Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Media Bureau Seeks Comment	)	
for Report Required by the Satellite Television	)	
Extension and Localism Act on	)	MB Docket No. 10-238
In-State Broadcast Programming	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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January 24, 2011

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To: The Commission

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I. Introduction And Summary

The National Association of Broadcasters (NAB)[1] is pleased to provide comment and data to help the Federal Communications Commission (FCC or Commission) complete its report on in-state broadcast programming.[2] Section 304 of the Satellite Television Extension and Localism Act of 2010 (STELA) directs the FCC to report to Congress on consumers' access to broadcast signals and in-state broadcast programming, and on whether alternative methods of defining local television markets would provide more consumers with in-state programming. In these comments, NAB shows that consumers today enjoy access to an extraordinarily high level of broadcast service, both over the air and via delivery by multichannel video programming

[1] NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] *See Public Notice*, "Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming," in MB Docket No. 10-238 (rel. Nov. 23, 2010) ("*Public Notice*").

distributors (MVPDs). We also demonstrate that revisions to or abandonment of the current method of defining television markets would not promote consumers' access to broadcast programming, but would in fact imperil the efficient functioning of the local television marketplace to the detriment of local stations, local advertisers and, most importantly, local viewers.[3]

More specifically, a study and data prepared by BIA/Kelsey show that consumers currently have access to a plethora of in-state and out-of-state broadcast station signals. According to BIA, over-the-air reception by at least one in-state full power television station reaches 3,067 counties (out of a total of 3,141 counties) and 275.2 million people (97.8% of the total 2000 Census population). On a weighted average basis, consumers across all counties nationwide receive over the air 12.2 in-state full-power television stations and 3.8 out-of-state full-power stations. And because significant numbers of television stations are multicasting, consumers today can receive over the air, on a weighted average basis across all counties, 18.8 program streams from commercial in-state full-power television stations and 6.1 program streams from non-commercial in-state stations. With regard to the consumers falling within the 2.2% of the total 2000 Census population lacking over-the-air access to in-state full-power stations, many will obviously have access to such broadcast stations by cable or satellite.

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[3] Television markets, known as Designated Market Areas or DMAs, are defined by Nielsen Media Research. A DMA is a group of counties served by local television stations licensed to communities within those counties. Section II of these comments provides further detail about the formation of DMAs and their importance in the television marketplace.

On a weighted average basis, 12.3 in-state and 3.9 out-of-state television stations are carried across all cable reporting units.[4] Almost all (99.99%) of subscribers to these cable reporting units are estimated to be receiving at least one in-state television station. With regard to satellite provision of broadcast stations, 97.8% of Dish Network subscribers can receive at least one in-state television station, while 93.9% of DIRECTV subscribers can receive at least one in-state station. Across all counties on a weighted average basis, Dish Network subscribers receive 9.7 in-state television stations and 1.5 out-of-state stations; DIRECTV subscribers receive 8.9 in-state and 1.5 out-of-state stations.

In evaluating the totality of in-state and other locally-relevant television programming available to consumers today, the Commission also should consider issues beyond the sheer totals of in-state or out-of-state broadcast signals viewers can receive. NAB particularly stresses that MVPDs are permitted to, and in fact do, deliver the local news, weather, public safety and other informational programming of local stations to serve in-state viewers in non-local DMAs. In addition, the web streaming of programming, including news and sports, by local stations is an increasingly common way for consumers to access in-state broadcast programming. And, the examination of cross border DMAs (i.e., those that include counties from more than one state) shows that out-of-state (but in-market) television stations frequently offer extensive locally-oriented service to viewers (such as the locally-oriented programming offered by Washington, DC stations to out-of-state viewers in northern Virginia). Clearly,

[4] These "units" are local cable systems required by copyright law to file semi-annual statements with the Copyright Office that provide a listing of all broadcast television stations they carried during the reporting period.

programming provided by out-of-state stations can be just as relevant to a local viewer as the programming offered by stations physically located in the same state as the viewer.

Based on the data and analysis provided by BIA/Kelsey and discussed in our comments, it would appear wholly unnecessary to alter how television markets are defined so as to ensure that consumers have access to in-state broadcast stations and programming. Any effort to redefine local television markets would also be fraught with significant practical difficulties. The current method of defining local television markets is based on marketplace realities, especially the present viewing patterns of local consumers, and counties are assigned to markets based on these actual viewing patterns (and reassigned as viewing habits change). Thus, revisions to the present method of defining local television markets inevitably would move away from current assessments of consumers' real-world preferences – and likely toward a method of defining markets less grounded in evidence from the television marketplace. Indeed, all three proposals for redefining markets set forth in the *Public Notice* shift from factors grounded in the marketplace and toward the use of static state boundaries as the only or primary factor in defining markets. Adoption of any of these alternatives would result in less rational and less useful markets, ones essentially untethered to viewing and population patterns and the economics of the television marketplace.

Looking at the *Public Notice*'s proposals for redefining markets in more detail, it is clear that reassignment of counties to different markets (which would be necessary under all of the proposals) could easily result in many viewers receiving service from more geographically distant television stations with lesser connections to those viewers.

Viewers are unlikely to receive more locally responsive service from stations that are significantly geographically more distant. As explained in detail in our comments, redefining markets has the real potential to disrupt television advertising markets, long-standing and important program exclusivity arrangements, the carriage obligations of cable and satellite operators, and local television station ownership structures.

As shown below and in the attached study and data, there is no need to take actions that will severely disrupt the local television marketplace and ultimately harm consumers. NAB thus urges the Commission to report to Congress on the high levels of in-state and out-of-state broadcast stations and programming available to consumers and on the need to avoid needless, serious disruption to local television stations and their viewers.

II. Television Markets Are Based On The Viewing Habits And Market-Driven Needs And Wants Of Local Consumers

Television markets are geographical areas in which there is a close and natural nexus between television stations and their service areas; between population centers and their housing, labor, and economic patterns; between advertisers and their potential customers; and between consumers and their television viewing habits. Television markets, as defined by Nielsen Media Research's (Nielsen) DMAs, represent the closest nexus between television viewers' actual viewing habits, statistically significant and relevant aggregations of people, and the service coverage of television stations as determined by the laws of physics for their location and transmission facilities. Viewer preferences for television programming, consumer preferences for housing and employment, and even station preferences for facility location and equipment all change dynamically over time. The current DMA system is designed to reflect and account for these changes. Imposing artificial constructs on television markets would disrupt one or more elements of how such markets are defined and function and ultimately would harm the ability of local television stations to serve their local viewers.

A. DMAs Reflect Actual Viewing Patterns and Change as Those Viewing Patterns Evolve

Of all the factors that go into defining a television market, most importantly Nielsen assigns virtually every county[5] and each television station in the United States to a DMA based on the *actual station viewing preferences* of the population in that county. Each DMA is made up of counties in which the preponderance of total viewing can be attributed to specific stations.[6] In other words, counties are assigned to markets based on the local stations the people in those counties actually view.[7] Viewers, themselves, essentially select their DMAs based on their own choices—Nielsen simply measures these viewing choices and makes market assignments accordingly.

