BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Commission
The Secretary

REPLY COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby submits its Reply Comments in response to the Further Notice of Proposed Rule Making, FCC 06-93, in the above-captioned proceedings, released July 24, 2006 (the "*FNPRM*"). In its Comments, Sinclair demonstrated that news and video programming are widely available on the Internet and through non-broadcast media platforms and that the modern advertising market is highly competitive.[1]

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[1] *See* Comments of Sinclair (October 23, 2006).

Numerous other entities also filed comments reaching many of the same conclusions.[2] Accordingly, Sinclair submits that the record amply demonstrates that there is no viewpoint, competition, or localism-based justification for any restrictions on local television ownership, and the Commission should eliminate all of its ownership restrictions.

Sinclair in this Reply addresses the comments submitted by Cequel Communications, LLC d/b/a Suddenlink Communications ("Suddenlink"). Suddenlink argues that the Commission should expressly prohibit any entity from exercising retransmission consent authority on behalf of more than one top-ranked local station "to foreclose entities from using local marking agreements ('LMAs') and various other means to consolidate the retransmission consent authority of the top-ranked local stations."[3]

As an initial matter, Suddenlink's filing fundamentally concerns the FCC's rules and policies regarding retransmission consent negotiations. But, that issue is well beyond the scope of this ownership rulemaking proceeding, which arises, in large part, from the Third Circuit's remand of rule changes the Commission adopted in the *2002 Biennial Review*.[4] Indeed, Suddenlink itself concedes that "reform of retransmission consent lies outside the scope of this proceeding," but then inconsistently states that it is concerned that the *FNPRM* does not reference retransmission consent ramifications.[5] As the Commission undoubtedly realizes, the media ownership proceeding is complicated enough without injecting a wholly new element.

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[2] *See*, *e.g.*, Comments of the Tribune Company (October 23, 2006) and Comments of the National Association of Broadcasters (October 23, 2006).

[3] Comments of Suddenlink, at 2 (October 23, 2006).

[4] *See In the Matter of 2002 Biennial Regulatory Review*, 18 FCC Rcd 13620 (2003) ("*2002 Biennial Review*"), *remanded Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004).

[5] Comments of Suddenlink, at 5.

Suddenlink, in support of its position, references several complaint proceedings involving negotiations with broadcasters representing two top-ranked stations.[6] But, these private adjudicatory matters are fact specific and not appropriately addressed in the context of an unrelated rulemaking proceeding. For example, with respect to Suddenlink's retransmission consent dispute with Sinclair, the parties ultimately settled the dispute voluntarily through negotiations.[7] As part of that settlement, Suddenlink withdrew the retransmission consent complaint that it had filed with the FCC.[8] Suddenlink's efforts now to rehash the same allegations it made in the complaint in the guise of "comments" to this rulemaking proceeding violate the spirit of the parties' agreement "to amicably resolve their dispute, settle and release all claims," and the FCC should not countenance Suddenlink's duplicitous actions.[9]

In any event, Suddenlink's argument that broadcasters, who own or program through an LMA two top-ranked stations in a market, necessarily exercise market power over cable operators, who are "compelled" to accept the broadcasters' retransmission consent terms, is simply ludicrous.[10] Ironically, it is only because of the rise in the number of competitors to local cable monopolists that broadcasters are now able to negotiate for higher retransmission consent fees.

As Sinclair demonstrated in its Comments, the vast majority of households actually watch television via a subscription service, such as cable, and increasingly these viewers are

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[6] *See* Comments of Suddenlink, at p. 6 n. 11.

[7] *See* Joint Motion to Dismiss, Docket Nos. CSR-7038-C and CSR-7039-C (August 7, 2006).

[8] *Id*. at ¶ 4.

[9] *Id*.

[10] Comments of Suddenlink, at 4.

watching cable network channels more than broadcast stations.[11] Moreover, Suddenlink provides no evidence that two top-ranked stations in a market would create sufficient market share to allow a broadcaster to dictate retransmission consent terms, including, in particular, per subscriber fees.

In fact, Sinclair calculates that Suddenlink pays far less for the retransmission of broadcast programming than what Suddenlink pays for typical cable network programming with lower ratings. For example, based on 2006 data, ESPN has an average monthly per subscriber license fee of $2.91, the USA Network has an average monthly per subscriber license fee of $0.47, and TNT has an average monthly per subscriber license fee of $0.89.[12] Further, industry reports suggest that cable network programming costs are rising. The Fox News Channel, for example, recently negotiated a carriage agreement with Cablevision Systems, resulting in an average per subscriber fee of $0.75 over the lifetime of the contract, which essentially triples the present per subscriber fee for the programming.[13]

By contrast, Suddenlink pays considerably less per subscriber for the retransmission of WCHS-TV and WVAH-TV, the two broadcast stations in Charleston, West Virginia, which Sinclair owns or programs pursuant to an LMA, and these stations have significantly higher primetime ratings (5 and 8, respectively) than ESPN, the USA Network, TNT, and the Fox News

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[11] *See* Comments of Sinclair, at 22 (citing *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 (2006)).

