Congress of the United States
Washington, DC 20515

September 30, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to share our concerns regarding the proposal to eliminate the long-standing network non-duplication and syndicated exclusivity rules (collectively, the "exclusivity rules"). These rules were adopted to support local broadcast television and help ensure our constituents receive the programming of local stations that is uniquely tailored to their communities. This is particularly important to the low income and minority communities we serve, many of which rely on their local broadcast television stations as their entertainment medium of choice.

Exclusive programming rights can incentivize television networks, syndicators, and local stations to invest in more and better video programming. Most importantly, although we recognize the debate on the subject, when adopted the Commission's exclusivity rules were intended to ensure that viewers receive the broadcast programming most relevant to them, rather than an out-of-market substitute that affords viewers no local connection.

While we recognize that the market has significantly changed over the years, the exclusivity rules have historically existed alongside the compulsory copyright license that Congress created to allow cable operators' easy access to copyrighted programming. Repeal by the Commission of its program exclusivity rules would impair the ability of local stations to enforce program exclusivity – a result we believe is not in the public interest.

Over the past decade, Congress has repeatedly considered the question of whether to extend this license, along with our consideration of other broadcast TV-related provisions of the Communications Act of 1934. Just last year, Congress extended through 2019 the distant signal copyright license for satellite carriers while directing the Government Accountability Office to study the consequences of a potential phase-out of the compulsory regime on consumers. We believe those findings will provide the FCC with a more complete record on which to act. As Congress continues to await those findings, we believe it is premature for the FCC to undo the exclusivity rules.

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The Commission's long-standing exclusivity rules encourage investment in local news and public service programming that benefits local communities. We urge you to preserve these rules for the benefit of the local television viewers we serve.

Thank you very much.

Very truly yours,

G. K. Butterfield
Member of Congress

Bobby L. Rush
Member of Congress

Gregory W. Meeks
Member of Congress

Hakeem Jeffries
Member of Congress

Yvette D. Clarke
Member of Congress

Karen Bass
Member of Congress

cc: Commissioner Clyburn
Commissioner Pai
Commissioner O'Rielly
Commissioner Rosenworcel

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Karen Bass
U.S. House of Representatives
408 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Bass:

Thank you for your recent correspondence expressing your concern about the proposal to eliminate the existing non-duplication and syndication exclusivity rules, particularly for its importance to low income and minority communities. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

Congress instructed the Commission in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) to open a proceeding to examine the "totality of circumstances" involved in retransmission consent negotiations. The purpose of this proceeding, which is ongoing at the Commission, is to examine both forces that act to drive up cable rates and the ability of consumers to fairly access video programming. An integral part of any review of the retransmission consent regime is consideration of the Commission's exclusivity rules.

As you are aware, consumers are often the victims of retransmission disputes. Frequent press accounts have highlighted that the negotiations between broadcasters and cable operators over retransmission rights often result in program blackouts where cable consumers are denied the ability to see a particular channel until the dispute is resolved. The Commission's exclusivity rules serve to exacerbate this problem for consumers by prohibiting the importation of distant signals, as well as strengthen the position of broadcasters in retransmission disputes, thereby constituting a distortion of free market processes.

In the early days of the cable industry, cable companies often supplemented their programming with signals imported from distant broadcasters. Congress provided a compulsory copyright license for the programming carried on the distant signals with an important condition: that the signals and their constituent programming would only be covered by the compulsory license if the importation of the distant signals were consistent with FCC rules. This statutory provision, codified at 17 U.S.C. 111 and 119, is the reason that the FCC exclusivity rules have any relevance today.

A great deal has changed since the compulsory copyright law was enacted. Two things seem especially relevant: private contracts between and among programmers, networks, and broadcasters typically include exclusivity provisions; and, in 1992, Congress passed retransmission consent legislation giving broadcasters the right to negotiate with cable and DBS companies over the right to transmit their signals.

