**Local TV**

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May 27, 2011

Marlene H. Dortch, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Amendment of the Commission's Rules Related to Retransmission Consent
MB Docket No. 10-71

Dear Ms. Dortch:

On March 3, 2011, in response to a Petition for Rulemaking filed by a coalition of multichannel video program distributors ("MVPDs") and other interest groups, the FCC released a Notice of Proposed Rulemaking seeking comment on proposed changes to its rules governing the process by which television stations and MVPDs negotiate retransmission consent. Local TV, LLC and FoxCo Acquisition, LLC (collectively, "Local TV") fully support the positions taken by the National Association of Broadcasters ("NAB") in its comments on the Petition for Rulemaking and in *ex parte* meetings with the Commission. Specifically, Local TV agrees with NAB that the only possible conclusion the Commission could reach after reviewing the record in this proceeding is that it lacks authority under the Communications Act to mandate carriage without consent or to force parties to submit to arbitration.

I write separately to share Local TV's own retransmission consent experiences and to ensure that those experiences are accurately reflected in the record. Local TV is involved actively in broadcast organizations, including NAB, Mobile 500, state broadcast organizations, and the various network affiliate associations. Based on this extensive involvement and our contacts throughout the television broadcast industry, I am confident that Local TV's experience negotiating thousands of retransmission consent agreements across the country is representative of the broadcast industry as a whole.

Local TV owns and/or operate twenty full-power television stations in sixteen markets, and each station is affiliated with at least one major network. I have attached to this letter a list of our stations and the markets served. The successes enjoyed by these stations are based in large part on the truly local service they provide their audiences, with a particular emphasis on local news. Many also produce and air extensive coverage of local events (*e.g.*, political campaigns, emergency weather reports, parades, special events) and local college and high school sporting events. Local TV's news producing stations often rank number one or two in their markets. In total, our stations produce 760 hours of live local news and programming every week, which likely makes us the largest single producer of television news in the industry.

The importance of live local programming was underscored recently in many of our markets where severe weather moved through causing the loss of lives and extensive property damage. Our stations in Oklahoma City, St. Louis, Kansas City, Memphis and Huntsville each went 'wall to wall'

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with weather, pre-empting regularly scheduled programming, to bring up to the minute information on the storms' movements, safety information and other critical data before, during and after the dangerous conditions.

Local TV's television stations reach the majority of the over 12.6 million television households in our sixteen markets through the retransmission of their broadcast signals by several hundred cable systems, both nationwide direct broadcast satellite systems, and other multichannel video program distributors ("MVPDs") of all sizes – from multibillion-dollar, diversified media companies like AT&T and Comcast to local co-operatives and municipally-owned telephony-based systems. To ensure carriage on the largest systems in any particular market, Local TV must negotiate retransmission consent with companies substantially larger than Local TV. Indeed, Local TV estimates that five entities control more than seventy-six percent of the MVPD homes served by Local TV's television stations.

To an overwhelming extent, our experiences demonstrate that the market-based approach to retransmission consent continues to function well. The existing system has allowed carriage agreements to continuously adapt to an ever-changing media marketplace. While our negotiations with MVPDs have been challenging at times, they have occurred – and concluded successfully – without government intervention or intrusion. In fact, our television stations rarely if ever have been removed from a cable or satellite system as a result of a retransmission consent dispute. Despite the complexity of the issues involved, and the often outsized leverage that we face in negotiating with much larger companies with substantially more retransmission consent experience than us, Local TV has managed to resolve all but one of its retransmission consent negotiations without any public hint that the negotiations even occurred.

It is no secret that the market value for retransmission fees for local broadcast programming has increased in recent years. Nor should this be a surprise. Local broadcasters consistently and overwhelmingly deliver the most popular programming available on any MVPD's platform. Yet, until 2005, few broadcasters were obtaining carriage fees for their popular programming. Meanwhile, national cable networks like ESPN, FOX News, TNT, and USA – which garner a mere fraction of the ratings of local broadcast stations – were able to charge license fees from anywhere between $0.50 to more than $4.00 per subscriber (according to data submitted by the cable industry). This imbalance was unsustainable, and beginning in 2005 broadcast retransmission fees slowly began to catch up to the lowest rated national cable networks. The fees paid by those who retransmit (and resell) Local TV's programming has provided the crucial resources that Local TV has reinvested in its stations, its local employees, and its local newsgathering operations. Additionally, local broadcasters face the growing demands from the networks for a portion of the income that we receive from the MPVDs to help defray the cost of producing the first run programming we broadcast – and the MPVDs resell. Even today, however, the average subscriber fee for the most popular local broadcast station in a market remains a tiny fraction of the fee that MVPDs pay nationwide cable networks that do not offer the most popular programming; do not offer any local programming; and do not have any local employees, any community involvement, or any nexus to local consumers.

