

Before the
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,)	RM-10335
Syndicated Exclusivity, and Network)	
Non-Duplication Protection Rules to)	
Low Power, Class A, and Noncommercial)	
Broadcast Stations)	

To: The Commission

STATEMENT IN SUPPORT OF PETITION FOR RULE MAKING

1. Elliot Block, licensee of WBQC-CA, Cincinnati, Ohio ("WBQC"), hereby strongly supports the above-captioned petition for rule making, filed by Venture Technologies Group, LLC ("VTG") on October 23, 2001. WBQC, a UPN affiliate, has gone through an lengthy and extremely difficult negotiating process with the local cable operator in Cincinnati to obtain carriage, which is now given for only the network part of the station's programming day. Even though the cable company is not now importing a duplicative distant signal, it should not be allowed to hold that sword over WBQC's head.

2. VTG seeks to expand the scope of the Commission's cable television network¹ and syndicated program² exclusivity rules to Class A and LPTV stations. These rules protect local full power 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. Under the

² See 47 C.F.R. §§ 76.92-76.93.

³ See 47 C.F.R. §§ 76.151-76.153.

present rules, if a full power television station had an exclusive UPN network affiliation in Cincinnati, Ohio, it could require a cable television system serving Cincinnati to black out duplicating programming carried by a distant signal. In contrast, because WBQC is a Class A station, it has no way to enforce any exclusive rights it obtains from UPN. As shown by VTG's pleading, WBQC's situation is not unique.

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.³ Thus if the network or syndicator refuses to grant exclusive rights, the broadcaster cannot interfere with duplicative distant signal importation by the cable system, including under a compulsory copyright license. The network or syndicator owns the programming, which is private property, and the broadcaster negotiates to acquire the rights needs and can get. The owner of the program and the party that obtained 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 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 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, the cable operator can take advantage of a statutory copyright license that comes at a fixed price without the administrative burden of the negotiation

⁴ See 47 C.F.R. §§ 76.94(f), 76.159.

process. As VTG points out in its petition, 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.

5. Exclusivity does not apply unless both the program owner and the local station agree to it, so local stations will not have unilateral rights to assert exclusivity if they have not bargained for it in their contracts. Exclusivity never deprives the public of the ability to see a program, because if the local station does not air a program, importation of a distant signal cannot be blocked. The exclusivity rules are 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. WBQC's ability to fulfill these obligations and to serve its community is impaired by the economic harm from not being able to assert exclusivity rights.

6. 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 1999,⁴ giving eligible stations like WBQC primary spectrum status. Class A stations like WBQC seeking to assert exclusivity rights have far greater local programming obligations and minimum hours of operation than full power stations.⁵ 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. Congress and the Commission subjected WBQC to most full power television operating rules. Obligations should be

⁷ See Section 336(f) of the Communications Act.

⁸ 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.

accompanied by rights. The growth of the Class A service will be, and should be, facilitated by eliminating the exclusion of these stations from the free functioning of the programming marketplace. Accordingly, Mr. Block urges the Commission to grant VTG's petition and to initiate a formal rule making promptly.

Respectfully submitted,

/s/ Peter Tannenwald

/s/ Jason S. Roberts

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