

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission’s Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the Telecommunications	)	
Act of 1996	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	

**REPLY COMMENTS OF  
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA)<sup>1</sup> hereby submits its reply comments to the Notice of Proposed Rulemaking (“*Notice*”)<sup>2</sup> in the above-captioned proceeding. In the *Notice*, the Commission seeks to refresh the record on proposals that it describes as “designed to increase participation in the broadcast industry by new entrants and small businesses” including a proposal it labels “Must-Carry for New Class A Television Stations.”<sup>3</sup> While the *Notice* does not specify any particular elements of that proposal, previous

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

<sup>2</sup> See *In re 2010 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; Promoting Diversification of Ownership In the Broadcasting Services*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011) (“*Notice*”).

<sup>3</sup> *Notice* ¶ 170.

proceedings have examined whether to grant new cable carriage rights to certain low-power stations that provide particular types of programming.<sup>4</sup>

NCTA has long supported efforts to promote a diverse media environment. But as NCTA has previously shown, for a variety of statutory, constitutional and policy reasons, expanding mandatory cable carriage is not an appropriate tool to advance that goal.

As we explained in the Commission's earlier proceeding on this matter,<sup>5</sup> Section 614 of the Cable Act limits must-carry rights to certain qualifying low-power stations.<sup>6</sup> The Commission cannot enlarge low-power stations' eligibility for carriage by creating a new group of Class A stations, as some have proposed. NCTA previously described that

[t]he Commission confronted this issue directly when it adopted the new Class A service . . . It concluded that qualifying for Class A status did not change a station's status for must-carry purposes. On reconsideration, the FCC reiterated that "Congress intended that Class A stations have the same limited must carry rights as LPTV stations. . . . [T]o be eligible for must carry, Class A stations, like other low power television stations, must comply with the Part 74 rules and the other eligibility criteria established by statute and our rules."<sup>7</sup>

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<sup>4</sup> See, e.g., *In re Promoting Diversification of Ownership In the Broadcasting Services*, Report & Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 ¶ 99 (2008) (seeking comment on the Commission's authority to adopt rules requiring cable carriage of Class A stations).

<sup>5</sup> See NCTA Comments, MB Docket No. 07-294 *et al.* (filed July 30, 2008) ("*NCTA 2008 Comments*"); NCTA Reply Comments, MB Docket No. 07-294 *et al.* (filed Aug. 29, 2008).

<sup>6</sup> See 47 U.S.C. § 534(h)(2). Section 614(h)(2) specifies the following qualification criteria: "(A) such station broadcasts for at least the minimum number of hours of operation required by the FCC under part 73; (B) such station meets all the obligations applicable to television broadcast stations licensed under part 73 with respect to the broadcast of non-entertainment programming, political programming, children's programming, and equal employment opportunity, and the FCC determines that the provision of such programming would address local news and informational needs which are not being adequately served by full power television stations because of the geographic distances of such full power stations from the low power station's community of license; (C) such station complies with interference regulations consistent with its secondary status under part 74; (D) such station is located no more than 35 miles from the cable headend and delivers a good quality signal to the headend; (E) the community of license of the station and franchise area of the cable system are both located outside the largest 160 metropolitan service areas and the population of the community of license did not exceed 35,000; and (F) there is no full power television station licensed to any community served by the cable system." *Id.*

<sup>7</sup> *NCTA 2008 Comments* at 4 (internal quotations omitted) (quoting *In re Establishment of a Class A Television Service*, Memorandum Opinion & Order on Reconsideration, 16 FCC Rcd 8244 ¶ 37 (2001)).

Moreover, tying carriage rights to a particular Class A station's programming content, as proposed in comments filed by the Diversity and Competition Supporters,<sup>8</sup> would only compound the serious First Amendment issues raised by mandatory carriage generally.<sup>9</sup>

In sum, as NCTA has demonstrated, the Communications Act and First Amendment bar the Commission from expanding must-carry rights for Class A low-power stations beyond the limited rights provided in Section 614 of the Act. For all these reasons, the Commission should decline to pursue any such proposal.

Respectfully submitted,

**/s/ Rick Chessen**

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<sup>8</sup> See Diversity and Competition Supporters (“DCS”) Comments at 34 (“DCS urges the Commission to designate a new sub-class of must-carry Class A stations that are hyper-local or provide multicultural and multilingual service.”).

<sup>9</sup> See *NCTA 2008 Comments* at 7 (explaining that a must-carry requirement designed to promote “hyper-local” “multicultural” or “multilingual” programming would be subject to – and almost certainly would not survive – the stringent “strict scrutiny” standard of review).