DMAs are not static. They change as market conditions and viewer preferences evolve. Nielsen analyzes these viewer preferences each year and makes changes as warranted by actual viewing data—for example, by moving a particular county from one DMA to an adjacent DMA.[8] Additionally, a station may petition Nielsen to change its "Market-Of-Origin" assignment if both its transmitter and the majority of its noise-limited

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[5] There are 13 very remote Alaska counties not included in any of the 210 DMAs.

[6] *See* JAMES G. WEBSTER, PATRICIA F. PHALEN, LAWRENCE W. LICHTY, RATINGS AND ANALYSIS: THE THEORY AND PRACTICE OF AUDIENCE RESEARCH 132 (2d ed. 2000) (hereinafter, "RATINGS AND ANALYSIS").

[7] *See* RATINGS AND ANALYSIS 132.

[8] *See* Norman Hecht Research, Inc., Designated Market Areas: How They Relate to Viewers and a Vital Local Television Marketplace (Sept. 2009) (hereinafter "NHR White Paper," Attachment B hereto), at 2; RATINGS AND ANALYSIS 132-34.

service contour are located in a different DMA than the DMA in which the station's community of license is located.[9] Nielsen reserves the right to consider whether the change sought reflects the reality of the market affected.[10]

Similarly, the Commission also has a well-established mechanism for making changes to the markets of particular stations, on a case-by-case basis, pursuant to the market modification mechanism set forth in Section 76.59 of the Commission's rules.[11] To make a change from one market to another, a station must present the Commission with particularized evidence of the station's commonality with the specific market to which the station wishes to be assigned—for example, data on shopping and labor patterns in the local market, audience viewing data, and advertising and sales data.[12] The critical determination in a market modification proceeding before the Commission—as with a market change petition to Nielsen—is to reflect actual conditions in the marketplace and make corrections to market designations, where warranted.[13] In sum, if

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[9] *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8371 (1999). A petition to change a station's Market-Of-Origin must include relevant information on which the petitioning station bases its request for a change in Market-Of-Origin, including community of license, transmitter location, signal coverage (including FCC coverage maps), audience data from previous measurements, and/or competitive considerations. *See id.*

[10] *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8371 (1999).

[11] *See* 47 C.F.R. § 76.59.

[12] *See* 47 C.F.R. § 76.59(b)(3), (6).

[13] *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8371 (1999) (Nielsen petitions); *Implementation of the Cable Television*

viewers change their television viewing preferences in a statistically significant way, mechanisms and processes exist to ensure such changes are reflected in FCC market modification decisions and in Nielsen's DMA designations.

B. DMAs Are Based on Population Centers Defined by the U.S. Government

The foundation of the Nielsen DMA system is the Metropolitan (or Micropolitan) Statistical Area (MSA), which is a geographical area defined by the U.S. Office of Management and Budget (OMB).[14] Each MSA consists of one or more counties and contains the relevant core urban area and any adjacent counties that have a "high degree of social and economic integration (as measured by commuting to work)" with the urban core.[15] That is, an MSA is a geographical area containing a "substantial population nucleus, together with adjacent communities that have a high degree of economic and social integration with that core."[16]

Critically, OMB's Metropolitan (or Micropolitan) Statistical Areas are not bound by state lines—and, for that reason, neither are Nielsen DMAs. Population centers near state lines inevitably draw people who live in communities from adjacent states to the

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Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues, Report and Order, 8 FCC Rcd 2965, 2976 (1993) ("Section 614(h)(1)(C) of the 1992 Cable Act permits the Commission to add communities to or subtract communities from a station's television market to better reflect marketplace conditions. . . .").

[14] *See* NHR White Paper, at 1; *see also* RATINGS AND ANALYSIS 134.

[15] *See* U.S. Census Bureau, Metropolitan and Micropolitan Statistical Areas, *available at* <http://www.census.gov/population/www/metroareas/metroarea.html> (last visited Jan. 13, 2011). A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but less than 50,000) population. *See id.*

[16] NHR White Paper, at 1-2.

urban core by offering employment, shopping, and entertainment opportunities. MSAs sometimes cross state lines in order to accurately reflect socially and economically integrated populations. The same is, of course, true for DMAs.[17]

For example, the New York-White Plains-Wayne, NY-NJ Metropolitan Statistical Area consists of Bergen, Hudson, and Passaic Counties in New Jersey, and Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, and Westchester Counties in New York.[18] The MSA crosses state lines because OMB has determined that the citizens of the designated New Jersey and New York counties surrounding the urban core, New York City, show a high degree of social and economic integration with each other. Likewise, Nielsen groups these counties (and others) into the New York DMA. In fact, the Commission itself recognizes the interstate commonality among the population in the metro-New York City area—market number one in the FCC's Top 100 television market list is designated as New York, New York-Linden (New Jersey)-Paterson (New Jersey)-Newark, New Jersey.[19] Thus, the Commission, OMB, and Nielsen all agree that the New York City market area is not bound by state lines because that is simply not the way the population lives and works. Commuters from Passaic County, New Jersey, want and need local news, weather, traffic, and emergency information from New York

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[17] *See, e.g.*, RATINGS AND ANALYSIS 134 (discussing the Denver DMA, which is comprised of counties in Colorado, Wyoming, and Nebraska because Denver stations account for a large share of television viewing in those counties).

[18] *See* U.S. Census Bureau, Metropolitan and Micropolitan Statistical Areas and Components, December 2009, *available at* <http://www.census.gov/population/www/metroareas/lists/2009/List1.txt> (last visited Jan. 13, 2011).

[19] *See* 47 C.F.R. § 76.51(a). Indeed, at least ten of the top 100 markets listed in this section include hyphenated markets with communities in different states.

City television stations.

While the MSA is a significant factor in setting DMA boundaries, it is not the only factor. DMAs also account for the physics of broadcasting and the technical reach of television signals.[20] Thus, while there are nearly one thousand total MSAs today, there are only 210 DMAs, so DMAs are generally a combination of more than one MSA.[21] MSA boundaries, like state boundaries, do not necessarily reflect technical signal coverage areas. In addition, in some cases DMAs include adjacent or non-MSA counties. In such instances, Nielsen determines which adjacent counties to include in the DMA based on the television viewing preferences—i.e., based on actual viewing habits and practices—of the consumers residing in those counties.[22]

C. Television Markets Are Also a Function of Technical Coverage

The basic foundation of broadcast television is its point-to-multipoint communications technology. The nature of broadcasting is to provide a programming service to as many people as possible as efficiently as possible from a single transmission location. Therefore, as a practical matter, many television stations and the towers they use to transmit their signals are located in population centers in order to reach as large a population as possible.

The physics of television broadcasting necessarily determines the geographical

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[20] *See* RATINGS AND ANALYSIS 22.

