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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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Petition for Rulemaking to amend the Commission's Rules to extend its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules to low-power, class A, and noncommercial broadcast stations	)))))))	MM Docket No. ________

Petition for Expedited Rulemaking

Venture Technologies Group, LLC ("VTG") hereby urges the Commission to revise its program exclusivity rules, including its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules,[1] so that all television broadcast stations (full, low-power, class A, and noncommercial stations) are entitled to bargain for and exercise program exclusivity against other broadcast stations and cable systems.[2] Effectively, VTG is requesting that the Commission permit the private contractual marketplace to operate freely and on a level playing field.

When it last examined its program exclusivity rules in its 1988 Further Notice of Proposed Rulemaking, the Commission noted that it was "appropriate to extend the exclusivity rights of the existing rules . . . to all station types. . . ."[3] However, the Commission never acted upon that rulemaking. As explained below, the time has come for the Commission to eliminate the disparity in exclusivity rights amongst broadcasters.

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[1] 47 C.F.R. 76.151-161 & 47 C.F.R. 76.92-97
[2] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 44.
[3] Id. at ¶ 44.

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Background

VTG's motivation to file this Petition stems from its recent acquisition of low-power television station WAWA-LP, Syracuse, New York. With its acquisition of WAWA-LP, VTG also signed an exclusive agreement with United Paramount Network ("UPN") to finally provide a UPN affiliate station in the Syracuse market.

In order to maximize its viewing audience, VTG needs cable carriage to reach the bulk of the market.[4] Accordingly, VTG approached Time Warner Cable, a division of AOL Time Warner ("Time Warner") to negotiate for cable carriage. In its initial meetings, VTG made it clear that it was willing to compensate Time Warner in exchange for cable carriage, even though other network-affiliated broadcasters are not charged for carriage and Time Warner pays for satellite-delivered cable networks that attract fewer viewers. Time Warner, however, opted to import UPN superstation WSBK out of Boston, Massachusetts over the objections of UPN.[5]

If WAWA-LP was a full-power station, it could invoke the protection of the Commission's network non-duplication rules and prevent Time Warner from importing WSBK. But WAWA-LP is a low-power station and, accordingly, cannot utilize the protection of this exclusivity rule. Effectively, Time Warner's decision to import a UPN station, without the approval of UPN, prevents VTG and UPN from reaping the benefits of the exclusive affiliation agreement that they signed.

VTG's inability to invoke the network non-duplication rule, simply because WAWA-LP is a low-power station, directly harms the citizens of Syracuse. First, without cable carriage WAWA-LP will not have an audience base large enough to justify

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[4] Syracuse has a 75% cable penetration rate. Investing in Television: Television 2000 Market Report at 89.
[5] See, e.g., UPN: AOL abuses its cable power, USA Today (July 5, 2001).

the costs of developing station content focused specifically at the Syracuse market. Additionally, instead of obtaining compensation from VTG to help keep cable rates down, Time Warner's decision to import WSBK will likely cause cable rates to rise in the near future to defray the compulsory copyright and associated fees incurred by importing WSBK.[6]

Discussion

VTG and UPN's struggles against Time Warner represent the exact situation the Commission's network non-duplication rule was meant to prevent. "[W]hat [the network non-duplication] rules protect is the local advertising and public service announcements within and adjacent to network programming. . . . The main purpose and effect is to allow the local affiliates to protect their revenues in order to make them better able to fulfill their responsibilities as licensees of the Commission."[7] Further, the "network non-duplication rule was originally designed to permit the formation and continuation of broadcast networks. There is evidence that importation of duplicating network signals can have severe adverse effects on a station's audience."[8]

Here, UPN, as a relatively new broadcast network, has to rely on low-power television stations in markets such as Syracuse to acquire a local voice so that it may compete on equal footing with other local network affiliates. By not extending the protection of the network non-duplication rule to all stations, broadcast networks that must rely on low-power television stations to reach new markets will continue to see their

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[6] It should be noted that an Order granting the rule changes requested herein would not require Time Warner to carry WAWA-LP. This Petition does not seek to establish any new cable carriage rules.
[7] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 48.
[8] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988) at ¶ 117.

efforts to establish local affiliate stations jeopardized by the importation of distant superstations.

The reasons why the network non-duplication rule was enacted in 1988 are equally valid for all stations, not just full-power stations, and the Commission has already recognized this fact. "[T]he private organization of networks is an efficient method of doing business, and that it is in the public interest to allow enforcement of reasonable exclusivity to support that method of distribution."[9] "We have also determined that, similar to syndicated programming, the contractual relationship between a network and its affiliates, rather than the Commission's rules, is the appropriate determinant of the extent of non-duplication protection."[10] Indeed, the Commission has acknowledged that low-power television stations "can be expected to have the same basic need for and interest in program exclusivity as full service stations."[11] The time has come for the Commission to resolve this unfinished business and provide all broadcast stations with equal protection from the exclusivity rules.[12]

The only question the Commission left unresolved in its 1988 Further Notice of Proposed Rulemaking that proposed to extend the program exclusivity rules to all stations was whether low-power stations "should be afforded the same degree of geographic exclusivity protection as full service stations."[13] VTG strongly urges the Commission to provide all stations the same degree of geographic exclusivity protection. Broadcast

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[9] Id. at ¶ 116.
[10] Id. at ¶ 118.
[11] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 44.
[12] While the primary thrust of this Petition focuses on the network non-duplication rule, VTG believes its arguments herein apply equally to the network and non-network territorial exclusivity and syndicated exclusivity rules that have also remained unacted upon by the Commission since 1988. Accordingly, VTG requests that the Commission address them in its Notice of Proposed Rulemaking.
[13] Id. at ¶ 44.

networks have a vested interest in maximizing their coverage and, accordingly, will provide exclusivity to an affiliate only when it serves that purpose. As noted earlier, "the contractual relationship between a network and its affiliates, rather than the Commission's rules, is the appropriate determinant of the extent of non-duplication protection."[14] Market forces, rather than abstact mileage constraints, are more efficient in determining proper geographic restrictions.

Conclusion

For the aforementioned reasons, VTG respectfully urges the Commission to revise its program exclusivity rules, including its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules, so that all television broadcast stations (full, low-power, class A, and noncommercial stations) are entitled to bargain for and exercise program exclusivity against other broadcast stations and cable systems.

Respectfully submitted,

Venture Technologies Group, LLC

By:____________________
Paul Koplin
President

Dated October 23, 2001

[14] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988) at ¶ 118.