There are many who argue that retransmission fees drive up consumers' cable bills without any corresponding benefit. Indeed, some broadcasters have told Wall Street they expect continuing double digit increases in the retransmission fees they charge cable companies. These fees, of course, are ultimately paid by consumers.

An elimination of the exclusivity rules is unlikely to have an immediate effect on programmers, broadcasters, cable companies, or consumers. This is because, as noted, current broadcast program contracts and network affiliation agreements normally contain their own exclusivity provisions prohibiting a program from being imported into a market if it is being shown on a local broadcast station. In these circumstances, retaining the exclusivity provisions may well be redundant and a federal intrusion, without cause, into the marketplace.

Faith in the free market would suggest that government get out of the way, absent an indication of harm. Since the rules appear redundant to existing contractual provisions based on the record, their elimination would not be the trigger for such harm. However, the presence of the exclusivity rules prohibits the market from operating in a fair and efficient manner and aggravates the harm to consumers during retransmission consent disputes. Simply put, there is a possibility that the exclusivity rules protect broadcasters from the marketplace by substituting an anti-market government mandate and in the process contribute to high cable and DBS prices.

I appreciate your thoughtful input on this issue. I am sure it will continue to be discussed as we pursue Congress's mandate on retransmission consent negotiations.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable G.K. Butterfield
U.S. House of Representatives
2305 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Butterfield:

Thank you for your recent correspondence expressing your concern about the proposal to eliminate the existing non-duplication and syndication exclusivity rules, particularly for its importance to low income and minority communities. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

Congress instructed the Commission in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) to open a proceeding to examine the "totality of circumstances" involved in retransmission consent negotiations. The purpose of this proceeding, which is ongoing at the Commission, is to examine both forces that act to drive up cable rates and the ability of consumers to fairly access video programming. An integral part of any review of the retransmission consent regime is consideration of the Commission's exclusivity rules.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Yvette D. Clarke
U.S. House of Representatives
2351 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Clarke:

Thank you for your recent correspondence expressing your concern about the proposal to eliminate the existing non-duplication and syndication exclusivity rules, particularly for its importance to low income and minority communities. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

Congress instructed the Commission in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) to open a proceeding to examine the "totality of circumstances" involved in retransmission consent negotiations. The purpose of this proceeding, which is ongoing at the Commission, is to examine both forces that act to drive up cable rates and the ability of consumers to fairly access video programming. An integral part of any review of the retransmission consent regime is consideration of the Commission's exclusivity rules.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Hakeem Jeffries
U.S. House of Representatives
1339 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Jeffries:

Thank you for your recent correspondence expressing your concern about the proposal to eliminate the existing non-duplication and syndication exclusivity rules, particularly for its importance to low income and minority communities. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

Congress instructed the Commission in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) to open a proceeding to examine the "totality of circumstances" involved in retransmission consent negotiations. The purpose of this proceeding, which is ongoing at the Commission, is to examine both forces that act to drive up cable rates and the ability of consumers to fairly access video programming. An integral part of any review of the retransmission consent regime is consideration of the Commission's exclusivity rules.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Gregory W. Meeks
U.S. House of Representatives
2234 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Meeks:

Thank you for your recent correspondence expressing your concern about the proposal to eliminate the existing non-duplication and syndication exclusivity rules, particularly for its importance to low income and minority communities. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

Congress instructed the Commission in the Satellite Television Extension and Localism Act Reauthorization Act (STELAR) to open a proceeding to examine the "totality of circumstances" involved in retransmission consent negotiations. The purpose of this proceeding, which is ongoing at the Commission, is to examine both forces that act to drive up cable rates and the ability of consumers to fairly access video programming. An integral part of any review of the retransmission consent regime is consideration of the Commission's exclusivity rules.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 10, 2015

The Honorable Bobby L. Rush
U.S. House of Representatives
2268 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rush:

Thank you for your recent correspondence expressing your concern about the proposal to eliminate the existing non-duplication and syndication exclusivity rules, particularly for its importance to low income and minority communities. Your views will be entered into the record of both our ongoing retransmission consent and exclusivity proceedings.

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Tom Wheeler