[21] As of June 6, 2003, there were 362 Metropolitan Statistical Areas and 560 Micropolitan Statistical Areas in the United States. *See* U.S. Census Bureau, Metropolitan Statistical Areas Micropolitan Statistical Areas, *available at* <http://www.census.gov/population/www/metroareas/aboutmetro.html> (last visited Jan. 14, 2011).

[22] *See* NHR White Paper, at 2.

limits of over-the-air signals and, therefore, influences the boundaries of a station's market.[23] Over-the-air viewers, in particular, naturally watch the signals of stations that are closest to them because they can receive these signals[24]—signals that, by their nature, do not stop at state borders. Thus, as a technical matter, television viewing patterns are a function of and are influenced by the reach of a station's signal.

The Commission recognizes the close association between a television station's signal coverage area and marketplace realities. For example, Grade B, now noise-limited service contour, coverage is a critical factor in the Commission's own market modification rules and policies. In considering proposals to add or remove a station from a particular DMA for purposes of cable carriage (discussed below), the Commission expressly requires evidence of "Grade B contour maps delineating the station's technical service area."[25] The Commission's policy in this regard relates to the statutory requirement that the Commission examine factors including "whether the television station provides coverage or other local service to such community."[26]

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[23] *See* RATINGS AND ANALYSIS 22-23.

[24] *See* RATINGS AND ANALYSIS 23.

[25] *See* 47 C.F.R. § 76.59(b)(2). Rule 76.59(b)(2) at this time still speaks in terms of analog Grade B contour maps, but, post-digital transition, the equivalent of the analog Grade B service contour is the noise-limited service contour. *See Tennessee Broadcasting Partners, Petition for Modification of the Television Market for WBBJ-TV, Jackson, Tennessee*, 25 FCC Rcd 4857, n.14 (MB 2010) (citing *Report to Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, 19554 (2005)).

[26] *See* 47 U.S.C. § 534(h)(1)(C)(ii)(II). *See also Armstrong Utilities, Inc., Petition for Modification of the Philadelphia, Pennsylvania DMA*, Memorandum Opinion and Order, 21 FCC Rcd 13475, 13484-85 (MB 2006) ("In all of the above decisions, the Bureau denied the petitioners' requests where WFMZ-TV's Grade B contour, or its expanded

In sum, there are technical, as well as social, economic and statistical, reasons for DMAs to be drawn in the manner in which they are.

D. Congress and the Commission Have Recognized DMAs as the Best Method for Determining Viewer Preference

Since 1992, Congress and the Commission have relied upon commercial market assignments as the backbone of several rules, most notably for mandatory cable carriage of television signals. Congress established the framework for the current cable must-carry regime in the Cable Television Consumer Protection and Competition Act of 1992.[27] The 1992 Cable Act, which amended the Communications Act, established that a television station's must-carry rights on a particular cable system are generally determined based on the station's (and the cable system's) local market.[28]

Grade B contour, encompassed at least a portion of the system communities while the remaining system communities fell just outside the Grade B contour. Because of this demonstrable coverage, WFMZ-TV's lack of historic carriage and its marginal local programming were given less emphasis.").

[27] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (hereinafter, "1992 Cable Act").

[28] *See* 1992 Cable Act, §§ 614(a); 614(h)(1)(A). To implement the 1992 Cable Act, the Commission initially relied not on Nielsen DMAs to determine local television markets, but instead used Arbitron Areas of Dominant Influence ("ADIs"). As enacted, Section 614(h)(1)(C) of the 1992 Cable Act specified that a station's market "shall be determined in the manner provided in Section 73.3555(d)(3)(i) of the Commission's rules." (Section 73.3555(d)(3)(i) of the FCC's rules, now redesignated as Section 73.3555(e)(2)(i), is a separate rule related to station ownership issues that, at one time, referred to Arbitron ADIs, but now refers to Nielsen DMAs.) However, after enactment of the 1992 Cable Act, Arbitron ceased its television research business, prompting the Commission, in 1995, to launch a proceeding to redefine market areas for the purpose of mandatory carriage of television signals. *See Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201, 6206 (1996).

With enactment of the Telecommunications Act of 1996,[29] Congress required that "local market" be determined for purposes of applying the mandatory carriage provisions "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on *viewing patterns* . . . ."[30] That is, Congress specifically directed the Commission to define television markets for cable carriage using a commercial service that sets market boundaries based on viewing preferences.

In adopting the Nielsen DMA as the appropriate determinant of local television markets, the Commission stated:

> Nielsen's DMA market assignments provide the most accurate method for determining the areas served by local stations. We recognize the benefits of switching to a market definition based on DMAs. DMAs have become *the television market standard* for commercial purposes in the absence of any alternative. *They represent the actual market areas in which broadcasters acquire programming and sell advertising* . . . Moreover, in general, we continue to believe that our 1993 decision to use updated market designations for each election cycle to account for *changing markets* is appropriate. Nielsen provides the only generally recognized source for information on television markets that would permit us to retain this policy. *Thus, we conclude that the DMA market designations will provide the best method of "delineat[ing] television markets based on viewing patter[n]s*" over the long term.[31]

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[29] Telecommunications Act of 1996, Pub. L. No. 104-104 (hereinafter, "1996 Act").

[30] 1996 Act, § 301; *see also Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201, 6206 (1996) (emphasis added).

[31] *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201, 6220 (1996) (emphases added) (internal citations omitted).

The ongoing concern for incorporating actual viewing patterns in the mandatory carriage rules, rather than relying on a static geographical determination, supports the notion that DMAs are dynamic and subject to change based on the needs and wants of viewers.

III. Section 304 Of STELA Requires That The Commission Analyze Access To Both Broadcast Signals And In-State Broadcast Programming

The context provided above is important to understand how the Commission must structure the report required by Section 304(1) & (2) of the STELA.[32] This report is to analyze how many consumers receive out-of-state broadcast signals, and the "extent to which" consumers have access to in-state broadcast programming, either over the air or via a multichannel video provider. *Public Notice* at 1. Significantly, there is an essential difference between these two requirements, the first focusing on receipt of *signals* and the second on access to *programming*. The difference in language is critically important to the Commission's approach in this proceeding.

While the reach of stations' signals (whether in-state or out-of-state) can be determined by analyzing the predicted coverage areas of the nation's television stations, evaluating the level of consumers' access to "in-state" programming requires a more nuanced approach. As discussed in detail below, access to in-state (or, more relevantly, locally-oriented) programming is not limited by consumers' access to the signals of television stations located in their home states. Stations in cross-border DMAs provide programming, including news and information, that serves all viewers

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[32] *See* Satellite Television Extension and Localism Act of 2010, Title V of the "American Workers, State, and Business Relief Act of 2010," Pub. L. 111-175, 124 Stat. 1218 (2010).

within their markets, not just those consumers whose households lie within the state where the station may physically be located.

