November 6, 2015

VIA ECFS

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

Re: *In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*; MB Docket No. 14-261; *In the Matter of Implementation of Section 103 of the STELA Reauthorization Act of 2014 Totality of the Circumstances Test*; MB Docket No., 15-216; *In the Matter of the Commission's Rules Related to Retransmission Consent*; MB Docket No. 10-71

Dear Ms. Dortch –

On Thursday, November 5, 2015, Gary Koerper, Michael Librizzi, and Jennifer McCarthy of Telletopia Foundation ("Telletopia") met with Commissioner Mignon L. Clyburn, Louis Peraertz, and Holly Sauer regarding the above-referenced proceedings.

A. Telletopia Has Developed an OTT Service That Will Deliver Local Broadcast Stations Online

Telletopia is a California 501(c)(4) nonprofit that has developed an over-the-top ("OTT") video service that delivers local broadcast television stations to any IP-enabled device on a subscription basis. Telletopia's service will enable consumers to watch the full 24-hour live, linear programming streams of local broadcast stations from any location within the stations' local market on any Internet-connected device without being tied to a set-top box, large bundle or long-term service contract. Telletopia has had a multitude of conversations with programming networks and broadcast owner groups to establish the means by which to pay them for their live 24/7 signal.

B. Two Key Roadblocks Exist to the Introduction of Online Local Broadcast Content Offerings

There are two roadblocks that prevent linear online video distributors ("OVDs"), like Telletopia, from launching competitive service offerings to cable, satellite, and telco-based subscription video packages:

1. Broadcast network and station owner resistance to carriage of the full local broadcast signal without compensation in the absence of a retransmission consent mechanism for online distribution; and
2. Lack of a compulsory copyright licensing scheme for Internet-based distribution of local broadcast station signals.

Telletopia intends to pay broadcasters for their live 24/7 channels, but no framework exists aside from retransmission consent for multi-channel video programming distributors (MVPDs). The FCC's proposal to adopt a technology-neutral definition of MVPD, together with related technology-neutral protections for OVDs against discriminatory licensing practices, will remove the first roadblock. However, eliminating the copyright impediment may require the Copyright Office, Congress, and/or the courts to intervene. This could take months – even years – to accomplish, especially considering multiple recent recommendations to abolish the compulsory licensing scheme.

Telletopia's business model and purpose are based on solving the copyright problem *today*. If the retransmission consent barrier is removed, Telletopia's solution – the copyright license exemption for nonprofits in Section 111(a)(5) of the Copyright Act – will enable the immediate introduction of a competitive Internet-based service focused on the retransmission of local broadcast stations to IP-enabled devices.

C. Section 111(a)(5) Copyright Exemption for Nonprofits Will Extend Local Broadcast Reach to Internet Viewers

Section 111 of the Copyright Act was adopted by Congress in 1976 as part of its effort to create a compulsory license framework to enable cable companies to retransmit local television broadcast stations without having to negotiate individual licenses with each and every copyright holder. The Section 111(a)(5) exemption was designed to enable entities that have no commercial advantage, like municipalities and nonprofits, to extend the reach of local television broadcast stations to as many viewers as possible.

Telletopia is a California 501(c)(4) nonprofit that has developed an OTT video service to deliver local broadcast television stations to any IP-enabled device with a subscription fee that covers the cost of maintaining and operating the service. With Telletopia, there are no investors, no shareholders and no IPO. Telletopia exists for the public benefit of increasing access to local broadcast TV.

D. Live Local Broadcast Stations Have no Path to the Internet

Consistent with Congressional intent to extend the reach of local broadcast stations, Telletopia is poised to make live broadcast stations available to Internet-enabled devices for the first time. Despite recent progress made in the distribution of video content over the Internet, broadcast station owners and networks are unable to solve the complex copyright licensing problems associated with bringing the full 24-hour live stream of local broadcast content to the Internet.

Local broadcast station content on the Internet is currently limited to locally-produced news programming. Almost all of the advertisements during this news programming are blacked out due to lack of copyright license clearance. At the same time, broadcast networks are offering OTT subscription services for a portion of their content. These network OTT offerings predominantly do not include the local stations' programming or advertisements, nor do they include most of the sports content that is an essential element of live broadcast station TV. Local broadcast stations are being squeezed for higher and higher retransmission consent fee payments to the networks with no recourse for reaching an increasingly Internet-only based audience.[1] As a result, funding for local programming, including local news, is at serious risk.

Making local broadcast stations available to IP-devices, including mobile devices, is particularly important in times of emergency where accessibility to local information is critically important to public safety. At the same time, Telletopia's service is accretive to broadcasters by increasing viewership and advertising revenues, while adding a new revenue source via payment of retransmission consent fees.

