

December 18, 2001

BY HAND DELIVERY

Ms Magalie Roman-Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: RM-10335 /
**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**

Dear Ms. Roman-Salas,

WFMJ Television, Inc. ("WFMJ") hereby opposes the above-referenced Petition for Rulemaking filed by Venture Technologies Group, LLC ("VTG") on October 23, 2001 (FCC Public Notice Report No. 2513, released November 19, 2001). WFMJ is the licensee of full-power television station WFMJ-TV, Youngstown, Ohio. It is WFMJ's belief that there is no justification to expand the scope of the Commission's exclusivity rules¹ to allow low-power and Class A stations to compete with full-power stations for program exclusivity rights, and that such an expansion would be detrimental to full-power stations.

From its inception, the low power television ("LPTV") service has been a "secondary spectrum priority service" subject to displacement by full-service stations at any time. It is well established that primary "full-service stations, by definition, can reach

¹ 47 C.F.R. §§ 76.151-161 & 47 C.F.R. §§ 76.92-97.

larger audiences than the low power television stations,"² and thus LPTV stations do not offer public service benefits equal to those provided by full-power stations. Moreover, as a secondary television service, LPTV stations are not subject to the extensive full-power television operating rules. As congress put it, "[L]ow-power television plays a valuable, albeit modest, role in the [video programming] market."³ Given the "modest role" of LPTV stations, the Commission's longstanding regulatory scheme affording exclusivity only to full-power television stations should not be overturned.

According to VTG, the Commission stated in 1988 that it was "appropriate" to extend exclusivity rights to LPTV stations. However, the video programming marketplace has changed dramatically since the Commission made that statement. In today's marketplace, it is particularly inappropriate to diminish the status of full-power stations in light of the obstacles they must overcome to effectuate the DTV transition. Given the stated paramount importance that the Commission and Congress have afforded the DTV transition, the Commission should not place additional burdens on DTV broadcasters by forcing them to expend their resources to bargain against LPTV stations for exclusivity.

¹ *Memorandum Opinion and Order of the Third Report and Order*, MM Docket No.87-268, 7 FCC Rcd 6924, 6953 (1992).

² 145 Cong. Rec. S14724 (November 17, 1999)

⁴ Petition at 1. It is important to note that Commission's statement was but one of many initial proposals subject to change included in a "Further Notice of Proposed Rulemaking" that was never acted on by the Commission.

⁵ The Commission recently reaffirmed the secondary status of LPTV stations when it assigned DTV channels. In order to provide all full-service stations with a second channel, the FCC established DTV allotments that displaced a number of LPTV stations. See e.g., *Sixth Report and Order, Advanced Television Systems and Their Impact Upon the Existing Television Service*, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997); *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd 7418, 7457 (1998).

Similarly, Class A stations should not be permitted to assert exclusivity rights. Although certain qualifying Class A stations were given a brief window to qualify for "primary status" under the Community Broadcasters Protections Act of 1999 ("CBPA"), the CPBA was not enacted for the purpose of establishing an entire class of stations on par with full-power television stations. Instead, the CBPA was enacted to provide a limited number of qualifying LPTV stations with interference protection from full-power stations during the DTV transition period. Congress recognized that because of the emerging DTV service, a number of LPTV stations would not survive. However, Congress still protected the ability of full-power stations to provide both analog and digital service during the DTV transition. The limited protection afforded to LPTV and Class A stations was a recognition by Congress that they were not to be placed on the same competitive footing as full-power television stations.

Moreover, should LPTV and Class A stations be permitted to exclusively air programming in a market, cable systems will be given an incentive to carry such stations which will undermine Congressional intent to preserve the bargaining power and must-carry status of full-power television stations.¹ Mandatory carriage rights are one of the

⁶ Community Broadcasters Protection Act of 1999, Pub. L. No 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f) ("CBPA").

⁷ *Establishment of a Class A Television Service*, 15 FCC Rcd 6355 at ¶ 4 (April 4, 2000).

⁸ *Id.* at ¶ 6.

⁹ *Id.*

¹⁰ According to the must-carry provisions of the Communications Act, a "local commercial television station," defined as "any full power television broadcast station," is entitled to cable carriage. 47 U.S.C. § 534 (h) (1) (A) (emphasis added). Therefore, by definition, Class A and low power stations operate at low power and cannot qualify as a "local commercial television station" entitled to the special must-carry rights given full-power stations, other than under the extremely limited circumstances provided in Section 76.55(d) of the Commission's Rules. Thus, Congress explicitly granted must-carry status to all full-power stations and declined to do so for LPTV and Class A stations. As the Commission stated: "We clarify that Class A stations have the same limited must carry rights as LPTV stations, but do not have the same must carry rights as full service television stations under Part 73." *Memorandum Opinion and Order on Reconsideration. Establishment of a Class A Television Service*, FCC LEXIS 2047 (April 13, 2001).

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most important privileges afforded full-power stations and providing exclusivity to LPTV and Class A stations will allow them to circumvent the Commission's rules by greatly expanding their ability to be carried on cable. Such an outcome is contrary to FCC and Congressional intent and must not be permitted.

In sum, the FCC and Congress have long recognized the public interest benefits associated with full-power television stations and have provided such stations with primary spectrum priority, which has included program exclusivity. As discussed above, extending the exclusivity rights to include LPTV and Class A stations would undermine the ability of full-power stations to make the transition to DTV and would impermissibly expand the rights of LPTV and Class A stations to be carried on cable. For these reasons, WFMJ respectfully request that the Commission dismiss VTG's Petition to revise the FCC's exclusivity rules.

Sincerely,


Betty H. Brown Jagnow
President
WFMJ Television, Inc.

cc: Paul Koplin
President, Venture Technologies Group, LLC