Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
2010 Quadrennial Regulatory Review	)	MB Docket No. 09-182
Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	

SUGGESTIONS FOR ADDITIONAL STUDIES
IN MEDIA OWNERSHIP PROCEEDING

I. Introduction.

The American Cable Association ("ACA") hereby responds to the Media Bureau's Public Notice seeking suggestions for additional studies in the media ownership proceeding.[1] As the Commission begins its comprehensive assessment of the efficacy of its media ownership rules to achieve the core policy goals of competition, diversity and localism, it must take into account the impact of retransmission consent negotiations on local markets.

As part of its media ownership proceeding, ACA urges the Commission to study: (i) to what extent the level of competition in a broadcast television market is reduced when one broadcast station jointly negotiates retransmission consent on behalf of another station in

[1] *Media Bureau Announces the Release of Requests for Quotation for Media Ownership Studies and Seeks Suggestions for Additional Studies in Media Ownership Proceeding*, Public Notice, DA 10-1084, MB Docket No. 09-182 (rel. Jun. 16, 2010).

the same market; (ii) the impact this reduced competition has on both the quality and quantity of local programming produced in the market; and (iii) the fees charged to cable and satellite TV operators to retransmit broadcast signals to consumers. In particular, the Commission must examine:

- The present number of instances, and historical trends of broadcasters negotiating retransmission consent on behalf of another station in the same DMA, including the number of instances involving two or more of the four national broadcast ("Big 4") networks.

- The prevalence of joint retransmission consent negotiating arrangements through:

    - Sharing agreements (*i.e.* , one station controls another station in the same market, such as through a Shared Services Agreement ("SSA") or Local Marketing Agreement ("LMA");

    - Duopolies (*i.e.*, one entity owns more than one station in the same market); and

    - Multicast Duopolies (*i.e.*, one station broadcasts one Big 4 network on its primary video stream and another Big 4 network on its multicast stream).

- The impact of joint negotiations for retransmission consent among broadcasters in a single DMA on the quality and quantity of local programming offered in the market, including an analysis of the local programming offered by broadcasters both before and after entering into such arrangements.

- The impact of broadcasters negotiating retransmission consent on behalf of another station in the same DMA on the prices charged to multichannel video programming distributors ("MVPDs") for retransmission consent rights.

American Cable Association. ACA represents nearly 900 independent cable companies that serve more than 7.6 million video subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in nearly every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than

half of ACA's members serve fewer than 2,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in lower density markets.

II. The Commission Must Evaluate the Extent that Joint Negotiations of Retransmission Consent in a Single DMA Impacts the Level of Competition Amongst Broadcasters.

The Commission must take into account the impact of retransmission consent negotiations on local markets. The right to negotiate retransmission consent for local station signal carriage is not only a fundamental component of broadcast station ownership, but an increasingly important revenue source to station owners – particularly local affiliates of the Big 4 networks. While broadcast stations' signals are recognized as "must have" programming by the Commission,[2] they also compete amongst themselves[3] based on the quality and quantity of their programming to attract viewers, which in turn allows the stations to secure higher retransmission consent fees from MVPDs. As such, any reduction in the level of competition in a local retransmission consent market through combined ownership or control of multiple broadcast stations would be harmful to the overall policy objectives of the Commission's local broadcast ownership rules.

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[2] *See In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 565, ¶202 (2004) ("*News Corp.-Hughes Order*") ("[W]e agree with commenters who contend that carriage of local television broadcast station signals is critical to MVPD offerings.")

[3] At the same time that two Big 4 affiliate stations can each be considered "must have" programming, they are also "substitutes" in the economic sense that carriage of one affects the price of carriage of the other. This is explained more fully in a paper prepared for ACA by Professor William P. Rogerson in connection with ACA's recent filing on retransmission consent. *See In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, Petition for Rulemaking, MB Docket No. 10-71, Comments of the American Cable Association, Appendix A, William P. Rogerson, *The Economic Effects of Price Discrimination in Retransmission Consent Agreements* at 7-10 (filed May. 18, 2010).

Through the acquisition of a station in the same market,[4] and other arrangements, broadcasters are negotiating retransmission consent on behalf of other stations in the same market. These arrangements are often contained in sharing agreements, such as SSAs and LMAs. The level of competition is particularly affected when these acquisitions and arrangements involve multiple Big 4-affiliated network stations because these stations typically command the highest fees.

Available evidence further suggests that instances in which one broadcast station negotiates retransmission consent on behalf of another station in the same market increases the amount of leverage that local broadcast television stations exercise in carriage talks with cable operators and other multichannel video programming distributors, leading to higher fees for carriage. These retransmission consent fee hikes are passed along to consumers in the form of higher cable rates, which affects the affordability of accessing this programming for some consumers.

As part of its media ownership proceeding, ACA urges the Commission to evaluate: (i) to what extent the level of competition in a broadcast television market is reduced when one broadcast station jointly negotiates retransmission consent on behalf of another station in the same market; (ii) the impact of this reduced competition on both the quality and quantity of local programming produced in the market; and (iii) the fees charged to cable and satellite TV operators to retransmit broadcast signals to consumers. In particular, the Commission must examine:

[4] With respect to negotiating retransmission consent, ACA makes no distinction between a broadcaster that owns two stations – whether full or low power – in the same market that is affiliated with different Big 4 networks (*i.e.*, a duopoly), and a station owner that broadcasts one Big 4 network on its primary video stream and another Big 4 network on its multicast stream (*i.e.*, a multicast duopoly).

- The present number of instances, and historical trends of broadcasters negotiating retransmission consent on behalf of another station in the same DMA, including the number of instances involving two or more Big 4 broadcast networks.

- The prevalence of joint retransmission consent negotiating arrangements through:

    - Sharing agreements (*i.e.* , one station controls another station in the same market, such as through an SSAs or LMA);

    - Duopolies (*i.e.*, one entity owns more than one station in the same market); and

    - Multicast Duopolies (*i.e.*, one station broadcasts one Big 4 network on its primary video stream and another Big 4 network on its multicast stream).

- The impact of joint negotiations for retransmission consent among broadcasters in a single DMA on the quality and quantity of local programming offered in the market, including an analysis of the local programming offered by broadcasters both before and after entering into such arrangements.

- The impact of broadcasters negotiating retransmission consent on behalf of another station in the same DMA on the prices charged to multichannel video programming distributors ("MVPDs") for retransmission consent rights.

III. Conclusion.

ACA urges the Commission, as part of its media ownership proceeding, to study the effects of joint negotiations for retransmission consent among broadcasters in a single DMA on competition in local broadcast markets.

Respectfully submitted,

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