

September 2, 2014

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 Monday, August 31, 2015, the attached list of broadcasters and broadcast representatives, along with the undersigned state broadcast associations, attended a meeting with Commissioner Jessica Rosenworcel and her legal advisor Valery Galasso and a separate meeting with Maria Kirby, Legal Advisor to Chairman Tom Wheeler, and legal intern Russell Hsio. Both meetings were focused solely on the broadcast industry's strong support for maintaining the two program exclusivity rules – the network non-duplication rule and the syndicated exclusivity rule.

The meetings served to dispel the myth that these two rules are “outdated.”<sup>1</sup> In fact, given the massive increase in consolidation among pay TV operators and overall increases in subscribership to pay TV services among American consumers in the last few decades,<sup>2</sup> the rules are more important than ever. With so many laws and other FCC rules designed to keep broadcasters small and local, it is disconcerting that the Commission would eliminate a regulation that serves as a counter-balance for local stations against large, national pay TV operators. Accordingly, we urge the Commission to maintain the rules.

Broadcast representatives, many of whom represent stations in medium and small markets, questioned why the Commission would consider eliminating the rules when there appears to be little potential public interest upside. The best outcome the Commission might hope for, assuming it still believes that a system of local broadcasting is a good thing for consumers, is the status quo. But as the broadcasters in the meetings made clear, there are myriad ways in which cable operators could import distant signals to the detriment of local stations and viewers. For example, broadcasters relayed personal stories of how cable operators try to

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<sup>1</sup> See “Upgrading Media Rules to Better Serve Consumers in Today’s Video Marketplace,” Tom Wheeler, FCC Chairman, Official FCC Blog (Aug. 12, 2015).

<sup>2</sup> 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).

strong-arm smaller stations into granting broad out-of-market retransmission consent rights during carriage negotiations. These stories undercut the argument that the existing rules – if repealed – could be replicated easily through contracts between stations and enforced through the courts.

Broadcasters specifically noted that enforcing exclusivity through contract could be very difficult, if not impossible, because of privity of contract issues. During a retransmission consent dispute, for example, a local broadcaster would need to rely on its network partner or various syndicated programmers to enforce their contracts with out-of-market stations that may allow their signals to be imported into the local station's market. The local station would not have any contract with the cable operator nor the distant station and would therefore have limited recourse through the courts. There is also little question that if a station needed to resort to litigation to enforce its bargained-for exclusivity rights, the process would be long and costly. Many of the broadcasters present expressed their grave concern that costly litigation would impede their ability to serve their local communities.

Finally, several broadcasters argued that the net result of eliminating the rules will be more carriage disputes that will last longer than the few, usually very short disputes that occur today. Cable operators, armed with a newfound ability to import distant signals, will be less motivated to negotiate for a new retransmission consent contract with a local station – and even less motivated to come back to the negotiating table after a dispute begins. And, while local viewers may be able to watch duplicative national programming via a distant, imported station, the local news on those out-of-market stations that will have no relevance for them. This situation could even raise public safety concerns during local emergencies when consumers most depend on their local broadcast stations.

For all of these reasons, we implore the Commission to maintain the program exclusivity rules.

We want to thank Commissioner Rosenworcel and FCC staff for taking the time to meet with us.

Sincerely,

/s/ D. Whit Adamson

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D. Whit Adamson  
Tennessee Association of Broadcasters

/s/ Kent Cornish

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Kent Cornish  
Kansas Association of Broadcasters

/s/ Justin Sasso

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Justin Sasso  
Colorado Broadcasters Association

/s/ Bob Houghton

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Bob Houghton  
Georgia Association of Broadcasters

/s/ Jim Timm

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Jim Timm  
Nebraska Broadcasters Association

/s/ Sharon Tinsley

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Sharon Tinsley  
Alabama Broadcasters Association

The following broadcasters and broadcast representatives were also in attendance:

- Steve Dant, KXRM/KXTU, Colorado Springs, CO
- Evan Pappas, KOAA, Colorado Springs, CO
- DuJuan McCoy, Bayou City Broadcasting, Evansville, Indiana
- Vanessa Oubre, WAFF-TV, Huntsville, AL
- Aaron Scoby, Serestar Communications
- Jeff Block, Scripts Television
- Tim McVay, WSB-TV, Atlanta, GA
- Bill Stewart, WJBF-TV, Augusta, GA
- Sally Brown, WSBT-TV South Bend, IN
- Joan Barrett, KWCH-TV Sunflower Broadcasting Wichita, KS
- Roger Brokke, WIBW-TV, Topeka, KS
- Brian McDonough, KY3 Schurz Communications, Springfield, MO
- Tracey Rogers, WMC-TV, Memphis, TN
- Dan Cates, WJHL-TV, Johnson City, TN
- Tom Tolar, WRCB-TV, Sarkes Tarzian, Chattanooga, TN
- George DeVault, WKPT-TV, Kingsport, TN
- Scott Goodwin, National Association of Broadcasters