Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for Delivery Of Video Programming	)	MB Docket No. 12-203
	)	

COMMENTS

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COMMENTS

I. INTRODUCTION AND BACKGROUND

The American Cable Association ("ACA")[1] files these comments in response to the Notice of Inquiry seeking data and information for the Commission's Fifteenth Report ("15th Report") on the state of competition for the delivery of video programming that will enhance the Commission's analysis of competitive conditions, enable the Commission to better understand the implications for the American consumer, and provide a solid foundation for Commission policy-making with respect to the delivery of video programming to consumers.[2]

[1]ACA represents nearly 850 small and medium sized cable operators, companies providing video, broadband Internet, and phone service in smaller and rural markets throughout the 48 contiguous United States and Alaska. ACA's membership includes a variety of businesses – family-owned companies serving small towns and villages, multiple system operators serving, and hundreds of companies in between. These companies deliver affordable basic and advanced services, such as high-definition television, Internet Protocol television ("IPTV") broadband Internet access, and digital voice, to about 7.4 million subscribers.

[2] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 12-203, ¶ 1 (rel. Jul. 20, 2012)("NOI").

In order to discharge its duty to report to Congress on the "status of competition in the market for the delivery of video programming,"[3] it is essential that the Commission's 15th Report discuss and analyze both multichannel video programming distributor ("MVPD") market entry and market exits. Specifically, ACA recommends that the Commission report: (i) the number of cable system closures and operators exiting from the market; (ii) the impact of such closures on competition; and (iii) the regulatory and non-regulatory conditions contributing to these system shutdowns. In addition, ACA urges the Commission to include in its report data that (i) highlights the substantial growth in importance industry-wide of retransmission consent fees as a source of revenue to local television broadcast stations; (ii) recognizes that competition between broadcasters includes not only competition for advertising, but competition for retransmission consent; (iii) reports how extensively separately owned same-market stations are entering into agreements that facilitate the coordination of negotiations with MVPDs for retransmission consent; and (iii) discusses the potential implications of this practice on competition.[4]

II. THE REPORT MUST INCLUDE DATA AND ANALYSIS CONCERNING MVPD SYSTEM CLOSURES AND MVPD EXITS FROM THE MARKETPLACE

The 14th Report discussed conditions affecting MVPD entry and market rivalry, including the impact of various regulations imposed on or adopted for the benefit of MVPDs.[5] To give a more complete picture of competition in the video distribution marketplace, ACA suggests that the 15th Annual Report expand its discussion of conditions and factors affecting MVPD market entry and focus additionally on factors leading MVPDs to either shut down systems or exit the marketplace entirely. These issues deserve attention in the Commission's annual competition report to Congress.

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[3] *See* Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 548(g).

[4] *See In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of Filing Requirement for Children's Television Programming Report*, Comments of the American Cable Association, MM Docket Nos. 00-168, 00-44, (filed Dec. 22, 2011) ("ACA Public File Comments") (describing media ownership, retransmission consent and antitrust implications of coordinated retransmission consent negotiations).

[5] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, MB Doc. No. 07-269, ¶¶ 46-73 (rel. July 20, 2012) (14th Report).

Data available to the Commission reveal that the number of cable systems has significantly decreased over the past five years, and ACA presents data in this filing indicating that the decrease is not solely due to consolidation, but to the permanent closure of many small systems. ACA believes that this trend reveals significant problems in the market for the delivery of video programming, particularly for smaller MVPDs in smaller markets and rural areas. The Commission should be reporting data indicating that these systems are disappearing from communities at a steady if not increasing rate and assessing the likely harm to consumers and possible causes, both regulatory and non-regulatory. Moreover, the Commission must examine and assess the significance of smaller cable systems leaving the market to the industry as a whole, including whether these closings are early warning signs of impeding problems for mid-sized and larger systems in less dense areas.

A Decreasing Number of Systems; An Increasing Number of System Closings. The 14th Report included a discussion of the number of cable systems registered with the Commission. It noted that 1,157 cable companies provided MVPD service to 34,005 communities at the end of 2011.[6] The Report recognized that, depending on the number of homes and the geographic size of the community, an operator may use one or more cable systems to provide video service to the community, and that a cable system is a physical system integrated to a principal headend.[7] Based on data in the Commission's Cable Operations and Licensing System ("COALS") database, the report states that as of December 14, 2011, there were 5,312 cable systems.[8] The report further noted that in metropolitan areas or regions, cable MVPDs, in pursuit of efficiencies, may operate a group of cable systems, whereas small cable companies that serve few homes in a single geographic area often operate only one cable system.[9]

[6] *Id.* ¶ 28.

[7] *Id.*

[8] *Id.* ¶ 28 n. 41.

[9] *Id.* ¶ 28.

ACA agrees that the number of cable systems in operation is important data that deserves inclusion in the Commission's annual video competition report to Congress. ACA, however, submits that in addition to reporting the number of cable systems as of June 30, 2012 in the 15th Report, the Commission should also include data going back for at least a five-year period to show whether the number of systems has increased or decreased. In fact, the Commission has been remiss in failing to include the number of cable systems in operation in its prior reports, thus depriving Congress of a context in which to assess significance of the current number of systems. Neither of the preceding Reports, (12th and 13th) even reported the total number of systems in operation for the period covering their reports.[10]

The information that ACA requests the Commission include in the 15th Report is readily available. ACA notes that the Commission regularly reports the number of cable systems in the Initial Regulatory Flexibility Act Analysis ("IRFA") that accompanies its notices of proposed rulemaking. For example, in its 2012 Program Access NPRM IRFA, the Commission reported that, based on industry data current as of October 2008, there were 6,101 systems nationwide, 4,410 of which have under 10,000 subscribers, an additional 258 systems have 10,000 to 19,999 subscribers.[11] In the IRFA of its 2007 Program Access NPRM, the Commission reported industry data indicating that, as of Oct. 2005, "of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers."[12] Thus, even based on this limited set of

[10] *See e.g. In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503 (2006); *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542 (2007).

[11] *In the Matter of Revision of the Commission's Program Access Rules; News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control; Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, et al.*, Notice of Proposed Rulemaking, 27 FCC Rcd 3413, Initial Regulatory Flexibility Analysis, ¶ 11 n. 28 (2012) (data derived from TELEVISION & CABLE FACTBOOK 2009 at F-2 (2009); the "data do not include 957 systems for which classifying data were not available).

[12] *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the*

data available to the Commission (prior industry reports and its COALS database), it is clear that between 2005 and 2011, the total number of cable systems has decreased by more than 26%, shrinking from 7,208 to 5,312. For systems with fewer than 10,000 subscribers, the percentage drop in the number of systems was even greater. This is important data concerning one of the three main types of providers in the video distribution market, and it should be included in the 15th Report to give a complete picture of the state of video competition.

ACA acknowledges that the Commission's data, discussed above, likely reflects, in part, the loss of systems due to the interconnection of one headend to another, or the interconnection of multiple headends to achieve operating efficiencies. As a result of these interconnections, a broader area may be served by a single system rather than multiple systems. However, the data also highlights the closures of many small cable systems, and the accompanying cessation of service to the community. The Commission should therefore also seek to determine and report on the number of cable systems that have closed where no wireline MVPD system took their place.

