ACA: Local TV Competition Decreasing

The cable association calls for the FCC to tighten its local TV station ownership limits, saying that the coordination of retransmission consent by broadcasters “serves to lessen competition in local broadcast markets evidenced by their ability to drive up the distribution cost of broadcast signals to a greater extent possible than if they were negotiating separately.”

The American Cable Association said Tuesday that it has developed new evidence showing that competing broadcasters are “escalating their business strategy of lessening competition in local markets by coordinating their retransmission consent negotiations,” prompting the trade group to call on the FCC to tighten its local TV station ownership limits to better achieve the commission's public interest goal of promoting competition in local media markets.

"Upon review of ACA's latest findings, the FCC will recognize what hundreds of smaller cable operators are observing in their local markets, which is that broadcasters are moving aggressively to consolidate at the local level. Instead of competing against each other, these broadcasters are colluding," ACA President-CEO Matthew M. Polka said in a statement. "At a minimum, ACA is urging the FCC to conclude that coordinated negotiations among two separately owned, Big Four broadcasters in a market violate the intent of the agency's duopoly rules and should be prohibited in the public interest under the multiple ownership rules."

ACA said it has found that of the 62 pairs of multiple Big 4 affiliates in the same Designated Market Area (DMA) that are known to operate under some sort of sharing agreement, its members confirmed that 46 of these pairs in 41 markets conducted retransmission consent negotiations using a single representative. When ACA last surveyed its members in 2010, it identified 36 pairs in 33 markets. Therefore, in the 24 months since ACA last reported to the FCC, the number of known instances of this form of broadcaster collusion at the local level has jumped by 28%.

ACA's new evidence of broadcaster coordinated bargaining was included in comments filed Monday in connection the FCC's quadrennial review of its media ownership rules mandated by Congress. This review includes the FCC's local TV station duopoly rules that ban combined ownership of top four stations in all local markets. The FCC review is expected to examine not only the eligibility of one entity to control multiple local TV stations but also whether to rule that business practices of two more local stations that are so tightly coordinated as to take on ownership attributes should be counted as ownership interests for purposes of applying the top four prohibition.

In the past, the FCC has found certain agreements among separately owned local TV stations to convey ownership attributes because the agreements permitted one station to sell a key station product, advertising time, on behalf of its competitor, a practice that lessens local competition.

Recently, retransmission consent as a revenue category has become increasingly important for broadcasters, second only to advertising. According to SNL Kagan, retransmission consent revenues increased from $214.6 million in 2006 to roughly $1.4 billion in 2010, heading to nearly $3.9 billion by 2015. Significantly, retransmission consent revenue increased from 1% of broadcaster gross revenues in 2006 to 5% in 2010, and is expected to increase to 15% by 2015. For this reason, ACA is urging the FCC to recognize that retransmission consent “has become a key station product and look at agreements facilitating the coordination of retransmission consent among non-commonly stations in the same market.”

As ACA explained in its comments, the coordination of retransmission consent under the template advanced by broadcasters “serves to lessen competition in local broadcast markets evidenced by their ability to drive up the distribution cost of broadcast signals to a greater extent possible than if they were negotiating separately.”

ACA's filing described practices that the FCC should deem attributable under its TV station ownership rules, including:

- Delegation of the responsibility to negotiate or approve retransmission consent agreements by one broadcaster to another separately owned broadcaster in the same DMA.

- Delegation of the responsibility to negotiate or approve retransmission consent agreements by two separately owned broadcasters in the same DMA to a common third party.
- Any informal or formal agreement pursuant to which one broadcaster would enter into a retransmission consent agreement with an MVPD contingent upon whether another separately owned broadcaster in the same market is able to negotiate a satisfactory retransmission consent agreement with the same MVPD.
- Any discussions or exchanges of information between separately owned broadcasters in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.

The legal analysis underpinning ACA's proposed attribution rules, it says, accords with long-standing FCC precedent concerning practices that convey influence or control from one broadcaster to another (as addressed in the first bullet), or that "lead to the exercise of market power" and "raise related competition concerns" (as addressed in the remaining bullets).

Insofar as broadcasters claim that sharing agreements in general promote important public interest goals, ACA argued that the competitive harm to competition by the coordination of retransmission consent negotiations far outweighs the *de minimis* benefit to local broadcasters of negotiating together with pay television providers once every three years.

ACA also urged the FCC to refuse to grandfather existing agreements or practices between broadcasters, holding that all existing agreements should be terminated, and to communicate to broadcasters engaged in any practices that facilitate the coordination of retransmission consent not done pursuant to an agreement to cease and desist immediately.

"These trends are troubling because coordination of retransmission consent between separately owned TV stations serving the same market reduces competition among broadcasters. ACA has documented several times in the past that a reduction in competition allows broadcasters to extract more money than when each station has to negotiate on its own behalf," Polka said.