



**OHIO ASSOCIATION OF BROADCASTERS
VIRGINIA ASSOCIATION OF BROADCASTERS
NORTH CAROLINA ASSOCIATION OF BROADCASTERS**

May 9, 2012

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

Re: Written *Ex Parte* Communication in CS Docket No. 98-120

Dear Ms. Dortch:

This *Ex Parte* presentation is respectfully submitted on behalf of the Ohio Association of Broadcasters (OAB), the Virginia Association of Broadcasters (VAB), and the North Carolina Association of Broadcasters (NCAB) in connection with the Commission's consideration of extension of the "viewability rule" in the above-referenced proceeding. The Associations are non-profit organizations representing the interests of broadcasters in their respective states.¹

A significant number of OAB, VAB and NCAB's television members are must-carry stations—many of whom provide niche programming, such as religious and foreign language programming, and other locally-oriented broadcast services—that are directly impacted by the viewability rule. For the following reasons, OAB, VAB and NCAB urge the Commission to extend the viewability rule for at least an additional three years in order to ensure that must carry stations can be accessed by all cable subscribers regardless of whether they subscribe to digital, analog or hybrid systems.

First, the Commission has previously and conclusively interpreted Sections 614 and 615 of the Communications Act of 1934, as amended, to contain the statutory mandate that "cable operators must ensure that all cable subscribers have the ability to view all local broadcast

¹ OAB has 55 television members. VAB has 31 television members. NCAB has 36 television radio members. These members will be directly impacted by this proceeding.

stations carried pursuant to mandatory carriage.”² The Commission’s interpretation has not been questioned by any appellate court; it is the correct and natural reading of the statutory mandate; and there has been no demonstration of a plausible re-interpretation of Congressional intent. To the contrary, the Commission’s viewability rule promotes consumer interests by ensuring that all cable subscribers are able to view must carry programming. Congress has spoken clearly on behalf of consumers and the viewing public on this issue.

Second, there is simply no compelling rationale for abandoning the rule which has worked well. The viewability rule has operated exactly as Congress and the Commission anticipated by ensuring that all MVPD subscribers have access to, and are able to view, must carry signals. There is no record of complaints from broadcasters or cable companies with the viewability rule or problems with compliance, nor has the FCC received requests for waiver of the requirement.³

Finally, loss of the viewability rule would work real and tangible harm on broadcasters who rely on must carry for carriage by covered MVPDs as well as consumers. There is no dispute that, in the absence of the viewability rule, certain viewers will lose access to must carry programming, which will have a spillover effect on the broadcast stations that will be unable to reach those viewers in their market who subscribe to cable services and rely on analog receivers. As demonstrated by NAB,⁴ this financial harm from the loss of advertising revenues is not a theoretical harm—rather it is a real and practical impact of the loss of viewers. And as revenues decrease, broadcasters’ ability to fund essential broadcast services will be diminished. The detrimental impact from this loss in viewership and revenues would “fall most heavily on those that need them most: the roughly fifteen percent of Americans who rely solely on over-the-air television, which disproportionately consist of low-income and minority households.”⁵ Such an adverse impact would only serve to impair the “important governmental interest” at the very heart of the must-carry regime in “preserving the benefits of free, over the air local broadcast television.”⁶

For the above-stated reasons and those stated by the NAB in this proceeding, the Commission should extend the viewability rule for at least another three years.

² *Carriage of Digital Television Signals*, Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 8803, 8808 (2007) (“Viewability NPRM”).

³ *Carriage of Digital Television Signals*, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, 27 FCC Rcd 1713, at ¶ 15 (“Notice”).

⁴ See NAB *Written Ex Parte Communication*, CS Docket No. 98-120 (April 23, 2012).

⁵ *Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, Third Report and Order, 22 FCC Rcd 21064, at ¶ 55 (2007) (citations omitted).

⁶ *Id.* at ¶ 10 (citing *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 at 219-221 (1997)).

Sincerely,

OHIO ASSOCIATION OF BROADCASTERS

/s/ *Christine Merritt*

Christine Merritt, Executive Director

VIRGINIA ASSOCIATION OF BROADCASTERS

/s/ *Doug Easter*

Doug Easter, Executive Director

NORTH CAROLINA ASSOCIATION OF
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/s/ *Lisa Reynolds*

Lisa Reynolds, Executive Manager