

United States Senate

WASHINGTON, DC 20510

MB
Satellite
11/4/11

November 3, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Dear Chairman Genachowski:

It has come to my attention that many of my constituents from Leslie County and other counties in Kentucky face an on-going situation in which they are unable to receive local news, weather, and educational programming from in-state network affiliates. For example, many of my constituents in Leslie County do not receive local programming from Lexington, Kentucky. Instead, all Leslie Countians serviced by Dish Network or DirecTV receive local programming from the Tri Cities of Tennessee. My constituents have informed me that they have repeatedly contacted and petitioned the FCC, but to no avail. Specifically, my constituents have expressed safety concerns regarding the fact that they do not receive appropriate local news, weather, and emergency broadcasts from Lexington, Kentucky.

Leslie County is not in the Lexington Designated Market Area (DMA), but is considered to be in the Tri-Cities DMA (which includes Bristol, VA, Johnson City and Kingsport, TN). FCC regulations prevent a satellite provider (Dish or Direct) from providing a network affiliate outside a subscriber's DMA unless the network affiliate in the DMA grants a waiver to that subscriber, or unless the stations in the Lexington DMA are considered to be "significantly viewed" in that county.

In order to be included on the "significantly viewed" list, a network station such as WKYT must have a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent. 47 C.F.R. § 76.5(i)(1). WKYT is not currently included on the "significantly viewed" list for Leslie County. See <http://transition.fcc.gov/mb/significantviewedstations031011.pdf>

The FCC recently released a report regarding these issues on August 29, 2011.¹ The report stated:

DBS [direct broadcast satellite] commenters recommend that the [FCC] use its waiver authority to designate all in-state local broadcast stations as significantly viewed in orphan counties based on all television households, not just those households receiving the relevant signal over the air. These commenters propose that the Commission shift the evidentiary burden to create a presumption that in-state stations are significantly viewed in orphan counties pursuant to the Commission's rules. They further contend that the Commission could act 'well within' existing statutory boundaries to help MVPD [multichannel video programming distributor] subscribers to access in-state local broadcast stations.

Please respond with an explanation as to whether—in light of the above language included in the report—the FCC intends to rectify the situation facing my constituents. Does the FCC plan to shift the evidentiary burden to create a presumption that in-state stations are significantly viewed in orphan counties? If not, please explain any other courses of action that the FCC could take to assist my constituents and remedy this situation.

Thank you for your prompt response to my concerns.

Sincerely,

A handwritten signature in cursive script that reads "Rand Paul".

Rand Paul, M.D.

United States Senator

¹ *In re* In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010, MB Docket No. 10-238, August 29, 2011.



FEDERAL COMMUNICATIONS COMMISSION

January 5, 2012

JULIUS GENACHOWSKI
CHAIRMAN

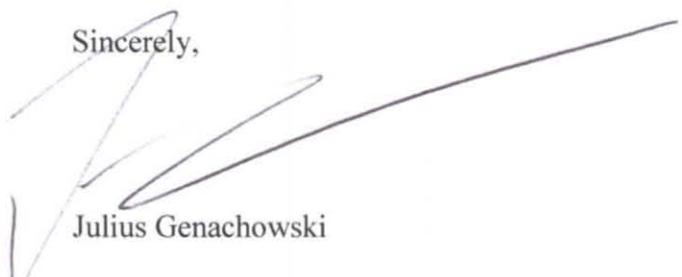
The Honorable Rand Paul
United States Senate
316 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Paul:

Thank you for your letter regarding consumers' inability to receive local programming in Leslie County. I appreciate your bringing this matter to my attention and have directed the Chief of the Media Bureau's Office of Communications and Industry Information to respond. I am pleased to provide the enclosed letter addressing your concerns.

If you have any additional questions or need any further assistance, please do not hesitate to contact me.

Sincerely,



Julius Genachowski

Enclosure



Federal Communications Commission
Washington, D.C. 20554

January 5, 2012

IN REPLY REFER TO:
CN-1101645

The Honorable Rand Paul, M.D.
United States Senate
316 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Paul:

Thank you for your letter regarding the availability of in-state broadcast television stations to satellite consumers in "orphan" counties, such as Leslie County. Specifically, you are interested in the status of a proposal advanced by the satellite television industry to expand the number of in-state television stations available to the residents of orphan counties. I appreciate the opportunity to respond.

The carriage of local television broadcast signals by satellite television carriers is governed by the Communications and Copyright Acts. These statutes require satellite television carriers to use the Designated Market Area (DMA) boundaries established by the Nielsen Company (Nielsen) to determine the television stations that are included in the carriers' local programming package, as well as to determine the consumers who are eligible to subscribe to local-into-local service in a particular market. Nielsen generally reviews its television market designations on an annual basis and, based on this review, Nielsen may assign one or more counties to a different DMA if the criteria used by Nielsen indicate that such a change is warranted. As you know, Nielsen has assigned Leslie County to the Tri-Cities DMA.

In preparing the in-state broadcast television programming *Report* required by the Satellite Television Extension and Localism Act of 2010, the Commission's Media Bureau did consider a proposal submitted by the satellite television industry to establish a presumption that in-state broadcast stations would be treated as "significantly viewed" stations in orphan counties. However, the Bureau determined that the agency could not adopt the proposal because it was inconsistent with current law, and it is axiomatic that the Commission cannot waive statutory requirements. As noted in its 2005 *Report and Order* implementing the significantly viewed provisions of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission is required by statute to use the same rules for significantly viewed determinations for satellite television providers that were in effect for cable television system operators as of April 15, 1976. Thus, the Bureau concluded that a statutory change would be necessary to implement the satellite industry's proposal.

Page 2—The Honorable Rand Paul, M.D.

The Media Bureau also examined other alternatives to the use of Nielsen DMAs that could provide more consumers with in-state broadcast programming. For example, the Bureau considered a proposal that would permit satellite television providers to file a request with the Commission to modify a television market. The Bureau also received a recommendation that a statewide copyright license be implemented to permit the distribution of additional out-of-market, but in-state, television broadcast stations. The Bureau determined, however, that the proposals could not be adopted without amendments to the Communications or Copyright Acts. Finally, some parties proposed that the satellite television industry should pursue the carriage of the local or news-only segments of programming available on in-state, but out-of-market broadcast television stations. The satellite industry indicated that this proposal was not a viable option in most cases because of capacity and licensing issues.

I hope that this information is helpful. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Michael S. Perko". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael S. Perko
Chief, Office of Communications and Industry Information
Media Bureau