With regard to this information, ACA has obtained data provided to it by the National Cable Television Cooperative ("NCTC"), showing primarily the number of NCTC member systems that have shut down and ceased distributing video programming. The data show that during the period from June 30, 2010 to June 30, 2012, 304 of NCTC's member systems had closed. During the two preceding calendar years, 2008 and 2009, NCTC members closed, respectively, 207 and 282 systems. Overall, during the immediately preceding five-year period, NCTC members closed a total of 793 small and rural cable systems, the vast majority of which reflect systems that have ceased providing video service in their communities.[13] At the time of their closing, these systems served a

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Communications Act: Sunset of Exclusivity Contract Prohibition, Notice of Proposed Rulemaking, 22 FCC Rcd 4252, Initial Regulatory Flexibility Analysis, ¶ 7 n. 23 (2007) (" 2007 Program Access NPRM") (Warren Communications News, TELEVISION & CABLE FACTBOOK 2006*,* "U.S. Cable Systems by Subscriber Size," page F-2 - data current as of Oct. 2005; the data "do not include 718 systems for which classifying data were not available.).

[13] ACA's Chairwoman and Chief Executive Officer, WOW! Internet, Cable & Phone, Colleen Abdoulah, recently reported to the Senate Committee on Commerce, Science & Transportation that since 2008, nearly 800 ACA

total of 35,264 subscribers. In order for the Commission to give Congress an accurate picture of the health of competition in video distribution markets, it is incumbent on the Commission to include in the 15th Report data revealing the overall decrease in the number of cable system, and all available information concerning the number of these systems that closed where no other wireline MVPD took their place.

Consequences of System Closings. The Commission has recognized the harms to communities of small cable systems going out of business. When it adopted the HD carriage exemption, the Commission noted that loss of these small cable systems could result in the loss of access to local broadcast networks where customers cannot obtain strong signals over-the-air and where local signals are not available from other sources, such as through DBS providers.[14] In its recent order extending the exemption "to protect the viability of small systems and their service to rural and smaller market consumers," the Commission reiterated its findings of consumer harms caused by system closures.

> [T]he loss of a small cable system could mean the effective loss of all MVPD service for some customers. Moreover, in some areas, due to poor over-the-air reception, the loss of a small cable system could mean the loss of any access to some or all broadcast signals as well.[15]

In its comments on the viewability rules, ACA described adverse consequences in areas where small system operators decide that their best decision is to shut down their systems, leaving consumers without access to terrestrial MVPD services altogether and thereby depriving them of the benefits of competition in these markets.

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member small systems have closed across the country. *The Cable Act at 20,* Testimony of Colleen Abdoulah, Chairwoman and Chief Executive Officer at WOW! Internet, Cable & Phone, *before the* Senate Committee on Commerce, Science, & Transportation, at 4 (July 24, 2012), *available at* http://commerce.senate.gov/public/?a=Files.Serve&File_id=cc8a6776-7e54-48e0-921f-11daebefc155 (last visited Sept. 10, 2012) ("Abdoulah Testimony").

[14] *In the Matter of Carriage of Digital Television Broadcast Signals*, Fourth Report and Order, 23 FCC Rcd 13618, ¶ 7 (2008).

[15] *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Fifth Report and Order, 27 FCC Rcd 6529, ¶ 21 (2012).

> The small cable systems that are encompassed within the existing HD carriage exemption are an important part of the overall market for MVPD services. These small systems provide an important competitive alternative to digital broadcast satellite ("DBS") services in the areas they provide service, which are typically rural areas of smaller markets. Although they often lack the robust channels offerings of DBS providers, these small operators can provide a low cost option for customers that prefer their service from a local provider, do not wish to obtain a set-top box to view programming, or are unable to qualify as DBS subscribers due to poor credit.[16]

ACA's concerns are not just theoretical. For example, one recent article reported that the closing of a thirty-year old rural New Hampshire cable system, combined with local topography making good reception of satellite signals impossible, will leave residents without access to any MVPD services.[17]

The repercussions of these system closures and market exits can be profound. Not only does the rapidly escalating price of video programming contribute to system closures and MVPDs exiting from the market for video content delivered to consumers, leaving them without any MVPD service, it adversely affects small and rural communities by removing a potential wireline provider of broadband Internet and other advanced services, thus adversely impacting competition across several services, including the delivery of video programming to consumers.[18]

Causes of System Closings and Market Exits. Once the Commission has reported the decreasing number of cable systems nationwide, and the repercussions this has on competition, it should analyze the possible causes of such closures and cable operator decisions to exit the MVPD market altogether, including both regulatory and non-regulatory conditions leading operators to

[16] *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules,* Comments of the American Cable Association, CS Doc. No. 98-120, 2 (filed Mar. 13, 2012) ("ACA Viewability Comments").

[17] Ann Bryants, Sun Journal, *Town Officials react to loss of cable TV* (Oct. 7, 2010) (Argent Telecommunications shutting down, citing the "economics of providing the service to a small customer base, many of whom take the minimal cable package, as the reason for discontinuing service;" the hills around several of the affected communities interrupt the view of the southwestern sky that is needed for good satellite reception, leaving residents without an MVPD alternative).

[18] *See* Letter to Chairman Julius Genachowski, Federal Communications Commission, from Rich Fickle, President & CEO, National Cable Television Cooperative, Inc. MB Docket No. 10-71, at 2 (filed Sept. 28, 2011) ("NCTC Ex Parte Letter").

shutter systems. Anecdotally, ACA believes the primary causes of small and rural system closings are increasing programming costs and pole attachment fees.[19] Additional causes of operators ceasing business may include property taxes, "skyrocketing operating costs, [and] government regulations changing daily."[20]

The Commission too is well aware of the unique challenges small and rural MVPDs face in offering competitive video, voice and broadband Internet services due to the cost of system build-outs and upgrades in less densely areas with a limited customer base.[21] The 14th Report accurately noted that "[o]ne of the biggest challenges small and rural MVPDs report facing is access to video content at competitive rates. These MVPDs indicate that a failure to acquire programming at competitive prices and terms reduces their ability to provide consumers with competitive and affordable video service offerings meeting the economic needs of the community."[22]

[19] *See, e.g.,* Abdoulah Testimony at 4 ("Our members include the smallest operators in the market. In fact, 82% of ACA's members serve fewer than 5,000 subscribers, and 30% serve fewer than 500 subscribers. Since 2008, nearly 800 of these small systems have closed across the country due in large part to escalating retransmission consent and programming costs that cannot be passed along to consumers, a trend I read will continue in many rural communities."); ACA Viewability Comments at 12-13 (describing member survey results reporting net video income decreases for systems serving fewer than 2,501 subscribers due primarily to significant increases in programming costs, particularly retransmission consent). Suburban and rural cable operators generally must attach their equipment to a greater number of their poles than their urban counterparts, yet have fewer subscribers per mile over which to spread the costs. Thus, excessive pole attachment costs impose a disproportionately heavy burden on small and rural cable operators. Despite Section 224, cable operators continue to face problems in obtaining reasonable access to poles. Even with the Commission's most recent pole attachment reforms, utilities continue to context requests from cable operators concerning the timing and cost of make-ready work. *See In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011). ACA members have reported to it that this significantly drives up the cost of operations and deployments. Additionally, Section 224 applies only to investor-owned utilities and not to utilities controlled by municipalities or other public entities. The publicly controlled utilities serve about 14 percent of the U.S. population, and while primarily serving rural markets, they also serve major markets such as Los Angeles, Orlando, San Antonio and Seattle. Public Power, American Municipal Power, http://amppartners.org/consumers/public-power/ (last visited Sept. 10, 2012). The unregulated rates assessed by publicly owned utilities far exceed pole attachment rates charged by regulated entities.

