



November 18, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notification of Ex Parte Presentation of American Television Alliance, MB Docket Nos. 09-182 and 10-71

Dear Ms. Dortch:

On November 16, 2011 representatives of the American Television Alliance ("ATVA") met with Joshua Cinelli of Commissioner Copps' office to discuss media ownership issues. In attendance for ATVA were Stacy Fuller of DIRECTV, Ross Lieberman of the American Cable Association, Diana Oo of Cablevision, Cristina Pauzé of Time Warner Cable, Kevin Rupy of USTelecom, Emily Gombar representing Mediacom and the undersigned. We asked that the Commission use its forthcoming Media Ownership NPRM to gather additional information regarding broadcaster practices that adversely impact competition in the local broadcast marketplace, particularly for retransmission consent, through means of coordinated negotiations, multicasting arrangements and network interference with station affairs, and examine whether these practices violate the Commission's media ownership rules. Attached is a list of questions that ATVA proposes to be included in the NPRM.

The record developed in response to the Media Ownership NOI and in the FCC's retransmission consent reform proceeding amply documents that separately owned broadcasters in the same market engage in coordinated retransmission consent negotiations either through a variety of legally binding "sharing agreements," such as Local Marketing Agreements ("LMAs"), Shared Services Agreements ("SSAs"), or Joint Sales Agreements ("JSAs"), or informally, through non-legally binding arrangements. For example, parties have documented at least 56 instances in which Big Four network affiliates are operating under some form of sharing agreement, and at least 36 pairs of broadcast stations in 33 different markets engaging in coordinated carriage negotiations through the use of a single bargaining representative.¹

¹ See ACA Comments, May 27, 2011, <http://goo.gl/tNvVW>.

These practices decrease competition amongst broadcasters in local markets, and permit station owners to secure higher retransmission consent fees² -- not through increasing programming quality but by increasing bargaining leverage in carriage talks. As a result, cable and satellite TV providers, who are charged higher retransmission consent fees, often must pass these increased costs along to consumers, who are also ill served by local stations that have less incentive to respond to conditions in local markets.

Broadcasters also are increasingly affiliating with two or more national networks to multicast multiple streams of Big Four network programming in a single DMA. Dual affiliation allows a single broadcast licensee to exercise control over multiple Big Four signals in a single DMA. Parties have identified at least 25 instances of common ownership of multiple Big Four affiliates in the same market achieved through combining a single broadcaster's primary video and multicast stream within a single broadcast signal.³ In the Fort Wayne, IN DMA, Granite Broadcasting (WISE-TV) is using a combination of sharing arrangements and multicasting to control three of the four Big Four networks as well as five of the six national networks. Nexstar—which owns WFFT in Fort Wayne, the former Fox affiliate—has filed a civil action alleging that Granite's multiple network affiliations violate the antitrust laws.

Lastly, the Big Four networks increasingly are dictating the terms under which independent affiliates sell retransmission consent to MVPDs, either by demanding a "cut" of those fees for themselves or exercising a veto or right to approve retransmission consent agreements.

Each of these practices allows broadcasters to end run the Commission's media ownership rules, specifically the local television ownership rule, the dual network rule and the national television ownership rule, as well as the related attribution rules. They cause competitive harms, which in turn, undermine the

² Available evidence strongly suggests that common control or ownership of multiple Big Four affiliates in a single DMA results in an increase in broadcast carriage fees by at least 21.6%. See *Mediacom Communications Corp. v. Sinclair Broadcast Group*, Ex Parte Comments of Suddenlink Communications in Support of Mediacom Communications Corporation's Retransmission Consent Complaint, CSR No 8233-C, 8234-M, at 5 (filed Dec. 14, 2009)

³ See ACA Comments, May 18, 2010, <http://goo.gl/LFCOS>. The number of instances of dual affiliation involving one of the Big Four affiliates is even greater. One news report has identified 68 instances -- 35 involving Fox, 20 for ABC, 7 for NBC, and 6 for CBS. See Price Colman, *D2 Offers A1 Opportunity for Big Four Nets*, TVNewsCheck (Apr. 20, 2011), available at <http://www.tvnewscheck.com/article/2011/04/20/50699/d2-offers-a1-opportunity-for-big-four-nets>.

Commission's goal of promoting localism and a diversity of voices.⁴ The local television ownership rule is intended to prevent "combinations of the top four stations" in a single market as "deleterious to competition."⁵ Under a sharing agreement between two Big Four affiliated stations in a single DMA, despite the fact that the stations remain independently owned, the owners essentially agree not to compete with one another. The Commission should explore whether an attributable interest exists when two separately owned stations in the same DMA engage in coordinated negotiation of retransmission consent—whether through a sharing arrangement (including LMAs, JSAs, SSAs or others) or an informal arrangement.

The dual network rule prohibits a television station from affiliating with an entity that maintains two or more of the national Big Four broadcast networks.⁶ Multicasting arrangements allow stations to do locally what the networks are forbidden from doing nationally: consolidate multiple Big Four signals under the control of a single entity. Also, for purposes of the local television ownership rule, when a single broadcast station affiliates with two or more of the Big Four networks to multicast multiple streams of programming, any notion of separate control is lost, as a single broadcaster now operates the equivalent of multiple stations in a single DMA.

The national television ownership rule prohibits one entity from owning stations that, in the aggregate, reach more than 39% of the country's households.⁷ In instances of network interference, a station abdicates its rights and responsibilities as a licensee—including the negotiation of retransmission consent—to a national broadcast network. The Commission should explore whether this constitutes a de facto transfer of control over station finances and programming, in violation of Section 310(d) of the Act. In addition, the FCC should examine whether a national network's veto power or right-of-approval over its affiliated stations' retransmission consent agreements gives the network an attributable interest in those stations, which would result in the network's violation of the national ownership cap.

Please contact me if you have any questions regarding these issues.

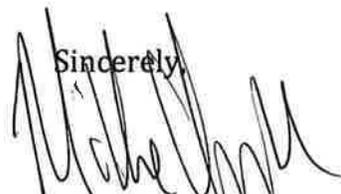
⁴ ATVA recently released a paper by Professor Phillip M. Napoli of Fordham University, entitled "Retransmission Consent and Broadcaster Commitment to Localism." Professor Napoli makes the case that retransmission consent rules are not accomplishing their original goal of enhancing local news and public affairs programming and the FCC should take that into consideration in its rulemaking. A copy of the paper is attached to this letter.

⁵ *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 ¶ 102 (2008).

⁶ See 47 C.F.R. §73.658(g).

⁷ See 47 C.F.R. §73.3555(e).

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Chappell". The signature is stylized with several loops and a long horizontal stroke at the end.

/s/ Mike Chappell