To provide the Commission with as much information as possible for its analysis and report, attached to our comments is a study conducted by BIA/Kelsey.[33] This study provides detailed information about the over-the-air reach of full-power broadcast stations on both a county and DMA level; the numbers of in-state and out-of-state full-power stations available to consumers via over-the-air transmission, on both a county and DMA basis;[34] the numbers of in-state and out-of-state stations carried across all cable reporting units and television markets; the percentages of cable and satellite subscribers who can receive at least one in-state television station; and the numbers of in-state and out-of-state stations received by subscribers of the two national satellite providers, on a county and television market basis. *See* BIA Study & Appendices 1-6.

We believe this data will enable the Commission to respond to Congress's request for information, and to apparent concerns, about viewers who receive signals from out-of-state stations and the extent to which consumers have access to in-state broadcast programming. In particular, the extensive data provided about the provision of in-state signals to the public will assist the Commission in framing its discussion about the number of viewers receiving out-of-state signals, given that many consumers receive both in-state and out-of-state stations (and the fact that viewers may receive

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[33] *See* Attachment A, *Analysis of In-State and Out-of-State Reach by Local Television Stations*, Mark R. Fratrik, Ph.D., BIA/Kelsey, January 24, 2011 ("BIA Study" or "Attachment A").

[34] As suggested in the *Public Notice* (at 2), BIA applied the Longley-Rice methodology for estimating television stations' coverage patterns. BIA Study at 4.

out-of-state stations does not mean they do not also receive in-state stations).[35] Taken as a whole, the attached study and appendices show extraordinarily high levels of broadcast television service to the American public, from both in-state and out-of-state stations transmitted over the air and delivered by cable and satellite.

A. Data Show that Viewers Have Access to a Plethora of In-State and Out-of-State Signals

The BIA Study and attached data show that the current over-the-air television distribution structure provides remarkably comprehensive in-state coverage, assuaging any concerns that any significant portion of the population lacks access to in-state broadcast stations and that the current DMA system needs revision to ensure viewer access to in-state signals or programming.

According to the BIA Study, over-the-air reception by at least one in-state full power television station reaches 3,067 counties (out of a total of 3,141 counties) and 275.2 million people (97.8% of the total 2000 Census population). *Id*. at 6-7 & Appendix 1. BIA is continuing to analyze the extensive data relating to the in-state reach of television translators, Class A stations and low-power stations. This data is expected to demonstrate that over-the-air television stations, taken as a whole, reach even greater

[35] Indeed, appendices 1 and 2 demonstrate that the vast majority of consumers that have access to signals from stations from a different state also have access to one or more in-state broadcast stations, both on a county and television market level. For example, viewers in Crittenden County, Arkansas, a county on the eastern edge of the state bordering Tennessee and located within the Memphis DMA, can receive, on average, the signals of three Arkansas stations over the air (in addition to receiving over the air more than 10 out-of-state stations). *See* BIA Study, Appendix 1. Similarly, in Clinton County, Illinois, located in the St. Louis DMA, viewers have access on average to five Illinois stations over the air (in addition to receiving over the air more than eight out-of-state stations). *Id.*

numbers of viewers than those reached by full-power stations alone.[36] We also note that many of the consumers falling within this 2.2% of the total 2000 Census population lacking over-the-air access to at least one in-state full-power station will have access to in-state stations by cable or satellite.

On a weighted average basis, consumers across all counties nationwide receive over the air 12.2 in-state full-power television stations and 3.8 out-of-state full-power television stations. *Id*. at 7. In the average television market, 96.1% of the local market's population can receive at least one in-state full-power station over the air. *Id*. at 8 & Appendix 2. There are 72 television markets where 100% of the market population can receive at least one in-state television station over the air. *Id*. Moreover, there are 67 markets where the weighted average number of in-state full-power television stations received over the air exceeds 10 stations (with 152 markets receiving more than five in-state stations and 187 markets receiving more than three in-state stations over the air). *Id*. at 8-9 & Appendix 2.

Cable and satellite carriage of in-state broadcast stations enhances this already-impressive level of access. On a weighted average basis, 12.3 in-state and 3.9 out-of-state television stations are carried across all cable reporting units.[37] Almost all

[36] We will provide this data in our reply comments.

[37] As part of the requirements for the cable compulsory license, local cable systems must file semi-annual Statements of Account with the Copyright Office that provide a listing of all television stations they carried. This listing of carried stations includes all the television stations located within the cable system's own television market, as well as the out-of-market television stations being carried. There were 3,721 cable reporting units that reported to the Copyright Office for the first report period (January – July) of 2009. Commonly owned cable systems that serve contiguous communities using a single headend file as a single reporting unit. The television stations being carried

(99.99%) of subscribers to these cable reporting units are estimated to be receiving at least one in-state television station. *Id*. at 11 & Appendix 3. Across all DMAs, the weighted averages of the number of in-state and out-of-state television stations provided via local cable systems are 12.3 and 3.4, respectively. *Id*. at 12 & Appendix 4.

Across all counties, between 94-98% of the subscribers to the two national satellite television providers can receive at least one in-state television station.[38] Across all counties on a weighted average basis, Dish Network subscribers receive 9.7 in-state television stations and 1.5 out-of-state stations; DIRECTV subscribers receive 8.9 in-state and 1.5 out-of-state stations. *Id*. at 15 & Appendix 5. Across all television markets, DIRECTV, on average, provides 5.25 in-state and .88 out-of-state television stations, with Dish Network providing, on average, 6.62 in-state and 1.12 out-of-state stations. *Id*. at 15-16 & Appendix 6.

Overall, these data show impressive numbers of broadcast stations accessible to consumers over the air and via cable and satellite. The Commission's report should accordingly reflect this ability of consumers to receive easily the signals of numerous broadcast stations, including a plethora of both in-state and out-of-state signals.

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include full-power stations as well as some Class A television and low-power television stations. BIA Study at 9-10.

[38] For Dish Network, 97.8% of all their subscribers can receive at least one in-state television station. For DIRECTV, 93.9% of all their subscribers can receive at least one in-state station. While most of the television stations carried by both satellite companies are full-power television stations, some are Class A and low-power television stations. BIA Study at 15 & Appendix 5.

B. Stations in Cross-Border Markets Regularly Provide Programming, Including News and Information, That Serves Consumers Throughout Their Viewing Area

Beyond analyzing data demonstrating the sheer number of station signals available to viewers, the Commission must also, under Section 304(2), report on the "extent to which" consumers have access to in-state broadcast *programming*, either over the air or via a multichannel video provider. With regard to the FCC's specific questions about measuring the "extent" of access to in-state programming, *Public Notice* at 4, it is not useful for the Commission to compile data on the percentage of in-state stations a consumer can access. As the Commission notes, "the difference in geographic size among the states" would produce widely disparate and misleading results. *Id*. Residents of San Diego, CA, for example, probably receive less than a third of all California-based broadcast stations; yet it is clear that consumers in the San Diego market are receiving multiple in-state stations and a plethora of locally relevant programming, including news, sports, traffic, weather and emergency information.