E. Non-Discriminatory Retransmission Consent Rules are Necessary for OVDs That Offer Local Broadcast Station Programming

Telletopia supports the FCC's proposal to include Internet-based distributors of live local broadcast programming in its definition of an MVPD and to extend its retransmission consent benefits and obligations to these OVD-MVPDs. To make its vision of a vibrant OVD marketplace a reality, however, the FCC must ensure that retransmission consent from local broadcast stations is made available on a non-discriminatory basis to OVDs.

As part of its efforts to compensate broadcasters for their programming, Telletopia has had numerous discussions with television broadcast stations and with broadcast network programmers to initiate negotiations for retransmission consent of local broadcast signals. Local broadcast stations have told us that they are prohibited by network affiliation agreements to grant retransmission consent to Internet-based distributors.

Without access to the full 24-hour linear stream of the local broadcast television signals, no OVD-MVPD will be able to compete effectively with established MVPDs that do have access to this high-demand content. Therefore, in addition to adopting a technology-neutral definition of an MVPD, the FCC must also make it a violation for a television broadcast station to discriminate in rates, terms and conditions against OVD-MVPDs. The FCC should bar network affiliation agreements that restrict or condition the grant of retransmission consent by a broadcast licensee in any manner that effectively precludes retransmission by an OVD.

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[1] Not only are viewers increasingly "cord-cutters" or "never-corders," but according to The New York Times, "[a]mong viewers ages 14 to 25, TVs finally have lost out: The bulk of their time watching shows is on computers, tablets and smartphones." "Millennials and Cutting the Cord," by Emily Steel and Bill Marsh, The New York Times, October. 3, 2015; available at: http://www.nytimes.com/interactive/2015/10/03/business/media/changing-media-consumption-millenials-cord-cutters.html?_r=0

The FCC must also prohibit television broadcast stations from insisting on bundling broadcast signals with other programming as part of retransmission consent negotiations with nascent OVD-MVPDs. As a local broadcast only service, Telletopia is helping consumers move away from the forced purchase of large bundles of programming to gain access to critical local news and information. Broadcast TV consent agreements are frequently tied with the carriage of cable TV networks. As a start-up and a nonprofit, Telletopia will carry only local broadcast stations and has no current plans to offer larger packages of programming. The FCC must prohibit television broadcast stations from insisting that OVD-MVPDs accept bundling and purchase non-broadcast content as a condition of either granting retransmission consent or as the basis to avoid a significant premium on the cost of such retransmission consent.

Under its authority in Section 325, the FCC has the ability to prescribe regulations that prevent efforts "to frustrate the functioning of a competitive market" and/or to "stifle competition through the negotiation process."[2] Broadcast station failure to grant retransmission consent to a new class of MVPDs or insistence upon materially different rates for retransmission consent within a DMA between an OVD-MVPD and any other MVPD are not justified by "competitive marketplace considerations."

F. A Narrow Interpretation of the Definition of MVPD Focused on Local Broadcast Station Retransmission Will Enable Immediate Competition and Avoid Unnecessary Regulation of Other Internet-Based Content

Telletopia agrees with the concerns expressed by other commenters regarding the imposition of MVPD regulations on OVDs that are not offering broadcast channels. There are no regulatory or market barriers blocking these OVDs from access to the Internet. The regulatory privileges and obligations of the FCC's MVPD rules are of particular importance to entities seeking to retransmit local broadcast station signals – the full content of which is unavailable to consumers over the Internet via other sources. Multi-channel content offerings that are not providing local broadcast station signals and are not availing themselves of the retransmission consent benefits of the MVPD rules should not be subject to the regulatory burdens of these rules.

[2] Implementation of the Satellite Home Viewer Improvement Act of 1999; Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, 15 FCC Rcd. 5445, 5469 ¶ 58 (2000).

G. Conclusion

Telletopia supports the FCC's efforts to establish a technology-neutral definition of an MVPD and to enable OVDs to bring competition to established providers. In order for such a rule change to be meaningful, however, additional measures must be taken:

- The FCC must prevent broadcast station and network affiliation agreements from discriminating against nascent OVD service offerings;
- New entrants should not be forced to pay for unwanted cable network content to gain access to the critical broadcast station programming that relies on access to the public airwaves for distribution;
- A narrow interpretation of the definition of MVPD that focuses on local broadcast station retransmission is needed to remove a major market barrier and enable the immediate introduction of competitive online video programming services.

Respectfully submitted,

/s/ Jennifer M. McCarthy

Telletopia Foundation

Cc: Commissioner Mignon L. Clyburn
Louis Peraertz
Holly Sauer