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	)	MB Docket No. 06-121
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
2002 Biennial Regulatory Review –	)	
Review of the Commission’s Broadcast	)	MB Docket No. 02-277
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments in the above-captioned proceeding.

NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is also the nation’s largest broadband provider of high-speed Internet access after investing $100 billion over ten years to build a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art telephone service to over seven million American homes and are rapidly making these services available nationwide.

I. THE COMMISSION SHOULD PROHIBIT LOCAL MARKETING AGREEMENTS THAT ALLOW A SINGLE ENTITY TO NEGOTIATE RETRANSMISSION CONSENT AGREEMENTS FOR TWO MAJOR NETWORK AFFILIATES IN THE SAME MARKET

In most respects, the matters at issue in the Commission's broadcast ownership proceedings – issues involving, for example, the extent to which broadcast ownership restrictions affect broadcasters' fulfillment of their public interest obligations, or their relationships with program suppliers and advertisers – are not matters that directly concern cable television operators or program networks. For this reason, NCTA has not generally participated in those proceedings. And we do not address those issues in these comments.

But, as the comments of Cequel Communications, LLC d/b/a Suddenlink Communications ("Suddenlink") point out,[1] Congress has created by statute a marketplace relationship between broadcasters and cable operators – retransmission consent – in which certain circumstances could adversely affect cable customers.

Broadcasters are licensed to provide their signals over the air, at no charge, to households in their communities. When Congress gave broadcasters, in 1992, the option of requiring cable operators to obtain their consent for the retransmission of those same signals to cable customers in their communities, it established for the first time a market-based, buyer-seller relationship between broadcasters and cable operators.

In these circumstances, it is important to ensure that stations opting for retransmission consent not be permitted to combine with the retransmission consent rights of other, non-owned stations in the negotiation of retransmission consent agreements. Congress has already required that individual stations negotiate retransmission consent in "good faith." But the Commission

[1] *See* Comments of Cequel Communications, LLC d/b/a/ Suddenlink Communications at 6.

should also ensure, through its ownership rules, that retransmission consent stations do not act *collectively* to enhance their market power.

The popularity of retransmission consent stations is bolstered by their use of over-the-air spectrum to reach and serve households and television sets not connected to cable or satellite service. This popularity is also tied, in most cases, to having affiliations with one of the four major broadcast networks. The ownership rules currently prevent a single entity from owning or controlling more than one of the four top-rated stations in a market – stations that are most likely to exercise retransmission consent.[2]

But that limit alone is not sufficient. It does not specifically prevent the use of *local marketing agreements* ("LMAs") by a single entity to negotiate retransmission consent for two or more stations. To prevent anticompetitive abuse, the ownership rules need to close this loophole.

As initially conceived, LMAs had nothing to do with retransmission consent. LMAs were time brokerage agreements, under which a broadcaster contracted with a second broadcaster in a market to obtain programming to fill a portion of the second broadcaster's time.[3] Such arrangements obviously intruded on the second broadcaster's independent editorial control over the programming on its station. But the Commission found that these arrangements could produce efficiencies that would enable the second (usually weaker) station to remain viable, offer more local programming, and provide better service. It therefore permitted such agreements – but only to a limited degree.

---

[2] *See* Notice of Proposed Rulemaking, ¶ 13.

[3] *See, e.g.*, *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting*, 10 F.C.C.R. 3524, 3580 (1995) (footnote omitted) ("[A]n LMA is a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Such agreements enable separately owned stations to function cooperatively via joint advertising, shared technical facilities, and joint programming arrangements.")

Because one of the purposes of the multiple and duopoly ownership rules is to protect diversity of editorial control over program content, the Commission's rules limit the amount of time on a station that can be controlled through an LMA by another broadcaster. Specifically, the rules provide that if an LMA gives a broadcaster the right to exercise control over more than 15% of another broadcaster's programming decisions, the first broadcaster will be deemed to *own* the second for purposes of the ownership rules.[4]

This provision focuses only on the undesirable effects of LMAs on programming diversity – because, originally, control over programming is all that LMAs provided. To the extent that LMAs have extended far beyond their original purpose and are now giving broadcasters more and more control over *other* aspects of a second broadcaster's operations, the Commission must examine whether such control is at odds with the public interest. *In particular*, an LMA that gives two top-four broadcast stations in a market – stations that cannot, under current rules be commonly owned – the right to jointly negotiate retransmission consent would not result in pro-competitive efficiencies.

It serves in no way the objective of helping a "failing station," which led the FCC to adopt the LMA exception to a broadcaster's otherwise non-delegable responsibility for the programming carried on its channel. It is nothing less than an end-run around the current rules forbidding one broadcaster from controlling two top-four licenses in the same market.

The targeted restriction proposed by Suddenlink on LMAs (along with retention of the bar on duopoly ownership of two top-4 stations in a market)[5] would prevent a single entity from

4 *See* 47 C.F.R. § 73.3555, note 2(j).

5 If the Commission were to relax its duopoly rule to allow ownership of a top-4 duopoly, it should do so only on the condition that the owner not be permitted to opt for retransmission consent for both stations.

exercising retransmission consent rights for two or more major network affiliates in a single market – either through common ownership *or* an LMA – and it should be adopted.

Respectfully submitted,

/s/ Daniel L. Brenner

Daniel L. Brenner
Michael S. Schooler
Counsel for the National Cable &
Telecommunications Association
25 Massachusetts Avenue, N.W.
Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

January 16, 2007