We agree that determining which consumers have access to in-state broadcast *stations* is an appropriate place to start in analyzing consumers' access to in-state *programming*.[39] We also agree that the term "access," for purposes of this report, should include consumers that could obtain access to the in-state broadcast stations

[39] As requested in the *Public Notice* (at 3-4), the attached BIA Study (at 6-9) includes such data broken down both by county and DMA. *See id*. at Appendices 1 & 2 (data on over-the-air reach of full-power stations).

carried via MVPDs. *See Public Notice* at 3.[40] Clearly, MVPDs deliver very significant numbers of in-state stations to millions of viewers.

Indeed, in cross-border markets throughout the country, MVPDs import programming from neighboring DMAs, either because such signals are significantly viewed in that area or because such programming is desired by subscribers and does not duplicate programming already available in the market.[41] To the extent that these MVPDs are carrying stations that provide such in-state and local programming, this programming must be reflected in the Commission's analysis of the accessibility of in-state "programming."

Finally, in evaluating the full extent of "in-state" programming available to consumers, the Commission must recognize that significant programming provided by stations in cross-border DMAs – while technically provided by an out-of-state station – is in fact locally relevant programming, just as the programming provided by stations within a viewer's home state. For example, in the Washington DC (Hagerstown) DMA, many of the major television stations are licensed to the District of Columbia. As anyone living in the Washington DC area can attest, however, those stations routinely air programming that serves the needs and interests of Virginia and Maryland residents.

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[40] As described above, Appendices 3, 4, 5 & 6 of the BIA Study include very detailed information on the numbers of in-state television stations delivered by cable and satellite, on both a county and DMA basis. And beyond the local market broadcast stations that cable systems carry, we further note that cable systems carry significant numbers of out-of-market, but in-state, stations. According to BIA, of the 12,931 "distant" television stations from other markets being carried by local cable system reporting units, more than half (6,983) are in-state television stations. BIA Study at 12.

[41] *See infra*, Section V.B., providing an illustrative list of examples where cable systems have worked with in-state but out-of-market broadcasters to import non-duplicating local content, including news and sports programming, to residents within the same state.

Meteorologists on local ABC-affiliate WJLA, for instance, provide coverage of weather throughout WJLA's viewing area, including the District of Columbia and parts of northern Virginia and Maryland. Stations in Washington DC also routinely provide news, sports and political programming relevant to Virginia and Maryland, despite the fact that those stations are technically licensed out of state.

If the FCC were to consider as "in-state" only the programming offered by stations physically located or licensed in the state where viewers reside, it would lead to the inaccurate conclusion that consumers in cross-borders DMAs (such as the suburban areas of Washington DC, including heavily populated areas like Arlington, Alexandria and Fairfax) have little or no access to locally relevant programming. That would be a serious misconception.

In fact, in cross-border markets throughout the country, stations provide programming that serves consumers in multiple states. In the Greenville-Spartanburg-Asheville-Anderson DMA, for example, stations located in Greenville, SC regularly provide news and informational programming that covers viewers throughout their local market, including counties in neighboring North Carolina. In testimony presented before the U.S. Senate Subcommittee on Communications and Technology, Paul A. Karpowicz, President of Meredith Broadcasting Group, stated that Meredith's station, WHNS, in Greenville, SC, routinely "provides locally-attuned service" to the North Carolina communities within its market, "just as it does to the South Carolina communities within its coverage area." Those out-of-state communities within WHNS's market have "close weather, topography, economic, and cultural ties" with Greenville, SC, and, accordingly, "WHNS airs news stories of specific relevance to these local out-of-state counties."[42]

In sum, in properly evaluating viewers' access to "in-state" programming under Section 304(2) of STELA, the Commission must do more than simply count up the numbers of signals licensed in a particular state that consumers can receive over the air or via cable and satellite. The Commission must also take account of the accessibility of broadcast programming provided by out-of-state (but in-market) stations, particularly in the DMAs that cross state borders, and the provision of in-state programming by stations that license their local programming to multichannel providers for delivery to in-state viewers in non-local DMAs. *See infra* Section V.B.

IV. Wholesale Changes To The Current Television Market Structure Would Severely Damage Local Broadcasting And Undermine Stations' Ability To Serve Local Viewers

Section 304(3) of STELA requires the Commission to provide an analysis of "alternatives to the use of designated market areas … to define local markets that would provide more consumers with in-state broadcast programming." As the Commission acknowledges, redefining local markets to revise or replace DMAs would affect viewers, the advertising market, the number of stations carried by MVPDs in these redefined

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[42] *See* Testimony of Paul A. Karpowicz, President, Meredith Broadcast Group, Before the Subcommittee on Communications and Technology, Committee on Commerce, Science, and Transportation, U.S. Senate, Oct. 7, 2009. Mr. Karpowicz also noted that the North Carolina counties in the Greenville, SC market are geographically much closer to Greenville, SC than to the nearest North Carolina city of license. Thus, it is more likely that stations located in Greenville would offer more locally relevant service to the residents of those geographically close North Carolina communities. In cross-market DMAs, viewers that are served by out-of-state (but in-market) stations are in fact being served by geographically closer stations, which are more likely to reflect these viewers' interests and concerns, than more distant in-state (but out-of-market) stations. *See* BIA Study at 19-20, 24-25.

local markets, and the ownership of broadcast television stations. *Public Notice* at 5. As demonstrated in the attached BIA Study, and as discussed in detail below, the three specific alternatives set forth in the *Public Notice* for redefining television markets would all have widespread negative ramifications in the local television marketplace for viewers, advertisers and broadcasters. *See* BIA Study at 16-26.

A. The BIA Study Identifies a Myriad of Practical Problems and Challenges Raised by the Alternative Market Definitions

As shown above, the current system of defining local television markets is based on marketplace realities, especially the present viewing patterns of local consumers, and counties are assigned to markets based on these actual viewing patterns (and reassigned as viewing habits change). Therefore, revisions to the present method of defining local television markets inevitably will move away from current assessments of consumers' real-world preferences – and likely toward a method of defining markets less grounded in evidence from the actual television marketplace. Indeed, all three proposals for redefining markets shift from factors grounded in the marketplace and toward the use of static state boundaries as the only or primary factor in defining markets.[43] The adoption of any of these three alternatives would result in less rational and less useful markets, ones essentially untethered to viewing and population patterns and the economics of the television marketplace.

The BIA Study identifies a number of reasons why these alternatives would result in arbitrarily-defined markets and produce various adverse effects on the functioning of

[43] The first proposal would rely solely on state boundaries to define markets in terms of the 50 states. The second proposal would divide states into multiple markets. The third would modify existing DMAs so that they do not cross state lines, which would involve the reassigning of counties from one state currently included in the DMA of another state to another DMA in their "home" state.

the local video marketplace. As an initial matter, many large states (especially those with numerous sizable population centers separated by considerable distances, such as California or Texas) are simply too large to constitute rational local television markets, as they do not reflect viewing patterns or the local television advertising marketplace. BIA Study at 18-19.

