August 31, 2015

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

Re: Notice of Ex Parte Communication, MB Docket No. 10-71

Dear Ms. Dortch:

On Thursday, August 27, the attached list of broadcasters, as well as the undersigned state broadcast association representatives, met separately with Commissioner Mignon Clyburn and her legal advisor Chanelle Hardy, Johanna Thomas of Commissioner Jessica Rosenworcel's office, and Alison Nemeth of Commissioner Ajit Pai's office. In these meetings, broadcast representatives reiterated the industry's broad support for maintaining the program exclusivity rules. The rules remain absolutely necessary to the preservation of local broadcasting. The costs of eliminating the rules, including diminution of localism, consumer confusion, and harm to local advertisers, far outweigh any theoretical gains. Accordingly, we encourage the Commission to retain these rules.

The twin exclusivity rules – the syndicated exclusivity rule and the network non-duplication rule – while often lumped together, have two distinct histories and justifications. Neither rule is "outdated."[1] The network non-duplication rule, since 1965, has successfully promoted local broadcast service by financially viable, locally-oriented network affiliated stations. The syndicated exclusivity rule was first adopted in the early 1970s as part of a "consensus agreement" with the cable industry and programmers. It was then repealed in 1980 when the Commission thought that the cable industry's growth would plateau and that allowing importation of distant signals carrying duplicative syndicated programming would have a minimal impact on broadcast stations. The Commission in 1988 reinstated the syndicated exclusivity rule, determining after exhaustive economic analyses that the basic rationale for eliminating the rule eight years earlier was fatally flawed and that, absent the rule, cable operators had an unfair competitive advantage over broadcast stations. In fact, the Commission recognized both the explosive growth of cable television and cable operators' incentive and ability to exploit the lack of exclusivity to disadvantage local stations, which were then, as now, their direct competitors for advertising. In light of the increasing concentration and regional clustering of multichannel video programming distributors (MVPDs) in the intervening decades,[2]

[1] *See* "Upgrading Media Rules to Better Serve Consumers in Today's Video Marketplace," Tom Wheeler, FCC Chairman, Official FCC Blog (Aug. 12, 2015).

[2] *See* Mike Farrell, "Eat or Be Eaten: Consolidation Creates A Top-Heavy List of the 25 Largest MVPDs," Multichannel News at 8-10 (Aug. 17, 2015).

we find it surprising that the Commission now would consider abandoning the rules while ignoring its prior (and correct) reasoning. The Commission has not performed anywhere near the level of analysis of the current marketplace needed to justify a change in course or elimination of the rules.

Broadcasters understand the need to eliminate outdated rules. As the most heavily regulated of all media industries, we have been pushing for modernization or elimination of certain rules for decades. Rules are not automatically outdated simply by virtue of how long they have been on the books, however. Some rules are more necessary today than when they were first implemented.

In these meetings, the broadcasters, representing communities large and small across the country, emphasized again and again that the changing media landscape has only made them more vulnerable to market manipulation by large national MVPDs. Small stations, for example, are especially vulnerable to strong-arm tactics during retransmission consent negotiations that could put them at odds with their network affiliation agreements. Small market stations are also the most exposed to erosion of their markets if stations in nearby large markets seek to expand their coverage areas via cable in the absence of the exclusivity rules. In this regard, we highlighted the potential negative impact for communities like Colorado Springs, CO; Jackson, TN; Bowling Green, KY; and Charlottesville, VA, just to name a few.

Ultimately, the program exclusivity rules are an efficient, nearly costless and highly effective means to ensuring Americans continue to receive programming relevant to them and their community. Indeed, we believe few Commission rules serve their intended purposes so well. We strongly believe that it would be a grave mistake to eliminate them.

Thank you very much for listening to our concerns.

/s/ Dewey Bruce
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Dewey Bruce
President and CEO
Montana Broadcasters Association

/s/ Michelle Vetterkind
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Michelle Vetterkind
President and CEO
Wisconsin Broadcasters Association

/s/ David L. Donovan
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David L. Donovan
President
The New York State Broadcasters Association, Inc.

/s/ Suzanne D. Goucher
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Suzanne D. Goucher
President and CEO
Maine Association of Broadcasters

/s/ Adam Sandler

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Consultant for Nevada Broadcasters Association

Broadcasters that attended all three meetings include:

- John Kueneke, News-Press & Gazatte
- Marti Hazel, WDRB Fox Louisville, KY
- Rick McCue, WBKO Fox Bowling Green, KY
- Chris Aldridge, WTVQ ABC Lexington, KY
- Steven W. Newberry, President and CEO, Commonwealth Broadcasting
- Ron Davis, Butte Broadcasting
- David Sanks, Wisconsin Broadcasters Association

Additionally, also attending the meeting with Commissioner Clyburn and her legal advisor Chanelle Hardy, were:

- Klarn DePalma, WFSB, Hartford, CT
- Josh Pila, Meredith Corp.