

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

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

To: The Commission



**COMMENTS**

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January 24, 2011

## I. INTRODUCTION

The American Cable Association (“ACA”) files these Comments in response to the Media Bureau’s request for comment and data for use in preparation of the report to Congress required by the Satellite Television Extension and Localism Act (“STELA”) on in-state broadcast programming.<sup>1</sup> The Public Notice seeks comment on three specific terms that Congress has charged the Commission to report on.

ACA members are uniquely positioned to help the Commission report to Congress on the availability of in-state broadcast programming, particularly in the rural areas ACA members serve, and ACA welcomes the opportunity to assist the Commission in formulating its report to Congress. To this end, ACA recommends that the Commission’s report:

- Measure the number of households that receive out-of-state broadcast stations’ signals by including households that receive these signals from an MVPD;
- Proceed with the Media Bureau’s proposal to count a household as having “access” to an in-state station if an MVPD carrying the station offers service to the household; and
- For both analyses above, break out the numbers for broadcast stations affiliated with Big 4 broadcast networks from other stations;

**About ACA.** ACA represents nearly 900 independent cable companies that serve more than 7.6 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in 49 states and in a majority of congressional districts. The companies range from family-run cable businesses serving

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<sup>1</sup> *Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming*, Public Notice, MB Docket No. 10-238 (rel. Nov. 23, 2010) (“*Public Notice*”).

a single town to multiple-system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 2,000 subscribers.

**II. THE COMMISSION SHOULD MEASURE THE NUMBER OF HOUSEHOLDS THAT RECEIVE OUT-OF-STATE BROADCAST STATIONS' SIGNALS BY INCLUDING HOUSEHOLDS THAT RECEIVE THESE SIGNALS FROM AN MVPD**

Section 304(1) of STELA requires the Commission to submit a report containing an analysis of "the number of households in a State that receive the signals of local broadcast stations assigned to a community of license that is located in a different State."<sup>2</sup> ACA comments on two Media Bureau Section 304(1) proposals below.

First, ACA disagrees with the Media Bureau's decision to measure the number of households that "receive" an out-of-state broadcast station signal by only including those households within a broadcast station's predicted service area.<sup>3</sup> Many households lie outside a station's predicted service area, but "receive" broadcast stations' signals through their MVPD. Due to broadcast carriage rules and other market factors, these MVPD delivered out-of-state broadcast stations' signals may be the only signals available to these consumers. By excluding these households, the Commission's report will undercount the number of households receiving out-of-state broadcast stations' signals. Consequently, to accurately measure the number of households that receive out-of-state broadcast stations' signals, the Commission's

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<sup>2</sup> *Public Notice* at 1, *citing* 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. 128 (2010).

<sup>3</sup> *Id.* at 2 ("[F]or purposes of this report, we will assume that all households within a broadcast station's predicted service area receive the station's signal and all households outside the predicted service area do not receive the station's signal.").

report must include households outside a broadcast station's predicted service area receiving out-of-state broadcasts stations' signals from an MVPD.<sup>4</sup>

Second, the Media Bureau seeks comment on the types of stations to include in its analysis.<sup>5</sup> Regardless of the stations that the Commission includes in its analysis, it must break out and separately analyze stations that are affiliates of the "Big Four" broadcast networks (*i.e.*, NBC, ABC, CBS, and FOX). Compared with other stations, these stations produce and carry more of the type of local programming that Congress is most concerned some populations may have limited access to.<sup>6</sup>

Broadcast stations affiliated with the "Big Four" broadcast networks typically produce more local news, sports, weather, and public affairs content than other broadcast stations in a market, and also carry network programming, such as college football, that may differ on a state-by-state basis. Breaking out the stations that typically produce the most local programming will better inform Congress of the number of households that receive out-of-state broadcast programming. In addition, the Commission's report should break out the total number of households that receive four out-of-state Big 4 network affiliates, and then the number receiving three, two, one or none. Reporting on the *number* of households receiving decreasing numbers of out-of-

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<sup>4</sup> If the FCC concludes that it is not feasible to determine on a household-by-household basis which broadcast stations' signals are received from an MVPD, ACA recommends the Commission's report assume that households may receive from an MVPD the broadcast stations' signals of the designated market area in which it resides.

<sup>5</sup> *Public Notice* at 2.

<sup>6</sup> See Congressman Ross, *Ross TV Freedom Provision Passes Senate, House: Study will be 'Critical First Step' to Local Channel Access* (Press Release), May 13, 2010, available at <http://ross.house.gov/News/DocumentSingle.aspx?DocumentID=185448> (last visited Jan. 24, 2011) ("Arkansans want to watch the Arkansas Razorbacks, not the LSU Tigers. Everyone who wishes to receive their local channels in their home state should have the option to do so.").

-state Big 4 network affiliates will better inform Congress of the amount of out-of-state broadcast signals “received” by consumers.

**III. THE COMMISSION SHOULD PROCEED WITH THE MEDIA BUREAU’S PROPOSAL TO COUNT A HOUSEHOLD AS HAVING “ACCESS” TO AN IN-STATE STATION IF AN MVPD CARRYING THE STATION OFFERS SERVICE TO THE HOUSEHOLD.**

Section 304(2) of STELA requires the Commission to submit a report containing an analysis of “the extent to which consumers in each local market have access to in-state broadcast programming over the air or from a multichannel video programming distributor.”<sup>7</sup> ACA comments on two Media Bureau Section 304(2) proposals below.

First, we agree that the Commission’s report should count a household as having “access” to the station if an MVPD carrying the station offers service to the household. In other proceedings, ACA has provided detailed information to the Commission on how broadcast networks and their affiliates impede access to broadcast stations in neighboring DMAs, even if the MVPD has a legal right to offer the station to their subscribers.<sup>8</sup> In certain circumstances, “Big Four” networks and their affiliates prevent many cable customers from receiving in-state broadcast signals by contractually prohibiting their affiliate stations from granting retransmission consent to MVPDs in adjacent DMAs. The networks and their affiliates do so even when this practice limits or prevents consumers’ access to in-state broadcast signals. Consequently, the

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<sup>7</sup> *Public Notice* at 1.

<sup>8</sup> See, e.g., *In the Matter of Petition for Rulemaking to Amend 47 CFR 76.64, 76.93 and 76.103 Retransmission Consent, Network Non-Duplication, and Syndicated Exclusivity*, MB Docket No. RM-11203, Petition for Rulemaking of American Cable Association at 2-6 (filed Mar. 2, 2005) (“ACA Retransmission Consent Petition”); *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Comments of the American Cable Association at 4-6 (filed Nov. 29, 2006).

Commission correctly proposes to base its measurements solely on whether an MVPD that carries the station offers service to the household, and not whether an MVPD has a legal right to carry the station and offer it to households.

Second, the Media Bureau seeks comment on how to measure the “extent” of access to in-state broadcast programming.<sup>9</sup> When measuring the “extent” of access to in-state broadcast programming, the Commission should again break out and separately analyze stations that are affiliates of the “Big Four” broadcast networks and report on the number of households that receive one, two, three, or four in-state Big 4 network affiliates. Also, because broadcast carriage rules differ for cable and DBS operators, the Commission’s report should separately measure the extent that households can access in-state broadcast stations through DBS providers and cable operators.

#### **IV. CONCLUSION**

By including ACA’s proposals in its report to Congress, the Commission can ensure that its report to Congress accurately measures the number of households receiving out-of-state broadcast stations, and the extent to which households have access to in-state broadcast stations.

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<sup>9</sup> *Public Notice* at 4.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**



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