[20] Shawna Creveling, *The Creston News Advertiser, Cable Company closes leaving customers without TV service* (June 29, 2012) (B&L Technologies shutting down service to several Iowa towns and cities, leaving 600 subscribers without cable service).

[21] 14th Report, ¶ 345.

[22] *Id.*

ACA and others have repeatedly described for the Commission how higher programming costs deplete the amount of capital available for smaller MVPDs' broadband deployment efforts.[23] The NCTC recently echoed these concerns, noting the direct relationship of escalating cable programming and retransmission consent costs to small to rural MVPD market exits in a September 2011 letter included in the docket of the Commission's retransmission consent reform rulemaking.[24]

> While increasing costs of inputs are a concern you would expect as part of any ongoing business, in the video programming market it has now reached a critical level. Many now believe that the video distribution business is no longer sustainable. Since January 2010, 28 member companies have exited the video business completely, unable to absorb the increases and unwilling to ask cash-strapped consumers to pay more for the same service. If current programming market trends hold, we expect to see this pace increase to the detriment of consumers and competition. This has the undesirable effect of lessening competition in the video marketplace as well as

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[23] *See* ACA Retransmission Consent Comments at 85-86 (higher programming costs deplete capital available for smaller MVPDs broadband deployment efforts; ability of rural providers to reach unserved areas with broadband plant is dependent on their ability to provide consumers with "triple-play" voice, video and data offerings; ability to include video in bundle is dependent on "reasonable and economic access to content"); Resolutions Passed by the Board of Directors of the National Association of Regulatory Utility Commissioners, TC-1, "Resolution on Fair and Non-Discriminatory Access to Content" (Feb. 16, 2011), *available at* http://www.naruc.org/News/default.cfm?pr=246 (last visited Sept. 10, 2012) (inability of providers in small and mid-sized markets to access video programming at reasonable rates will deter entry, curtail competition and adversely impact broadband deployment in unserved areas). *See In the Matter of Amendment of the Commission's Rules Related to Retransmission* Consent, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, *et al*, at 24-25 (filed May 27, 2011*); see also In the Matter of Comment Sought on Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent,* MB Docket No. 10-71, Comments of Organization for the Promotion and Advancement of Small Telecommunications Companies, National Telecommunications Cooperative Association, Independent Telephone and Telecommunications Alliance, Western Telecommunications Alliance, and Rural Independent Competitive Alliance at 3-4 (filed May 18, 2010) (rising costs of retransmission consent raise the costs of multichannel video, harm competition, and hinder the deployment of advanced services by small and mid-size MVPDs; multiple parties "representing a variety of MVPDs have, in separate filings, provided similar demonstrations that the current rules are outdated, harmful to consumers, impede broadband adoption and deployment, and are therefore in need of reform.") (citations omitted).

[24] *See* NCTC Ex Parte Letter. NCTC acts as a buying cooperative for video programming on behalf of its member companies, who may "opt into" programming agreements if they are satisfied with the prices negotiated. *Id.* at 1. At the time of the letter, NCTC reported having more than 950 independent cable operator members, nearly half of which serve 1000 or fewer subscribers. *Id.* at 1. As of June, 2012, NCTC reported having about 910 member companies. *See In the Matter of Revisions of the Commission's Program Access Rules; News Corp. and the DIRECTV Group, Inc. Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control, Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, et al.*, Comments of the American Cable Association, MB Doc Nos. 12-68, 07-18, 05-192, Appendix B, Declaration of Frank Hughes, ¶ 5 (filed June 22, 2012).

> choice for consumers. People living in small, rural communities seem to be among the first Americans to face this unwelcome trend.[25]

To ensure the completeness of its 15th Report, the Commission must include a discussion of the likely regulatory and non-regulatory factors contributing to large number of system closings and cable operator departures from the marketplace. This is particularly important data and analysis for the Commission to provide as policymakers begin to assess the successes and failures of the Cable Competition and Consumer Protection Act of 1992, and whether and how it needs to be reformed.[26]

III. THE 15th REPORT MUST TAKE ACCOUNT OF IMPORTANT DEVELOPMENTS IN BROADCAST MARKETS INCLUDING THE IMPACT OF COORDINATION OF RETRANSMISSION CONSENT NEGOTIATIONS ON LOCAL BROADCAST COMPETITION

In its 14th Report, the Commission placed entities into one of three strategic groups for purposes of analysis: MVPDs, broadcast television stations, and online video distributors ("OVDs"), and within these categories, addressed industry structure, conduct, and performance including regulatory and non-regulatory conditions affecting MVPD and broadcast television entry and rivalry and performance.[27] Broadcast station practices that decrease competition are crosscutting issues that touch all of these areas.[28]

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[25] NCTC Ex Parte Letter at 1.

[26] Abdoulah Testimony, at 4.

[27] For example, the 14th Report discussed horizontal concentration in the local broadcast television markets, and recognized the growing importance to broadcast station bottom-lines of retransmission consent revenues. NOI, ¶¶ 167-170, 222. It noted that the Commission has opened a proceeding to reform its retransmission consent good faith negotiation rules, and sought comment on whether it should be a per se violation of the good faith standard for a station to grant another station (or station group) the right to negotiate its retransmission consent agreements when the stations are not commonly owned, a practice that MVPDs suggest lead to broadcast stations charging higher prices to MVPDs than each station could achieve by negotiating on its own. 14th Report, ¶ 193.

[28] NOI, ¶¶ 22-23 (MVPD Structure – Conditions Affecting Entry and Rivalry); *Id.*, ¶¶ 40, 43, 45-47 (Broadcast Television Structure; Horizontal Concentration; Conditions Affecting Entry and Rivalry; Price Rivalry). The NOI asks a series of specific questions that span several issue categories concerning the level of retransmission consent fees and their impact on both broadcast and MVPD entry and rivalry. Retransmission consent is identified as a regulatory condition affecting MVPD entry and seeks comment on the impact of retransmission consent and other Commission rules on entry and rivalry among MVPDs. *Id.* ¶ 23. With regard to broadcast industry structure, the NOI notes that the Commission's broadcast television ownership rules impose certain limitations on the number of broadcast television stations an entity can own in a designated market area

As the 14th Report recognizes, since the Commission's last comprehensive analysis of its media ownership rules, retransmission consent compensation has grown in importance.[29] More specifically, "Retransmission consent fees have replaced network compensation as the second largest source of revenue for broadcast television stations."[30] Where broadcasters had previously relied primarily on advertising revenues to fund their operations, today affiliates of the Big 4 television networks (ABC, CBS, Fox and NBC) are increasingly relying on a dual revenue model that includes carriage fees.[31]

Accordingly, ACA submits that the 15th Report will not accurately depict broadcast television structure, performance, and competition unless it (i) highlights the substantial growth in importance industry-wide of retransmission consent fees as a source of revenue to local television broadcast stations; (ii) recognizes that competition between broadcasters includes not only competition for advertising, but competition for retransmission consent; (iii) reports how extensively separately owned same-market stations are entering into agreements that facilitate the coordination of negotiations with MVPDs for retransmission consent; and (iii) discusses the potential implications of this practice on competition.[32] It is especially important to include this information if, as the NOI

("DMA"). *Id.* ¶ 43. The NOI indicates that the Commission is interested in tracking common ownership of broadcast stations nationally and by DMA, and asks whether there is other data available that may better inform the Commission's assessment of horizontal concentration in the broadcast station industry. *Id.* ¶ 40. The NOI further explains that although the Commission also collects data and information about the ownership of broadcast television stations for its Quadrennial Media Ownership review, here, the Commission is "exploring how the structure of broadcast television affects competition in video programming distribution." *Id.* ¶ 43 n.76. Relatedly, the NOI seeks comment on broadcast industry performance, particularly on price rivalry concerning revenue derived from retransmission consent fees. *Id.* ¶¶ 45, 47.

