

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. Polar Broadcasting, Inc. ("Polar"), licensee of KEZT-CA, Sacramento/Stockton, California and KDJT-CA, Salinas-Monterey, California,¹ hereby supports the above-captioned petition for rule making, filed by Venture Technologies Group, LLC ("VTG") on October 23, 2001. VTG seeks to expand the scope of the Commission's cable television network² and syndicated program³ 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 full power stations to enjoy the full benefit of whatever exclusive programming rights they have bargained for in the open marketplace.

¹ In addition, the President of Polar, Warren Trumbly, is the licensee of KEXT-CA, Modesto, California, and the Vice President of Polar, Linda K. Trumbly, Mr. Trumbly's spouse, is the licensee of KAXT-CA, Santa Clara-San Jose, California.

² See 47 C.F.R. §§ 76.92-76.93.

³ See 47 C.F.R. §§ 76.151-76.153.

2. The rules currently 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 needs and can get. On many occasions Polar and its principals have bargained with a network to obtain such rights. It should therefore be able to receive the benefit of the bargain, and be free to decide on the scope of the right conveyed pursuant to their bargain. 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.

3. 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.

⁴ See 47 C.F.R. §§ 76.94(f), 76.159.

4. 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 1999,⁵ giving eligible stations primary spectrum status. Class A stations like the ones licensed to Polar and its principals seeking to assert exclusivity rights have far greater local programming obligations and minimum hours of operation than full power stations.⁶ 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 Class A stations most full power television operating rules. Obligations should be 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, Polar urges the Commission to grant VTG's petition promptly.

Respectfully submitted,

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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.

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December 18, 2001