Defining television markets based solely or largely on state boundaries would be arbitrary because there are a number of cases where certain areas of states are more closely aligned with counties in adjoining states than with counties in their own state. BIA Study at 20 (noting several examples, including northern Idaho counties in the Spokane, WA television market, which follow Pacific Time Zone hours like counties in Washington, rather than Mountain Time Zone hours followed by the rest of Idaho).

Similarly, redefining DMAs so that they do not cross state lines would result in many reassigned counties becoming part of television markets where the stations are geographically very distant and have few, if any, ties to those counties.[44] Because viewers routinely watch stations located in adjoining states to obtain programming relevant to them, redefining markets based solely or in large part on state boundaries would easily jeopardize consumers' access to their preferred programming, if those cross-border stations were no longer "in their markets" (and thus, for example, were no longer available via cable or satellite). BIA Study at 22. Moreover, as BIA discusses, it

[44] BIA Study at 24-25. For example, if Dona Ana County, NM (currently part of the adjacent El Paso, TX market) were reassigned to the in-state Albuquerque market, the viewers would then receive "local" television from Albuquerque stations located 200 miles away – rather than from El Paso stations only 50 miles away. It is highly unlikely that these Dona Ana county consumers would receive more relevant local programming, especially local news, weather and emergency information, from stations so much more distant.

would be challenging to formulate rational criteria for reassigning counties to newly-defined state-based markets, especially in counties where stations from different markets and different states reach significant segments of those counties' viewers or where counties (previously assigned to out-of-state markets) are roughly equidistant to two or more in-state markets. BIA Study at 22-23, 25. As explained in more detail in the BIA Study, it is therefore highly unlikely that redefined markets based on state boundaries rather than marketplace criteria will result in television markets that provide greater amounts of programming preferred by viewers, especially locally-oriented programming.[45]

Beyond the problems and challenges identified in the BIA Study with the proposed alternatives to the DMA system, the Commission, in preparing its report to Congress, should also focus on two further important points about the current functioning of the local television marketplace. First, the DMA structure is the most efficient system for ensuring a robust local television advertising market and, in turn, for providing the financial basis for quality news and local programming production. Second, there is no public benefit in allowing MVPDs to import duplicating network or syndicated programming from stations in a neighboring market.

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[45] The BIA Study also discusses how redefining markets will inevitably cause many local television ownership arrangements to fall out of compliance with the FCC's ownership rules. *Id*. at 22, 23-24, 26. For example, there are nearly 300 instances where one entity owns more than two local television stations in a particular state, and thus, would be in violation of the local ownership rules if markets were redefined strictly on state boundaries. *Id*. at 22. In addition, redefining markets based on state boundaries would have very significant effects on the carriage requirements for local cable and satellite systems, especially given the very large numbers of full-power television stations in some states. *Id*. at 20-21 (noting 107 full-power stations in California and 135 in Texas).

B. Alternatives to the Current DMA System Would Harm Local Stations' Ability to Attract Advertising, Resulting in Fewer Resources for Local News, Sports and Informational Programming

Local advertisers rely on the DMA system when deciding how to buy and sell advertising. For example, a local car dealership needs to reach the audience most likely to purchase a car from his or her lot, and those buyers are most likely to come from the dealer's local DMA. Moreover, after placing an advertising buy on a local television station, the car dealership needs to examine the effectiveness of its purchase to make rational, effective advertising decisions in the future. And, of course, the station needs to attach a price for its available commercial time based on its relative competitive position in the market. DMAs and their related audience measurements make all of this possible.

To abandon or undermine the DMA as the structure for television markets would disrupt the efficient functioning of the advertising marketplace, to the detriment of viewers, advertisers and stations.[46] A change in the way markets are fundamentally structured could inaccurately and artificially shrink the size and, perhaps, rank of some stations' markets and artificially increase the size and rank of other markets. *Id*. Such a decrease in the size or rank of a station's market may preclude it from being included in national advertising campaigns and have a negative impact on station revenues. *Id.* Moreover, a market structure that does not account for population centers, as the DMA does, would likely look like a group of counties gerrymandered together and result in inefficient buys for advertisers trying to reach consumers in their particular areas. *Id.*[47] In

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[46] *See* NHR White Paper, at 3-4.

[47] As the BIA Study points out, if stations were defined in terms of the 50 states, many television markets simply would be too large to function as an efficient mechanism for local advertisers. For example, local businesses in San Francisco want to target their

this inefficient market, advertising dollars would go to other media outlets, ultimately reducing the ability of local stations to deliver quality, locally-oriented programming. *Id.* Everyone loses in this scenario—viewers, stations and advertisers**.**

C. There Is No Public Interest in Allowing MVPDs to Retransmit a Distant Station's Duplicating National Network or Syndicated Programming

As briefly discussed in the BIA Study, defining television markets more strictly on state boundaries, rather than the realities of the television marketplace, would disrupt the long-standing, important contractual relationships local television stations have with program suppliers (both networks and syndicators). BIA Study at 21, 25-26.[48] Below, we explain in greater detail the value of such exclusivity agreements and why the public interest is not served by disrupting them, either through the redefinition of television markets or by allowing MVPDs to retransmit duplicating network or syndicated programming.

As we discuss in more detail in Section V, MVPDs can already retransmit in-state local programming across DMA boundaries without any change in the law. Therefore, it is simply unnecessary to modify existing television markets to permit provision of in-state programming in this manner. And, any change that would allow MVPDs to retransmit *duplicating* network and syndicated programming from out-of-market stations

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advertisements to potential customers in the San Francisco area – they would have little use for a "California"-based advertising market including, for example, viewers in San Diego unlikely to patronize local businesses in San Francisco. BIA Study at 19. Similarly, consumers in Arlington, VA are not likely potential customers for Norfolk or Richmond based local business advertisers. *Id*. at 19-20.

[48] For example, network affiliation agreements include terms for market-wide exclusivity, but such terms would be jeopardized by the definition of a television market on a state-wide basis to include dozens of stations, including multiple stations affiliated with the same network. BIA Study at 21.

is particularly unnecessary (and, indeed, harmful, as explained below). Some proposals have gone so far as to call for the Commission to repeal its network non-duplication, syndicated exclusivity, and sports blackout rules—rules that otherwise merely provide a mechanism for television stations to enforce their market-acquired program exclusivity rights to prevent the retransmission of such duplicating programming.[49] These types of proposals are contrary to the public interest because they would undermine the local broadcasting system that Congress and the Commission designed and have maintained for more than 70 years.

The simple fact is that exclusivity -- as Congress and the Commission have consistently recognized -- constitutes an essential component of America's unique system of free, over-the-air television stations licensed to serve local communities.[50] Local affiliates always have negotiated with networks and syndicated programming sources for exclusive programming within their markets. Advertisers on local broadcast stations expect and, indeed, pay for that exclusivity; these advertising revenues support stations' local programming, including news, and their ability to serve their communities. Exclusivity, which is limited by Commission rules to narrowly defined geographical zones near stations' home communities, enhances competition by strengthening local stations' ability to compete against the hundreds of non-broadcast and non-local

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[49] *See* H.R. 3216, 110th Cong., Section 2(d).