[29] 14th Report, ¶¶ 222-225, Table 17 (showing retransmission consent revenues grew since 2006 from $214 million out of $2.46 billion to $931 million out of $2.20 billion in 2010 – representing an increase from 0.9% of revenues in 2006 to about 4.2% in 2010).

[30] *Id.* ¶ 222.

[31] *See, e.g.*, Staff, TVNewsCheck, *Retrans Revenue To Top $3.6B Through 2017*, *available at* http://www.tvnewscheck.com/article/2011/05/25/51472/retrans-revenue-to-top-36b-through-2017 (last visited Sept. 10, 2011) (reporting that SNL Kagan has projected that total industry retrans fees could increase from $1.14 billion in 2010 to $3.61 billion by 2017, with average per-sub fees for cable MSOs potentially more than doubling over time from their levels through 2017).

[32] *See* ACA Public File Comments (describing media ownership, retransmission consent and antitrust implications of coordinated retransmission consent negotiations).

suggests, the report is to provide the Commission a solid foundation for policy-making with respect to the delivery of video programming to consumers.[33]

A. The Commission Should Continue to Take Account of the Substantial Growth in Importance Industry-Wide of Retransmission Consent Fees as a Source of Revenue to Local Television Stations

In its 14th Report, the Commission recognized that retransmission consent fees have escalated rapidly over recent years, and that by 2009, had "replaced network compensation as the second largest source of revenue for broadcast television stations."[34] ACA applauds the Commission for recognizing that retransmission consent fees are increasingly important to the bottom lines of broadcast stations, and recommends that the Commission continue to report this important metric. In order to assess competition between broadcasters, the Commission must closely track and report the broadcasters' most significant revenue sources in today's market, including revenue generated from retransmission consent.

By late November 2011, SNL Kagan reported that retransmission consent revenues had increased from $214.6 million in 2006 to approximately $1.4 billion in 2010 and, this revenue is projected to increase to $3.9 billion by 2015.[35] There are frequent reports of articles or analyses of broadcaster financial performance that describe the year-to-year increase and total revenue now available due to retransmission consent.[36] According to Kagan, retransmission consent revenue has

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[33] NOI, ¶ 1.

[34] 14th Annual Report, ¶ 222.

[35] Robin Flynn, SNL Kagan, Broadcast Investor, "Boosting retrans projections as TV station owners succeed in pushing rates" (Nov. 22, 2011) ("Kagan November 22, 2011 Article"); *see also* Staff, TVNewsCheck, *Retrans Revenue To Top $3.6B Through 2017*, *available at* http://www.tvnewscheck.com/article/2011/05/25/51472/retrans-revenue-to-top-36b-through-2017 (last visited Sept. 10,, 2012) (reporting that SNL Kagan has projected that total industry retrans fees could increase from $1.14 billion in 2010 to $4.86 billion by 2017, with average per-sub fees for cable MSOs potentially more than doubling over time from their levels through 2017).

[36] Fisher Communications' Fourth Quarter and Full-Year 2011 Financial Results Driven by Strong Performance of Company's Core Broadcast Stations and Growing Momentum of Digital Portfolio, Press Release, Fisher Communications (rel. Mar. 1, 2012), *available at* http://investor.fsci.com/phoenix.zhtml?c=61026&p=irol-newsArticle&ID=1667951&highlight= (last visited Sept. 10, 2012) (including retransmission consent as rationale for strong fourth quarter); Gray Reports Strong Non-Political 4Q Rev, Press Release, TVNewsCheck.com (rel. Feb. 24, 2012), *available at* http://www.tvnewscheck.com/article/2012/02/24/57677/gray-reports-strong-nonpolitical-4q-rev (last visited Sept. 10, 2012) (listing retransmission consent revenue increasing to $5 million

increased from a negligible amount of total broadcast gross revenues in 2006,[37] to 4.5 percent in 2008,[38] and reached 15 percent in 2012.[39] For some individual broadcasters, the percentage of total revenues represented by retransmission consent is already 20 percent.[40] A recent article on retransmission consent summed the situation up thusly: "What started as a trickle is now a *vital* source of broadcast revenue."[41]

In light of the fact that retransmission consent revenues are rapidly growing and are becoming an increasingly important revenue source for local stations – now second to advertising as single source of station revenues – the Commission's report must continue to highlight their growth in importance to broadcast station finances.[42]

B. The Commission Must Recognize that Broadcast Television Stations Compete for Retransmission Consent Revenues

The 14th Report finds that broadcast stations cater to two distinct sets of customers: audiences and advertisers.[43] Further, that broadcast stations engage in price rivalry involving both prices charged advertisers through the sale of on-air advertising time and the prices charged to MVPD systems for retransmission consent.[44] ACA agrees. Like competition for advertising dollars, competition among local stations for retransmission consent fees based on the quality of their

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for the quarter); Scripps Reports Fourth-Quarter Results, Press Release, Scripps Co. (rel. Feb. 24, 2012), *available at* http://escrippsnews.scrippsnet.com/node/2472 (last visited Sept. 10, 2012) (reporting increased retransmission consent revenue of 30% year over year).

[37] Robin Flynn, SNL Kagan Broadcast Investor, *Boosting retrans projections as TV station owners succeed in pushing rates*, (Nov. 22, 2011).

[38] *See* Tony Lenoir SNL Kagan Broadcast Investor, *Retrans for public station group grows 31.4% in '11, reaches 14.2% of total TV revs*, (Mar. 22, 2012).

[39] Justin Nielson, SNL Kagan Broadcast Investor, *TV retrans revenues up 29% YOY in Q2* (Aug. 30, 2012).

[40] *See* Tony Lenoir, SNL Kagan Broadcast Investor, *Retrans for public station groups grows 31.4% in '11, reaches 14.2% of total TV revs*, (March 22, 2012).

[41] David Hatch, TVNewsCheck, *It's a Long, Hard Road to Retrans Reform*, (Sept. 5, 2012)(emphasis added).

[42] 47 U.S.C. § 325(b).

[43] 14th Report, ¶ 156.

[44] *Id.*, ¶ 190, 193.

programming to attract viewers, is also a form of local broadcast competition.[45] And, not surprisingly, competition among broadcasters in a market for retransmission consent fees is typically most intense among the top four-rated stations. ACA submits that in its 15th Report, the Commission must also explicitly recognize that separately owned, same-market broadcast stations compete amongst themselves for retransmission consent fees.

