the new economic realities, this would represent another roadblock to growth.

Duplicating programming within the DMA doesn't serve the best interests of the viewers or the local economy. When reviewing the arbitrary nature of political borders on a map, we hope that the FCC considers the reality of organic retail markets and consumer patterns. For all intents and purposes, Las Cruces and El Paso are two markets inextricably linked, and to force an artificial separation on the DMA would be inadvisable in the extreme.

If any further input is needed, please don't hesitate to contact my offices.

Sincerely,

A handwritten signature in black ink that reads "Ken Binkley". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

Ken Binkley
Partner

March 31, 2011

Brenda De Anda-Swann
News Director
KVIA-TV
El Paso, TX 79912

Ms. De Anda-Swann,

I have learned that the Federal Communications Commission (FCC) is considering allowing cable and satellite companies to carry signals from TV stations outside local markets, such as the El Paso/Las Cruces market. As a former news director at two El Paso affiliates and a longtime resident of Las Cruces, I can attest that when it comes to TV news coverage of southern New Mexico, we here depend almost exclusively on El Paso TV stations. KVIA-TV in particular, which has a full-time news bureau in Las Cruces, provides excellent coverage of southern New Mexico, unlike stations in Albuquerque that focus primarily on the northern part of the state. Little to no southern New Mexico news appears on Albuquerque TV newscasts. Allowing carriage of TV stations outside our area would be of no benefit to residents here. I believe it would only add to channel clutter.

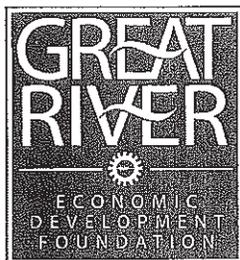
Las Cruces and El Paso are in essence one metroplex, dependent on each other economically, socially and culturally. It only stands to reason that we receive TV coverage of local news from El Paso TV stations. I'm for leaving things as they are.

Please feel free to forward this letter to the FCC if you deem it worthy. Thank you.

Yours truly,



Udell Vigil
Las Cruces, NM resident



March 10, 2011

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

Dear Ms. Dortch,

There is no question in my mind that the existing television market system is of significant benefit economically to our region. Quincy, Illinois is the largest city in a 100-mile radius and serves as a regional hub for over 600,000 people. The Tri-State Development Summit is a three state, 35-county initiative that brings together area leaders to address common issues and improve the quality of life of the entire region through economic development activities.

Both WGEM-TV, the NBC affiliate, and KHQA-TV, the CBS affiliate, play an integral role in the tri-state region of western Illinois, southeast Iowa and northeast Missouri. They provide leadership, public service, news and weather coverage and emergency alerts. The stations and their employees are strong community supporters. WGEM-TV and its parent company helped start the Tri-State Development Summit and the Community Foundation of the Quincy Area. KHQA-TV has been involved in an awareness campaign to help boost the regional economy.

Without these stations, our area would not be able to maintain a regional mentality and economic growth at its current level. Anything that negatively impacts the existing television market system would have significant negative economic and quality of life consequence for us.

Sincerely,

Jim Mentest
Tri-State Development Summit Facilitator
Great River Economic Development Foundation President