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September 2, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary, Room TW B204
The Portals
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Ex Parte Communications
MB Docket Nos. 10-71**

Dear Ms. Dortch:

This letter is submitted pursuant to Section 1.1206 of the Commission's rules to disclose communications made in the above-referenced proceedings. On Monday, August 31, 2015 members of the California Broadcasters Association met with the following FCC officials and staff: Nancy Murphy, Mary Beth Murphy, Steven Broecker and Kathryn Berthot from the Media Bureau; Alison Nemeth from the Office of Commissioner Pai; Commissioner Jessica Rosenworcel and Jennifer Thompson; Commissioner Mignon Clyburn and Chanelle Hardy; Commissioner Michael O'Rielly and Robin Colwell; and Maria Kirby, Office of Chairman Tom Wheeler. Members of the Missouri Broadcasters Association also attended some of the meetings.

At all of the meetings the following topics were discussed and the following points were made. The broadcasters oppose the repeal of the Network Non-Duplication and Syndicated Exclusivity rules (the "Rules"). Broadcasters related their stories about how their stations have a strong local presence and their view that rescinding the Rules would have a strong negative impact on their stations' viability, viewers and advertisers. They believe that the important contribution they make in their communities in the form of local news and public affairs programming and the ability to serve local advertisers at reasonable rates will be jeopardized.

The broadcasters observed that the marketplace for syndicated and network programming markets has been stable for 50 years in large measure as a result of the Rules. Furthermore, when syndicated exclusivity was repealed, it was later readopted following an extensive economic analysis. At that time, the FCC carefully analyzed the role of syndicated exclusivity in local television marketplace economics, concluding that it was crucial to the ability of local stations to obtain and deliver independent programming alongside the network programming. Among the considerations important to the Commission was protecting local advertiser support for local programming, which is still deemed important to local communities. It was noted that no similar analysis has been performed to demonstrate that the conclusions reached earlier by the Commission are now invalid.

Broadcasters also noted that without the Rules, small-market stations, and even some not-so-small-market stations, will be very vulnerable to encroachment by nearby larger markets. A few current examples were cited to demonstrate the danger of encroachment and how it can mushroom without the Rules in place. California broadcasters demonstrated how in their state nearly every market is within reach of San Francisco or Los Angeles and how the state could wind up with a few superstations and little else.

It was also noted that the Rules were adopted as part of a package of a copyright and communications policy agreement that had three parts. In order to allow program carriage on cable, the cable industry got a compulsory copyright license, and to facilitate their stations' retransmission on cable, broadcasters got the Rules. As part of one integrated, interdependent agreement, one part cannot be changed without the other. So a repeal of the Rules should not become effective before Congress acts to repeal the compulsory license, which effectively provides for a government-mandated below-market rate subsidy to MVPs for program retransmission subject to FCC carriage rules.

Broadcasters noted that the FNPRN did not examine the difficulties faced by local stations to protect their nonduplication should the forum be shifted to the courts. It is doubtful that local stations have the legal standing to bring a legal action. Indeed, it is questionable whether they are even considered third-party beneficiaries of programming agreements and so they would have to negotiate for the network or the program syndicator to sue in order to protect their market. Moreover, throwing enforcement out of the FCC administrative process and into the court system would likely create a chaotic marketplace in place of a very well understood one. In such an environment, syndicators would likely deem the transaction cost too high to sell exclusivity to local stations at all. It could also lead to significant distortion in the network-affiliate relationship.

In sum, broadcasters asked: What public good will be achieved by this? A realistic prediction is that repeal will lead to years of chaos and expensive, years-long litigation. It will devalue local stations and disserve their advertisers and their local viewers. Big-market stations will seek bigger exclusivity areas while smaller stations will have less with which to bargain for to maintain their exclusivity areas. Over time, bigger-market stations will take ever-increasing pieces of local station markets, encroaching on their areas and economic support.

Sincerely,



Gregg P. Skall

Counsel to the California Broadcasters Association