C. The Commission Must Report the Widespread and Increasing Practice of Separately Owned Same-Market Television Stations Coordinating Retransmission Consent Negotiations.

In addition to reporting that retransmission consent revenue levels are growing industry-wide and becoming an increasingly important revenue source for broadcasters, and that local broadcasters compete against one another to secure retransmission consent fees from MVPDs, the Commission must report the widespread and increasing practice of separately owned broadcast stations operating in a single market coordinating their retransmission consent negotiations. More specifically, the Commission must now quantify, using publicly available information, the extent of the practice of separately owned same-market broadcasters coordinating their retransmission consent negotiations. Reporting on the extent of these practices will provide Congress a full picture of the status of competition in the market, particularly between broadcast stations that operate under separate ownership in the same market.

In March 2011, ACA reported to the Commission that there were 62 instances of separately owned same-market full power broadcast stations affiliated with a Big 4 network operating under some form of sharing agreement.[46] In order to identify the number of instances of coordinated

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[45] *See, e.g.*, *In the Matter of 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*, Reply Comments of the American Cable Association, MB Doc. Nos. 09-182, 07-294, at 8-9 (filed Apr. 17, 2012) ("ACA Media Ownership Reply Comments"); *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Reply Comments of the American Cable Association, MB Docket No. 10-71 at 24-25 (filed June 27, 2011) ("ACA Retransmission Consent Reply Comments").

[46] *In the Matter of 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*

retransmission consent negotiations, ACA asked its members who operate in the markets of the broadcasters named in the 62 instances the following question:

> In the last year, have you simultaneously negotiated retransmission consent for 2 separately owned big 4 networks (i.e. ABC, NBC, CBS, or FOX) in the same TV market with a single representative for both broadcasters?

Diversification of Ownership in the Broadcasting Services, Comments of the American Cable Association, MB Doc. Nos. 09-182, 07-294, at 6 (filed Mar. 5, 2012) ("ACA Media Ownership Comments"). While broadcasters appear to generally make known when sharing agreements exist between stations, they rarely publicly disclose the terms of these arrangements. Thus, it is difficult to determine from publicly available information whether or not a sharing agreement includes the assignment of retransmission consent negotiation rights. Nonetheless, by examining publicly available documents and records, ACA has twice provided the Commission data on instances in which separately owned same-market full power broadcast stations affiliated with Big 4 networks were operating under some form of sharing agreement. In 2010, ACA submitted information to the Commission gathered from publicly available documents and records showing that separately owned full power stations in the same market that are affiliated with Big 4 networks are operating under some form of sharing agreement. In addition, ACA submitted data and analysis based on reports from ACA members and other MVPDs, demonstrating that 36 pairs of Big 4 broadcasters in 33 markets had coordinated their retransmission consent negotiations using a single negotiator for both stations within the last three years. In every instance, the broadcasters coordinating their retransmission consent negotiations were operating under some sort of sharing agreement. *In the Matter of 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*, Comments of the American Cable Association, MB Docket No. 09-182, at 9, Appendix A (filed June 22, 2010) ("ACA Media Ownership NOI Comments"); *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, Comments of the American Cable Association, MB Docket No. 10-71, at 7 (filed May 27, 2011) ("ACA Retransmission Consent Comments"). Little less than one year later, ACA reported that it had found 56 instances of Big 4 broadcasters operating under a sharing agreement. *See id.* at 7 n.6, Appendix B (explaining that in ACA Media Ownership NOI Comments at 9, Appendix A, *Table 2,* the table referenced showed 57 instances of multiple Big 4 affiliates operating under some sort of sharing agreement. ACA subsequently determined that one of the listed instances (Ft. Smith-Fayetteville-Springdale-Rogers, AR) was erroneously placed in this table and is actually a case of common ownership. Removal of this market leaves 56 instances of sharing agreements); *see also In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, MB Docket No. 10-71, Comments of the American Cable Association, at Appendix C (filed May 18, 2010) ("ACA Petition Comments"). Last year, ACA reported that there are now 62 instances of these sharing agreements in 55 designated market areas ("DMAs"). ACA Media Ownership Comments at 6-7; *See* Appendix A, Table 1. The first time that ACA undertook the effort to identify these instances in 2010, ACA identified a total of 56 in 50 DMAs. ACA Media Ownership NOI Comments at 9, Appendix A, Table 2. Therefore the net number of instances had increased by 10.7%, and the net number of DMAs increased by 10% in approximately one year. Of the six new instances reported by ACA on its updated 2011 list, five are instances of sharing agreements that didn't exist at the time ACA last submitted its list (West Palm Beach-Ft. Pierce; Tucson (Sierra Vista); Topeka, Anchorage; and Idaho Falls/Pocatello(Jackson)) and three are instances of sharing agreements that ACA failed to identify the last time it submitted its list (Traverse City-Cadillac; Columbus-Tupelo-W Pnt-Hstn; and Casper-Riverton). ACA removed two instances from its updated list because publicly available documents and records indicated that broadcasters were no longer in some kind of sharing agreement (Ottumwa-Kirksville) or one of the stations in some kind of sharing agreement were no longer a Big 4 affiliate (Springfield (Nexstar/Mission)). Since the ACA report, there has been a 63rd instance. In Toledo, OH, Lin Media sold Fox affiliate WUPW to American Spirit Media. American Spirit Media now allows Raycom Media to operate the station in tandem with its CBS affiliate WTOL under a shared services agreement. Kris Turner, *FCC Approves Channel 36 Sale; 63 Layoffs Loom*, Toledo Blade (Mar. 27, 2012), *available at* http://www.toledoblade.com/TV-Radio/2012/03/27/Channel-36-s-sale-finalized-63-layoffs-loom.html (last visited Sept. 10, 2012).

In 52 of the 62 instances in where separately owned, same market broadcasters affiliated with a Big 4 Network were operating under some form of sharing agreement, ACA was able to obtain a response from at least one of its members.[47] Of these 52 responses, ACA was able to confirm 46 instances, involving 41 DMAs, where negotiations of retransmission consent was conducted by a single representative on behalf of two non-commonly owned stations. The last time ACA surveyed its members, it identified 36 instances in 33 markets.[48] Accordingly, the data shows that the number of instances of coordination had increased by 10 instances in 8 DMAs or 27.8% since ACA first reported on this practice to the Commission.[49] Growth in the instances of coordinated retransmission consent negotiations is an important metric that must be included in the 15th Report's discussion of broadcast station conduct.

D. The Commission Must Recognize that Competition in Local Television Markets May Be Reduced When Separately Owned Same-Market Broadcasters Coordinate their Retransmission Consent Negotiations.

No report on the state of competition in the market for the provision of broadcast television service can be complete without a discussion of the practices of non-commonly owned broadcast television stations that are alleged to directly reduce competition in local markets. ACA has provided

[47] ACA could not receive a response from its members for 10 instances. ACA did not have members in the market of 8 instances (West Palm Beach, FL; Honolulu, HI; Rochester, NY; El Paso, TX, Monterey-Salinas, CA; Utica, NY; Grand Junction-Montrose, CO; and Victoria, TX), and ACA members did not negotiate retransmission consent with the broadcasters in the last year in the other two instances (Tri-Cities, TN-VA and Traverse City-Cadillac, MI).

