

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re:

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)

RM-_____

To: The Commission

STATEMENT IN SUPPORT OF PETITION FOR RULE MAKING

1. The Community Broadcasters Association ("CBA") strongly supports the above-captioned petition for rule making, filed by Venture Technologies Group, LLC ("VTG") on October 23, 2001. CBA is the trade association of the nation's Class A and Low Power Television ("LPTV") stations and frequently expresses the views of that industry in governmental forums.

2. VTG seeks to expand the scope of the Commission's cable television network^{1/} and syndicated program^{2/} exclusivity rules to Class A and LPTV stations. These rules protect local broadcast stations against the importation by cable television systems of duplicative programming from distant stations, thereby allowing local stations to enjoy the full benefit of whatever exclusive programming rights they have bargained for in the open marketplace. By way of example, under the present rules, if a full power television station had an exclusive UPN

^{1/} Sections 76.92-76.93.

^{2/} Sections 76.151-76.153.

network affiliation in Syracuse, New York, it could require a cable television system serving Syracuse to black out duplicating programming carried by a distant signal. In contrast, a Class A or LPTV station with the same exclusive UPN network affiliation cannot require a blackout and has no way to enforce the exclusive rights for which it bargained with UPN. This Syracuse example is exactly VTG's situation. It is real, not hypothetical; and as discussed below, it is not unique.^{3/}

3. There is no justification for allowing cable television systems to interfere with the programming marketplace in this manner. The rules permit exclusivity to be asserted only if a network or syndicator grants exclusive rights to the broadcaster by contract and the broadcaster shows the contract language to the cable operator.^{4/} Thus if the network or syndicator refuses to grant exclusive rights, the broadcaster cannot interfere with duplicative distant signal importation by the cable system. The network or syndicator owns the programming. The programming is private property, and the broadcaster bargains to acquire whatever rights it needs and can get. The owner of the program and the party that bargained for the right to use it should be free to decide on the scope of the right conveyed pursuant to their bargain. The existing system unreasonably permits a cable operator, who is not a party to any contract with the program owner, to alter the rights arrangement that a network or syndicator and a broadcaster have privately negotiated.

4. The cable operator enjoys an unfair advantage. Not only is it not a party to the network affiliation contract and so is not bound by that contract but it also enjoys the benefit of

^{3/} See Paragraph 7, *infra*.

^{4/} See Sections 76.94(f) and 76.159 of the Rules.

a compulsory copyright license when it imports a distant signal. The cable operator is permitted by law to make a unilateral choice as to whether import a signal and pay any associated additional copyright fee, regardless of the desire or intent of the program's owner. In contrast to the broadcaster, who must negotiate privately for the right to display a program, the cable operator can take advantage of a statutory copyright license that comes at a fixed price and is available without the administrative burden of the negotiation process.

5. As VTG points out, the Commission observed 13 years ago that it was "appropriate" to extend exclusivity rights to LPTV stations. It is now time to do that and to give Class A and LPTV stations the ability to benefit from private property rights.

6. There several important points to remember:

a. Exclusivity does not apply unless both the program owner and the local station agree to it, so local stations will not have the unilateral right to assert exclusivity for which they have not bargained.^{5/}

b. Exclusivity never deprives the public of the ability to see a program, because if a local station does not air a program, importation of a distant signal is not duplicative and cannot be blocked.

c. The exclusivity rules are completely independent of the must-carry rules and do not in any way expand the rights of any Class A or LPTV station to be carried on cable.

d. Class A stations seeking to assert exclusivity rights have far greater local programming obligations and minimum hours of operation than their full power

^{5/} See Paragraph 3, *supra*.

counterparts.^{6/} Their ability to fulfill these obligations and to serve their communities is being impaired by the economic harm from not being able to assert exclusivity rights.

7. As VTG points out, the problem is real, and a solution is needed immediately. Time Warner has gone to substantial lengths, including incurring distant signal copyright fees, to avoid allowing local Class A or LPTV stations to develop UPN affiliations and to build on those affiliations to serve their local audiences. Syracuse is not the only example. UPN affiliate WBQC-CA, Cincinnati, Ohio, has fought with Time Warner for years over cable carriage^{7/} and only recently was granted part-time carriage, from only 6:00 p.m. to 11:00 p.m., covering its network programming, but not most of its local programming. Time Warner is demanding cash to carry UPN affiliate WLOT-LP, Watertown, New York. A similar struggle is in progress involving WBGT-LP Rochester, New York.^{8/}

8. The problem is growing as satellite distribution systems make it easier and less expensive to distribute programming nationally. The nation now has more networks and other program sources than ever before. However, continued progress in developing new sources of programming and the resulting programming diversity will be impaired if cable companies are permitted to continue to interfere with intended distribution rights.

^{6/} Section 336(f)(2)(A)(i) of the Communications Act requires Class A stations to broadcast an average of at least three hours of local programming per week and to be on the air at least 18 hours a day. Full power stations have no minimum local programming obligation and may broadcast as little as two hours per day and 28 hours per week. See Section 73.1740(a)(2)(ii) of the Rules. Class A stations share the other programming obligations of full power stations, including the broadcast of three hours per week of children's programming.

^{7/} See <http://www.wbqc.com/thetruth/thetruthpublicdocuments.htm>.

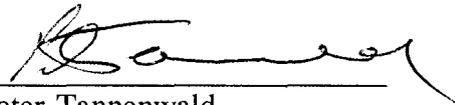
^{8/} See <http://www.emonline.com/news/web102401.html#venture>.

9. It is particularly appropriate that the Commission extend marketplace rights now, in light of the recent enactment by Congress of the Community Broadcasters Protection Act of 1999,^{9/} which enabled LPTV stations to upgrade to a new "Class A" television service, with primary spectrum status. Class A stations provide a newly available stable base of broadcast outlets that are often more attractive to program producers and distributors than LPTV stations have been in the past, because of their increased permanence.^{10/} Congress and the Commission have subjected Class A stations to most full power television operating rules.^{11/} Obligations should be accompanied by rights. The growth of the Class A service will be, and should be, facilitated by eliminating the exclusion of and LPTV stations from the free functioning of the programming marketplace.

10. Accordingly, CBA urges the Commission to grant VTG's petition promptly.

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Respectfully submitted,



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November 13, 2001

^{9/} See Section 336(f) of the Communications Act.

^{10/} The power limits set forth in Section 74.735(a) of the Commission's Rules are also higher now than they were in 1988, again increasing the attractiveness of Class A and LPTV stations to program distributors.

^{11/} See *Establishment of a Class A Television Service* (MM Docket No. 00-10), *Report and Order*, 15 FCC Rcd. 6355 (2000), and *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd. 8244 (2001).

CERTIFICATE OF SERVICE

I, Donna L. Brown, do hereby certify that I have, this 13th day of November, 2001, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Statement in Support of Petition for Rulemaking" to the following:

Paul Koplin, President
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Donna L. Brown