[50] *See, e.g.*, FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004* (Sept. 8, 2005) ("*2005 FCC Retransmission Consent Report*"), at ¶ 50; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Memorandum Opinion and Order, 9 FCC Rcd 6723 (1994), at ¶ 114; S. REP. NO. 102-92 (1991), at 38.

programming networks offered by cable and satellite. The Commission's rules do not mandate exclusivity, but merely enable broadcasters to protect the contractual arrangements they "have entered into for the very purpose of securing programming content that meets the needs and interests of their communities."[51] Programming exclusivity, and the system of local service it permits, is not a weakness of our broadcast system, but, rather, is a unique and highly valued strength.

In light of the independent economic reasons supporting the programming exclusivity rules, and the rules' integral role in promoting competition, it is no surprise that the Commission, in a 2005 Report to Congress, expressly rejected various MVPDs' proposals to allow MVPDs to abrogate and bypass the local program exclusivity rights of stations if they could not reach agreement on retransmission consent with local stations.[52] This conclusion remains entirely valid today.

Recognizing and supporting the current retransmission of local programming to viewers served by television stations in a neighboring state or the retransmission of local programming to in-state but out-of-market viewers—*and the ability to retransmit such programming without any change in the law*—should be a fundamental component of the Commission's report. There is simply no need to either redefine the current structure of local television markets, or otherwise alter existing regulations pertaining to privately-negotiated program exclusivity arrangements, to promote viewers' access to in-state programming offered by out-of-market stations.

[51] *2005 FCC Retransmission Consent Report* at ¶ 50.

[52] *See 2005 FCC Retransmission Consent Report* at ¶¶ 50-51.

V. No Changes To Current Law Are Required To Provide Viewers With Local Programming, Including In-State Programming, From Stations Outside Their Existing Market

Neither Congressional nor Commission action is necessary to provide consumers with more “in-state” programming than what they already can receive. Neither the Copyright Act nor the Communications Act nor state boundaries nor DMA boundaries prevent MVPDs from retransmitting in-state local programming to viewers who reside in DMAs served primarily by “out-of-state” stations. MVPDs can obtain a private copyright license and retransmission consent from a particular station to retransmit the station’s local programming into out-of-market areas without any change in law or regulation.

A. The Copyright Law and the Communications Act Do Not Prohibit Retransmission of Copyrighted Local Programming to In-State, Out-Of-Market Viewers

Any notion that legislation is necessary to allow MVPDs to export a station’s local news, weather, sports, or public affairs programming to in-state, out-of-market subscribers is based on a fundamental misperception of copyright and communications law.

Local television signals include multiple and diverse programming that is owned by multiple and diverse copyright owners. In virtually all cases, however, television stations own and control the copyrights to their own locally produced programming—i.e., local news, local weather, and local public affairs programming. The copyrights for network and syndicated programs are owned by different copyright owners, making it difficult (although not impossible) for an MVPD to obtain *all* of the necessary copyright licenses for the programming contained in a television station’s signal. For that reason, Congress created a statutory copyright licensing scheme to enable MVPDs to retransmit the content broadcast by a television station without having to obtain licenses from, and individually pay royalties to, each copyright owner of network, sports, and syndicated programming.

In short, the *local* statutory copyright license[53] allows MVPDs to retransmit *all* programming contained within a local television station's signal throughout that local station's DMA (and in areas where the station is "significantly viewed"[54]) without the consent of the various copyright owners and without paying any incremental copyright royalty fees.[55] MVPDs regularly rely upon this free, *local* statutory copyright license to retransmit programming throughout the station's DMA and in areas where the station is significantly viewed.

The distant statutory copyright license, on the other hand, generally requires MVPDs to pay an additional copyright royalty fee to retransmit a station in communities outside its local market and areas in which it is not significantly viewed. But MVPDs that want to provide their subscribers with programming that is not otherwise available, such as in-state news and informational programming from an adjacent market, are authorized by the Copyright Act to retransmit such a signal without needing to negotiate

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[53] *See* 17 U.S.C. § 111 (cable retransmissions) 17 U.S.C. § 122 (satellite retransmissions).

[54] Communities in which a station is deemed to be "significantly viewed" are determined by the Commission. A station must achieve a certain level of "over-the-air" viewing in a community, pursuant to the viewing standard set forth in 47 C.F.R. § 76.5(i), to be considered "significantly viewed" in that community. The Commission's rules allow interested parties to modify the "significantly viewed" list based on documented changes in local over-the-air viewing patterns.

[55] The geographical scope of the local cable compulsory license is somewhat different for noncommercial, educational television stations, but that difference is not material to the discussion here.

separate licenses with the owners of all the programs on the station. The Commission's exclusivity rules do not preclude MVPDs from providing non-duplicative programs, including station-produced news and informational programming. Cable systems take advantage of this statutory license to supplement programming available from local stations.[56] Thus, no change in the Copyright Act is necessary to give MVPDs access to out-of-market signals that provide station-produced in-state programming.

Nor is any change in the Communications Act necessary. Although MVPDs may not retransmit, with a few exceptions, a television station's signal without the station's consent,[57] stations may, and do, grant such consent in the private marketplace. Just as a station may grant an MVPD a private copyright license to retransmit its local programming without any change in copyright law, a station may grant an MVPD the right to retransmit the signal containing the local programming without any change in communications law.

If Members of Congress believe that viewers desire to have access to locally-produced news, weather, sports, public affairs, and informational programming from out-of-market television stations in their home state, they can simply encourage local MVPDs to retransmit those in-state stations. The originating in-state stations have every incentive to consent to the retransmission of their *local* programming, and they are doing so today. MVPDs, therefore, have every tool available today to retransmit local programming from in-state, out-of-market stations.

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[56] For example, the cable system serving Mountain Home, AR, which is part of the Springfield, MO DMA, carries KATV, the ABC affiliate from Little Rock, AR as a distant signal.

[57] *See* 47 U.S.C. § 325(b).

B. Stations Are Already Licensing Their Copyrighted Local Programming to MVPDs for Delivery to In-State Viewers in Non-Local DMAs

DMA boundaries are no obstacle to delivering locally-produced programming into in-state, out-of-market areas. Local stations can—and do—grant MVPDs a private copyright license and retransmission consent to "export" their local news, weather, sports, public safety, and informational programming across DMA lines to serve in-state viewers in other DMAs. MVPDs can easily place this local programming on a low-tier public access channel without disrupting or supplanting another cable programming channel. The result is a private marketplace transaction in which the MVPD, the local station, and the in-state, out-of-market viewers all benefit at no cost to any of the parties.

There are many examples, in DMAs throughout the country, where viewers served primarily by out-of-state television stations have access to in-state television signals. Here are just a few:

* Comcast imports the local news programming of KOAT-TV, Albuquerque, New Mexico, into Las Cruces, New Mexico, which is located in the El Paso, Texas, DMA.