[48] ACA Media Ownership NOI Comments at 9, Appendix A; ACA Retransmission Consent Comments at 7.

[49] *See* Appendix A, Table 2. Of the ten net new instances of coordinated retransmission consent negotiations, there were 14 new instances reported in 2012, and four instances that weren't reported, for a net of 10 additional instances. Nine of the new instances appeared on ACA's 2010 list of instances in which broadcasters operated under some kind of sharing agreement, but at that time, no ACA member was able to confirm that these broadcasters used a single negotiating representative. These markets are (i) Dayton, OH; (ii) Lincoln and Hastings-Kearney, NE; (iii) Augusta, GA; (iv) Peoria-Bloomington, IL (Granite/Barrington); (v) Peoria-Bloomington, IL (Nexstar/Sinclair); (vi) Wichita Falls-Lawton; (vii) Sioux City; (viii) Joplin-Pittsburg; (ix) Rochester-Mason City-Austin. Five of the new instances did not originally appear on ACA's initial list of instances in which broadcasters operated under some kind of sharing agreement, (Topeka; Anchorage; Traverse (Heritage/Cadillac); Columbus; and Casper-Riverton). In the last list, ACA reported four instances of broadcasters using the same negotiator, but ACA could not re-confirm these broadcasters negotiated in this way in the last year and were removed from this year's list (Syracuse; Springfield (Nexstar/Mission); Traverse (Barrington/Tucker); and Corpus Christi).

in several filings with the Commission its data and analysis demonstrating that coordinated retransmission consent negotiations by separately owned, same market broadcasters lessen competition in local broadcast markets, as evidenced by these broadcasters ability to drive up prices beyond levels achievable if each station were to negotiate retransmission consent separately.[50] In these instances, broadcasters collude, rather than compete against one another for retransmission consent fees.[51]

Competition among local stations for retransmission consent fees based on the quality of their programming to attract viewers, is also a form of local broadcast competition, and should be recognized as such by the Commission. In particular, competition among broadcasters in a market for retransmission consent fees is typically most intense among the top four-rated stations. Coordination of retransmission consent among same-market Big 4 affiliates decreases this form of competition because it permits broadcasters to secure higher retransmission consent fees not through increasing programming quality but simply through increased bargaining leverage in retransmission consent negotiations, thus adversely affecting the level of local competition. In lieu of acquiring a second station in the same market, which is prohibited between two top four-rated broadcast stations in a market, broadcasters are simply coordinating their carriage negotiations, a practice which achieves the same end. ACA has repeatedly argued that this diminishes competition

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[50] ACA Media Ownership Comments at 8; ACA Media Ownership Reply Comments at 19-20. *See* ACA Media Ownership NOI Comments at 5-10; ACA Petition Comments at 11-14; ACA Retransmission Consent Comments at 20-22; ACA Retransmission Consent Reply Comments at 77-85; *see also* ACA Public File Comments, at 10-11; *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Reply Comments of the American Cable Association, MM Doc. Nos. 00-168, 00-44, at 8-10, (filed Jan. 17, 2012) ("ACA Public File Reply Comments").

[51] ACA Media Ownership Comments at 8-11; ACA Media Ownership Reply Comments at 8-10; *see* ACA Media Ownership NOI Comments at 5-10, 19-20; ACA Retransmission Consent Comments at 21-22; ACA Retransmission Consent Reply Comments at 33-37. ACA's assertions concerning the effects of coordinated negotiations on retransmission consent prices do not rest solely on economic theory. Available empirical evidence submitted by cable operators forced to negotiate with broadcasters that coordinated their retransmission consent negotiations suggests that common control or ownership of multiple Big 4 affiliates in a single market results in significantly higher retransmission consent fees, ranging from 21.6% to 161% higher than for separately-owned or controlled broadcast affiliates. ACA Retransmission Consent Comments at 10-11.

among same-market broadcasters and effectively increases horizontal concentration.[52] The practical effect of the coordination of retransmission consent negotiations between Big 4 stations under a formal, legally binding, agreement or informal understanding or arrangement is no different than the formation of an actual duopoly by license transfer.[53] The adverse impact on competition among broadcasters of such coordinated retransmission consent negotiations is no different than the impact made possible through merger, which are not countenanced for top four rated television stations in the same market under the Commission's local television station ownership limits.[54]

Retransmission consent compensation has now grown to be a vital source of broadcast station revenue. Accordingly, assertions that negotiating practices by non-commonly owned, same-market broadcast stations are reducing competition with respect to an increasingly important source of station revenues, evidenced by higher prices to MVPDs and their subscribers, must be included in

[52] *See* ACA Media Ownership Comments at 8-11; ACA Media Ownership NOI Comments at 6-11. ACA Retransmission Consent Comments at 5-25; ACA Retransmission Consent Reply Comments at 2-32; ACA Public File Comments at 2-11; ACA Public File Reply Comments at 2-17. An initial economic analysis done by ACA's economic expert, Professor William P. Rogerson, demonstrated that standard economic theory predicts that if two otherwise competing Big 4 broadcasters in the same market are able to collectively negotiate to maximize their joint profit, they will be able to charge higher retransmission consent fees than if the two networks were separately owned or controlled so long as the networks are partial substitutes for one another, as are broadcast networks. ACA Petition Comments at 9-14; William P. Rogerson, Professor of Economics, Northwestern University, "Joint Control or Ownership of Multiple Big 4 Broadcasters in the Same Market and Its Effect on Retransmission Consent Fees," May 18, 2010, at 7-8 ("Rogerson I"); ACA Retransmission Consent Comments at 9; William P. Rogerson, Professor of Economics, Northwestern University, "Coordinated Negotiation of Retransmission Consent Agreements by Separately-Owned Broadcasters in the Same Market", at 6,11 ("Rogerson II"). Professor Rogerson explained that by operating under coordinated control for the purpose of negotiating retransmission consent, Big 4 affiliates are able to "act as a single entity for purposes of negotiating retransmission consent prices . . . [and] this coordinated activity allows broadcast stations to negotiate higher retransmission consent fees than they would otherwise be able to." Rogerson I, at 3.

[53] ACA has recommended that the Commission deem attributable for local television ownership purposes four forms of coordinated negotiations among separately owned, same-market stations: (i) delegation of the responsibility to negotiate or approve retransmission consent agreements by one broadcaster to another separately owned broadcaster in the same DMA; (ii) 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; (iii) 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; and (iv) 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. ACA Media Ownership Comments at 27; ACA Media Ownership Reply Comments at 14.

[54] 47 C.F.R. § 73.3335(b).

the discussion on broadcast station conduct in the Commission's 15th Report. This is especially true if, as the NOI suggests, the report is to provide Congress an accurate picture of the status of competition in market for delivery of video programming to consumers.[55]

IV. CONCLUSION

There are significant changes underway in the market for the delivery of video services. In order for the Commission to provide a full and accurate understanding of the nature and scope of these changes, as well as the forces shaping them, the 15th Report must include data on system closures in addition to data on market entry. The Commission should report data indicating that these systems are increasingly disappearing from rural communities across the country and assessing possible causes, both regulatory and non-regulatory. Moreover, the Commission must examine and assess the significance of smaller cable systems leaving the market to the industry as a whole, including whether these closings are early warning signs of impeding problems for larger systems in larger markets.