The increasing value of broadcast retransmission fees has changed the dynamics of negotiations with MVPDs, and, in turn, that admittedly has led to more public retransmission consent disputes than in years past. Rather than adjust to the changing marketplace – as broadcasters have done in countless circumstances – certain MVPDs are instead turning to government intervention in private retransmission consent negotiations.

Greater government intervention is bad public policy and would produce poorer choices for consumers. In Local TV's experience, the mere threat of FCC rule or policy changes regarding retransmission consent negotiations has had the perverse effect of stalling and discouraging negotiations by certain operators. Efforts to gain the favor of key government regulators necessarily distracts both sides from the most important task at hand: negotiating with each other in good faith.

Greater government intervention also would prove unworkable. A retransmission consent agreement reflects a complex arrangement of tradeoffs and concessions by both parties that are not appropriate for other parties facing different circumstances. In Local TV's experience, the most contentious issues are not always financial terms. Frequently, in fact, compensation issues are resolved relatively early in discussions, while other issues can take months to negotiate. These more difficult discussions can include confidentiality, technical carriage terms, multicast carriage, channel positioning, promotion and advertising, after-acquired systems or stations, and most-favored-nation provisions. Commission involvement in back-and-forth negotiations regarding such complex issues almost certainly would lengthen and complicate retransmission talks. Moreover, by holding out the hope of some alternative avenue to resolve these difficult issues, the FCC would remove the existing incentives encouraging focused, good-faith negotiations on both sides. This counterproductive result runs directly counter to the Commission's goals in this proceeding and, ultimately, would harm consumers.

In our experience, the best tool for encouraging good faith and earnest negotiations is a hard deadline. In any retransmission negotiation, both parties sincerely want to avoid a service blackout. Consequently, when a hard deadline approaches, the parties naturally focus their efforts on the most important issues at hand and spend less time posturing. Indeed, throughout our most difficult negotiations, we have learned that progress often cannot be made without the pressure of a looming deadline. When certain MVPDs come to believe that an extension of an expiring agreement is readily attainable or that the government might intervene in our negotiations, those MVPDs quickly evidence no incentive to compromise or avoid delay. If, however, both parties understand that the deadline is real, each party is more likely to seek common ground on less critical issues and to prioritize the negotiations in their schedules, thereby allowing the negotiations to progress to the most important areas of dispute – and resolution.

Local TV only sets a hard deadline as a last resort because service disruptions harm our stations, our viewers, and our advertising clients. When MVPD carriage lapses, a broadcaster immediately suffers as ratings and advertising revenue declines. Loyal viewers of local news stray – out of necessity – to other area stations. Local advertising clients also must look for alternative outlets for their advertising dollars. These broken relationships with audiences and advertisers are not repaired easily. In contrast, because of the substantial transaction costs involved with changing

MVPD providers (including often hefty "early termination fees" charged by MVPDs), consumers are unlikely to seek to change providers unless a carriage dispute lasts for several weeks or more. In other words, removing our signals from an MVPD's system imposes immediate harm on consumers and immediate harm on the stations involved and relatively little immediate harm to the MVPD. Accordingly, no rational broadcaster would take the drastic step of suspending an MVPD's right to retransmit its station's signal unless it truly reached an impasse with the MVPD that could not be resolved privately. This has been our experience.

Because of the high stakes involved, Local TV has always conducted its negotiations with the utmost good faith, and, in the vast majority of its negotiations, Local TV believes the MVPD likewise has honored its good faith obligations. In only a handful of situations has an MVPD engaged in abusive, bad faith tactics. For example, whereas we typically contact MVPDs to begin negotiations *several months* in advance of contract expirations, certain very large MVPDs have refused to begin any substantive dialogue until the final *days* before their contract expires. Two major operators reached agreements with us on the basic deal points during negotiations, only to renege later and demand different terms. One major MVPD simply refused to honor the term sheet we negotiated with one of its managers, informing us that the individual was not "authorized" to negotiate retransmission consent with us. Finally, we have a small number of small cable systems that refuse to honor their contractual obligations and/or simply carry signals without consent. In these rare situations, the Commission should have a robust and prompt process for enforcing its rules requiring "good faith" negotiations to discourage the gamesmanship that our stations sometimes face.

Revising established retransmission consent rules based on a few high profile disputes, which typically involve the same few large MVPDs, would compromise substantially Local TV's ability to continue our unbroken string of successful carriage negotiations. In fact, the revisions proposed in the Petition for Rule Making in this docket would only lead to more difficult negotiations, more incentives for declaring an impasse and ending negotiations, and therefore an increased likelihood of blackouts. The Commission can and should avoid this outcome by committing to act on any complaints alleging violation of existing rules on an expedited basis, and by closing this proceeding without revising any of the existing rules governing retransmission consent negotiations.

Respectfully submitted,

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President and COO
Local TV, LLC
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