* Comcast cable systems in Abington, Glade Spring, and Saltville, Virginia (in the Tri-Cities Tennessee/Virginia DMA) import the local newscasts of WDBJ-TV, which is in the Roanoke, Virginia, DMA.

* Time Warner Cable, in Robeson and Scotland Counties, North Carolina, both of which are located in the Myrtle Beach, South Carolina, DMA, imports into those two North Carolina counties the local news and weather programming of in-state Station WECT-TV, Wilmington, North Carolina, which is located in the Wilmington DMA.

* Cable companies in the southern Colorado counties of Montezuma and La Plata, which are in the Albuquerque, New Mexico, television market, import the local in-state news from Denver television

stations.

* Charter Cable in Johnson City and Bristol, Tennessee (in the Tri-Cities Tennessee/Virginia DMA) imports the local newscasts of WBIR-TV, which is in the Knoxville, Tennessee, DMA.

* Cable companies in several northeastern North Carolina counties located in the Norfolk, Virginia, DMA import and retransmit into those counties the local news from North Carolina stations in the adjacent Greenville-Washington-New Bern, North Carolina, DMA.

* Comcast imports the local newscasts of stations in the Atlanta, Georgia, DMA to viewers in the northwest corner of Georgia who are otherwise served by television stations in the Chattanooga, Tennessee, DMA.

Satellite companies have the very same ability to retransmit local programming from in-state, out-of-market stations by obtaining a copyright license and retransmission consent from the distant station—although for years they were reluctant to do so. That is now changing. For example, DIRECTV is exporting the local programming of KATV in Little Rock, Arkansas, into the counties in southwest Arkansas in the Shreveport DMA that are served by Shreveport stations. To the extent that MVPDs do not pursue carriage of in-state local programming to in-state, out-of-market subscribers, it is the result of their own business decisions—not a result of any prohibition in the law or Commission rules.

VI. To The Extent That Viewers Desire Additional Programming From In-State And Out-of-State Stations, Technological Innovation, Not Government Intervention, Is The Proper Solution

In today's digital world, with multicast channels on broadcast television, ever-expanding capacity of cable and satellite networks, and steaming via the Web, consumers have unprecedented access to local television station programming. Because technological developments are further enhancing viewers' access to in-state and other locally-oriented broadcast programming, there is even less reason to disrupt the existing structure of local television markets in an effort to promote consumers' access to locally relevant programming.

In the last five years, consumer access to video programming has expanded exponentially. Digital multicast channels, on demand programming via MVPDs, and streaming and cached video on the Web provide viewers ever-increasing amounts of popular and niche programming, including in-state and other locally-oriented programming, that might not have been available to consumers in the analog era. There are currently more than 1,500 broadcast multicast channels, a number of which include local programming.[58] For example, NBC Local Media recently announced new "Nonstop" multicast channels in Philadelphia and Washington D.C. that will feature about eight hours of local programming per day.[59] Any viewer able to receive the digital signal of a full-power station's primary channels, including viewers in adjacent DMAs, can also receive that station's multicast channels, thereby increasing the amount of local and/or in-state programming. Indeed, consumers today across all counties receive over the air, on a weighted average basis, 18.8 program streams from commercial in-state full-power television stations and 6.1 program streams from non-commercial in-state stations. BIA Study at 8.

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[58] BIA, Media Access Pro, 2010.

[59] *See* Malone, Michael, "Exclusive: NBC Local Media Sets 'Nonstop' Launch Dates," Broadcasting and Cable, Oct. 21, 2010. NAB has discussed the multicast programming offered by local television stations in detail in previous comments. *See* Comments of NAB in GN Docket No. 10-25 (May 7, 2010), at 17-22 (describing extensive multicast programming, including local and regional news and sports, foreign language, political, children's and other niche programming).

MVPDs are increasingly using their on-demand functionalities to provide viewers with anytime access to local and in-state programming. Comcast, for example, offers on demand local programming across the country, including sports programming in Washington State, where the local Western Hockey League team, the Spokane Chiefs, can be viewed anytime, for free, by Comcast subscribers. Also in Washington, Comcast subscribers have on demand access to thrice daily local newscasts from Seattle station KOMO.[60]

Additionally, many local stations are now offering their local newscasts and other video for online streaming, available to anyone in the world, including out-of-market viewers who may be unable to receive that programming via traditional means – over-the-air or via an MVPD. KPRC, the local CBS affiliate in Houston, for example, offers live steaming of their newscasts and cached videos of their most popular stories. KPRC is just one of many stations that have made their newscasts available online – and the numbers appear to be increasing.

And local station websites are not the only place to obtain local programming video on the Web. Local sports syndicated networks, such as Wazoo Sports Network in Kentucky, stream live local sports programming on the Web, including local minor league baseball games, high school basketball games and much more.[61] Similarly, viewers that live in states with Atlantic Coast Conference (ACC) universities can see their local school's games for free on Raycom Sports website – even if those viewers live in a so-called out-of-state DMA.

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[60] *See* Xfinity Local On Demand website and local listings, available at http://www.comcastgetlocalondemand.com.

[61] *See* www.wazoosports.com.

Increasing access to broadcast programming, due to the technological developments illustrated above, demonstrates even more clearly that there is no need to change the existing television market structure. The FCC, when analyzing alternatives to the existing DMA system for its report, should consider how technological innovation provides the best solution to any perceived problem with consumer access to broadcast programming.

VII. Conclusion

The above comments and attached data show an extraordinarily high level of over-the-air in-state television service to the American public. The digital signals (and multiple programming streams) being broadcast by local television stations reach very wide audiences. Both cable and satellite systems also provide in-state television stations, not only from their home markets but often from adjoining markets. Viewers may further access the programming of local stations via the Internet. In addition, an examination of specific local television markets shows that out-of-state (but in-market) television stations frequently offer extensive locally-oriented service to viewers (such as the locally-oriented programming offered by Washington, DC stations to viewers in northern Virginia). Moreover, broadcast stations today are licensing their copyrighted local programming (such as news) to MVPDs for delivery to in-state viewers in non-local DMAs.

Efforts to alter local television market definitions to ensure the availability of local service are thus not only unnecessary, they are also fraught with difficult practical problems. Alternative methods of defining television markets (e.g., use of state boundaries) would not be based on actual viewing patterns, as are the existing television markets, and thus would be less reflective of the “real world” television marketplace. The reassignment of counties to different markets could easily result in many viewers receiving service from more geographically distant television stations with lesser connections to those viewers. Redefining markets has the real potential to disrupt local television advertising markets, long-standing and important program exclusivity arrangements, and the carriage obligations of cable and satellite operators. Finally, if television markets are redefined, existing local stations’ ownership structures could easily fall out of compliance with the FCC’s rules.

As shown by these comments and the data in the attached report, there is no need to take actions that will severely disrupt the local television marketplace and ultimately harm viewers. NAB thus urges the Commission to report to Congress on the high levels of in-state and out-of-state broadcast stations and programming available to consumers and on the need to avoid needless, serious disruption to local television markets.

Respectfully submitted,

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January 24, 2011