ACA believes the primary causes of small and rural system closings are increasing programming costs and pole attachment fees, as well as increased taxes, and regulatory fees and mandates. The repercussions of these system closures and market exits can be profound. Not only does the rapidly escalating price of video programming contribute to system closures and MVPDs exiting from the market for video content delivery, leaving many remote and rural customers without any MVPD service, it also adversely affects small and rural communities by removing a potential provider of broadband Internet and other advanced services. This harms competition across several services, including the delivery of video programming to consumers.

The increasing importance of retransmission consent fees to broadcasters is another change that is having a rapid and significant impact on the video delivery market. These changes deserve a careful exposition and analysis in the 15th Report. In a functioning market, broadcasters should

[55] NOI, ¶ 1.

compete for retransmission consent fees based on the ability of their programming to attract viewers. In order to fully assess the level of competition between broadcasters, the Commission must closely track and report the most significant revenue sources. In today's market, this includes retransmission consent revenues.

Finally, the Commission should also include data and analysis on the practice of same-market broadcasters coordinating the negotiation of retransmission consent fees. Competition for retransmission consent should be based on the ability of their programming to attract viewers. The practice of coordinated retransmission consent negotiations decreases this competition, evidenced by broadcasters securing higher retransmission consent fees through market collusion compared with individual negotiation. The Commission must include information in the 15th Report to promote a better understanding of these practices and the effect they have on the video delivery market.

Respectfully submitted,

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APPENDIX A

TABLE 1

62 Instances of Separately Owned, Same-Market Broadcasters Affilated with a Big 4 Network Operating Under Some Form of Sharing Agreement

		Station #1			Station #2		
DMA	DMA Rank	Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Columbus, OH	32	Sinclair Broadcast Group	WSYX	ABC	Cunningham Broadacsting	WTTE	FOX
West Palm Beach-Ft. Pierce	38	E.W. Scripps	WPTV	NBC	Raycom Media	WFLX	FOX
Jacksonville	50	Newport Television	WAWS	FOX	High Plains Broadcasting	WTEV	CBS
Providence-New Bedford	53	LIN TV	WPRI	CBS	Super Towers	WNAC	FOX
Wilkes Barre-Scranton-Hztn	54	Nexstar Broadcasting Group	WBRE	NBC	Mission Broadcasting	WYOU	CBS
Ft. Myers-Naples	62	Waterman Broadcasting	WBBH	NBC	Montclair Communications	WZVN	ABC
Dayton	63	Sinclair Broadcast Group	WKEF	ABC	Cunningham Broadacsting	WRGT	FOX
Charleston-Huntington	65	Sinclair Broadcast Group	WCHS	ABC	Cunningham Broadacsting	WVAH	FOX
Tuscon (Sierra Vista)	70	Raycom Media	KOLD	CBS	Belo	KMSB	FOX
Honolulu	71	Raycom Media	KHNL	NBC	MCG Capital	KGMB	CBS
Springfield, MO	75	Schurz Communications	KYTV	NBC	Perkin Media	KSPR	ABC
Rochester, NY	79	Nexstar Broadcasting Group	WROC	CBS	Sinclair Broadcast Group	WUHF	FOX
Syracuse	84	Barrington Broadcasting	WSTM	NBC	Granite Broadcasting	WTVH	CBS
Cedar Rapids-Wtrlo-IWC&Dub	89	Sinclair Broadcast Group	KGAN	CBS	Second Generation of Iowa	KFXA	FOX
El Paso (Las Cruces)	91	Communication Corp of America	KTSM	NBC	Titan TV Broadcast Group	KDBC	CBS
Savannah	92	New Vision Television	WJCL	ABC	Parkin Broadcasting	WTGS	FOX
Baton Rouge	94	Communication Corp of America	WGMB	FOX	White Knight Broadcasting	WVLA	NBC
Burlington-Plattsburgh	95	Smith Media	WFFF	FOX	Lambert Broadcasting	WVNY	ABC
Tri-Cities, TN-VA	96	Bonten Media Group	WCYB	NBC	Esteem Broadcasting	WEMT	FOX
Greenville-N. Bern-Washngtn	99	Bonten Media Group	WCTI	ABC	Esteem Broadcasting	WFXI	FOX
Johnstown-Altoona-St Colge	102	Peak Media	WWCP	FOX	Palm Television	WATM	ABC
Lincoln & Hastings-Krny	105	Pappas Telecasting	KHGI	ABC	Omaha World-Herald	KFXL	FOX
Tyler-Longview(Lfkn&Ncgd)	107	Communication Corp of America	KETK	NBC	White Knight Broadcasting	KFXK	FOX
Fort Wayne	109	Granite Broadcasting	WISE	NBC	Malara Broadcasting Group	WPTA	ABC
Youngstown	110	New Vision Television	WKBN	CBS	Parkin Broadcasting	WYTV	ABC
Augusta-Aiken	111	Media General	WJBF	ABC	Schurz Communications	WAGT	NBC
Peoria-Bloomington	116	Granite Broadcasting Crop.	WEEK	NBC	Barrington Broadcasting	WHOI	ABC
Peoria-Bloomington	116	Nexstar Broadcasting Group	WMBD	CBS	Sinclair Broadcast Group	WYZZ	FOX
Fargo-Valley City	117	Hoak Media	KVLY	NBC	Parker Broadcasting	KXJB	CBS
Traverse City-Cadillac	120	Barrington Broadcasting	WPBN	NBC	Tucker Broadcasting	WGTU	ABC
Traverse City-Cadillac	120	Heritage Broadcasting Group	WWTV	CBS	Cadillac Telecasting	WFQX	FOX
Monterey-Salinas	125	Cowles Publishing	KION	CBS	Seal Rock Broadcasters	KCBA	FOX
Columbus, GA (Opelika, AL)	127	Raycom Media	WTVM	ABC	Southeastern Media Holdings	WXTX	FOX
Corpus Christi	129	Cordillera Communications	KRIS	NBC	SagamoreHill Broadcasting	KZTV	CBS
Amarillo	130	Nexstar Broadcasting Group	KAMR	NBC	Mission Broadcasting	KCIT	FOX
Wilmington	132	Raycom Media	WECT	NBC	Southeastern Media Holdings	WSFX	FOX

62 Instances of Separately Owned, Same-Market Broadcasters Affilated with a Big 4 Network Operating Under Some Form of Sharing Agreement