[12] *See* Mike Reynolds, Fox News Triples its Pleasure, October 23, 2006 *available at* www.multichannel.com/article/CA6383705.html, attached as Exhibit 1 (last visited December 14, 2006).

[13] *Id*.

Channel (1, 2, 2, and 1, respectively).[14] Accordingly, Suddenlink's bald suggestion that broadcasters that own or program two top-ranked stations in a market are able to dictate retransmission consent terms is refuted by the fact that the per subscriber fees in its own voluntary agreement with Sinclair are below, and in some cases substantially below, the per subscriber fees for other programming services, which are far less popular.

For the reasons set forth above and in the Comments, Sinclair respectfully submits that there is no valid basis for continued regulation of local television broadcast ownership, and the Commission should eliminate all of its restrictions.

SINCLAIR BROADCAST GROUP, INC.

By: /s/
Kathryn R. Schmeltzer
Tony Lin

Counsel for Sinclair Broadcast Group, Inc.

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Dated: January 16, 2007

[14] *See* attached Exhibit 2.

Exhibit 1

http://www.multichannel.com/article/CA6383705.html

Fox News Triples Its Pleasure

Cablevision Renewal Pact's License Fee Tops 75 Cents

By Mike Reynolds 10/23/2006

Fox Four
Fox News Channel's average 75 cents per month, per subscriber deal with Cablevision Systems would vault it into the fourth spot among the 10 most-watched basic-cable networks. The following were estimated 2006 licensing fee averages:

Network	Household Rating	Monthly License Fee
Disney Channel	2.3	$0.79
USA Network	2.2	$0.47
TNT	2.2	$0.89
ESPN	1.7	$2.91
Lifetime	1.5	$0.23
Cartoon Network	1.4	$0.15
TBS	1.3	$0.39
Fox News Channel	1.3	$0.26
Hallmark Channel	1.3	$0.04
Nick at Nite*	1.2	$0.40

*The license fee listed for Nickelodeon, which shares the channel space with Nick at Nite.Ratings period: June 26 through Sept. 24.
Sources: Kagan Research and Nielsen Media Research data

Trying to set a template for deal negotiations over the next few years, Fox News Channel has signed a lucrative contract renewal with Cablevision Systems Corp.

Terms were not publicly disclosed, but parties familiar with the extension said the Bethpage, N.Y.-based cable operator will pay Fox News a monthly per-subscriber fee "north of 75 cents" on average in a deal that lasts into the early part of the next decade.

Fox News also has a second renewal pact. Speaking to reporters after the News Corp. annual meeting in New York Friday, chief operating officer Peter Chernin said DirecTV

Inc. has a deal with Fox News. News Corp., which owns Fox News, controls 38% of DirecTV. Chernin would not disclose pricing on either deal.

While the new license fee with Cablevision begins below that average in the early years of the contract, the rate escalates over its duration, according to those familiar with the pact. Eventually, Fox News would see its license fee triple from its current level, between 25 and 27 cents.

Fox sought a buck per sub. But the 75 cents figure is well above the 50 cents per month, per subscriber that a number of analysts expected.

For its part, CNN, which Fox News surpassed in the monthly ratings rankings early in 2002, receives a monthly per-subscriber fee of 45 to 55 cents, according to industry estimates.

With its other 10-year contracts beginning to roll off, Fox News — which started in 1996 — figures to be sitting on a mountain of new affiliate revenue as its extant contracts conclude over the next few years.

Another distributor whose Fox News deal will soon expire is the National Cable Television Cooperative, which represents independent cable operators with systems reaching some 14 million subscribers nationwide in programming-contract negotiations. NCTC senior vice president of programming Frank Hughes said the co-op is “working on an agreement” with Fox News, but declined to characterize the tenor of those conversations or whether the contract has expired.

Merrill Lynch & Co. media research analyst Jessica Reif Cohen estimated in a report last week that Fox News will receive about 65 cents per sub from Cablevision in the first two years, with “step-ups over the course of the six- to seven-year deal.”

Over the next four years, Merrill estimates Fox News will “generate over $2.4 billion in affiliate revenue from FY07 to FY10, over $450 million more than we currently project.”

Fox News will soon negotiate with the two largest cable operators, Time Warner Cable (fall 2007) and Comcast (fall 2008).

Exhibit 2

Charleston, WV
May-06

	Mon-Fri Primetime Rating	Share
WCHS	**5**	**9**
WVAH	**8**	**13**
AEN	1	1
AMC	<<	<<
CMT	<<	<<
CNN	1	2
DSC	1	1
DSNY	1	1
ESPN	1	2
FAM	1	1
FOOD	1	1
FX	1	1
FXNC	1	2
HALL	1	2
HGTV	1	1
HIS	1	1
LIF	1	2
NICK	<<	<<
SFI	1	1
SPK	1	2
TBSC	1	1
TLC	<<	<<
TNT	2	3
TVL	1	2
TWC	<<	<<
USA	2	3