		Station #1			Station #2		
DMA	DMA Rank	Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Columbus-Tupelo-W Pnt-Hstn	133	WTVA, Inc.	WTVA	NBC	Southern Broadcasting	WKDH	ABC
					Lingard Broadcasting	WLOV	FOX
Rockford	134	Nexstar Broadcasting Group	KQRF	FOX	Mission Broadcasting	WTVO	ABC
Topeka	136	New Vision Television	KTKA	ABC	Parkin Broadcasting	KSNT	NBC
Monroe, LA-El Dorado	137	Hoak Media	KNOE	CBS	Parker Broadcasting	KAQY	ABC
Monroe, LA-El Dorado	137	Nexstar Broadcasting Group	KARD	FOX	Mission Broadcasting	KTVE	NBC
Duluth-Superior	139	Granite Broadcasting	KBJR	NBC	Malara Broadcast Group	KDLH	CBS
Wichita Falls & Lawton	142	Nexstar Broadcasting Group	KFDX	NBC	Mission Broadcasting	KJTL	FOX
Wichita Falls & Lawton	142	Drewry Broadcast Group	KSWO	ABC	Hoak Media	KAUZ	CBS
Lubbock	143	Nexstar Broadcasting Group	KLBK	CBS	Mission Broadcasting	KAMC	ABC
Erie	146	Nexstar Broadcasting Group	WJET	ABC	Mission Broadcasting	WFXP	FOX
Erie	146	SJL of Pennyslvania	WICU	NBC	Lilly Broadcasting	WSEE	CBS
Sioux City	147	Titan TV Broadcast Group	KPTH	FOX	Waitt Broadcasting	KMEG	CBS
Anchorage	148	Coastal Television Broadcasting	KTBY	Fox	Vision Alaska	KYUR	ABC
Joplin-Pittsburg	149	Nexstar Broadcasting Group	KSNF	NBC	Mission Broadcasting	KODE	ABC
Joplin-Pittsburg	149	Saga Communications	KOAM	CBS	Surtsey Media	KFJX	FOX
Rochestr-Mason City-Austin	153	Quincy Newspapers	KTTC	NBC	SagamoreHill Broadcasting	KXLT	FOX
Terre Haute	154	Nexstar Broadcasting Group	WTWO	NBC	Mission Broadcasting	WFXW	FOX
Idaho Fals-Pocatllo(Jcksn)	160	Intermountain West Communications	KPVI	NBC	Compass Communications	KFXP	FOX
Idaho Fals-Pocatllo(Jcksn)	160	News-Press & Gazette	KIFI	ABC	Fisher Comunications	KIDK	CBS
Abilene-Sweetwater	164	Nexstar Broadcasting Group	KTAB	CBS	Mission Broadcasting	KRBC	NBC
Billings	168	Nexstar Broadcasting Group	KSVI	ABC	Mission Broadcasting	KHMT	FOX
Utica	172	Nexstar Broadcasting Group	WFXV	FOX	Mission Broadcasting	WUTR	ABC
Grand Junction-Montrose	184	Hoak Media	KREX	CBS	Parker Broadcasting	KFQX	FOX
Casper-Riverton	196	Mark III Media	KGWC	CBS	Silverton Broadcasting	KTWO	ABC
					Wyomedia	KFNB	FOX
San Angelo	197	Nexstar Broadcasting Group	KLST	CBS	Mission Broadcasting	KSAN	NBC
Victoria	204	Saga Communications	KAVU	ABC	Surtsey Media	KVCT	FOX

PENDING STATION SALE APPROVAL

Toledo, OH	74	Raycom Media	WTOL	CBS	American Spirit Media	WUPW	FOX

Note- Yellow Highlight Denotes Instance Not Previously Identified by ACA

APPENDIX A

TABLE 2

46 Instances of Separately Owned, Same-Market Broadcasters Affiliated with a Big 4 Network Simultaneously Negotiating Retransmission Consent With an MVPD Using a Single Representative

		Station #1			Station #2		
DMA	DMA Rank	Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Columbus, OH	32	Sinclair Broadcast Group	WSYX	ABC	Cunningham Broadacsting	WTTE	FOX
Jacksonville	50	Newport Television	WAWS	FOX	High Plains Broadcasting	WTEV	CBS
Providence-New Bedford	53	LIN TV	WPRI	CBS	Super Towers	WNAC	FOX
Wilkes Barre-Scranton-Hztn	54	Nexstar Broadcasting Group	WBRE	NBC	Mission Broadcasting	WYOU	CBS
Dayton	63	Sinclair Broadcast Group	WKEF	ABC	Cunningham Broadacsting	WRGT	FOX
Charleston-Huntington	65	Sinclair Broadcast Group	WCHS	ABC	Cunningham Broadacsting	WVAH	FOX
Springfield, MO	75	Schurz Communications	KYTV	NBC	Perkin Media	KSPR	ABC
Cedar Rapids-Wtrlo-IWC&Dub	89	Sinclair Broadcast Group	KGAN	CBS	Second Generation of Iowa	KFXA	FOX
Savannah	92	New Vision Television	WJCL	ABC	Parkin Broadcasting	WTGS	FOX
Baton Rouge	94	Communication Corp of America	WGMB	FOX	White Knight Broadcasting	WVLA	NBC
Burlington-Plattsburgh	95	Smith Media	WFFF	FOX	Lambert Broadcasting	WVNY	ABC
Greenville-N. Bern-Washngtn	99	Bonten Media Group	WCTI	ABC	Esteem Broadcasting	WFXI	FOX
Johnstown-Altoona-St Colge	102	Peak Media	WWCP	FOX	Palm Television	WATM	ABC
Lincoln & Hastings-Krny	105	Pappas Telecasting	KHGI	ABC	Omaha World-Herald	KFXL	FOX
Tyler-Longview(Lfkn&Ncgd)	107	Communication Corp of America	KETK	NBC	White Knight Broadcasting	KFXK	FOX
Fort Wayne	109	Granite Broadcasting	WISE	NBC	Malara Broadcasting Group	WPTA	ABC
Youngstown	110	New Vision Television	WKBN	CBS	Parkin Broadcasting	WYTV	ABC
Augusta-Aiken	111	Media General	WJBF	ABC	Schurz Communications	WAGT	NBC
Peoria-Bloomington	116	Granite Broadcasting Crop.	WEEK	NBC	Barrington Broadcasting	WHOI	ABC
Peoria-Bloomington	116	Nexstar Broadcasting Group	WMBD	CBS	Sinclair Broadcast Group	WYZZ	FOX
Fargo-Valley City	117	Hoak Media	KVLY	NBC	Parker Broadcasting	KXJB	CBS
Traverse City-Cadillac	120	Heritage Broadcasting Group	WWTV	CBS	Cadillac Telecasting	WFQX	FOX
Columbus, GA (Opelika, AL)	127	Raycom Media	WTVM	ABC	Southeastern Media Holdings	WXTX	FOX
Amarillo	130	Nexstar Broadcasting Group	KAMR	NBC	Mission Broadcasting	KCIT	FOX
Wilmington	132	Raycom Media	WECT	NBC	Southeastern Media Holdings	WSFX	FOX
Columbus-Tupelo-W Pnt-Hstn	133	WTVA, Inc.	WTVA	NBC	Southern Broadcasting	WKDH	ABC
					Lingard Broadcasting	WLOV	FOX
Rockford	134	Nexstar Broadcasting Group	KQRF	FOX	Mission Broadcasting	WTVO	ABC
Topeka	136	New Vision Television	KTKA	ABC	Parkin Broadcasting	KSNT	NBC
Monroe, LA-El Dorado	137	Hoak Media	KNOE	CBS	Parker Broadcasting	KAQY	ABC
Monroe, LA-El Dorado	137	Nexstar Broadcasting Group	KARD	FOX	Mission Broadcasting	KTVE	NBC
Duluth-Superior	139	Granite Broadcasting	KBJR	NBC	Malara Broadcast Group	KDLH	CBS
Wichita Falls & Lawton	142	Nexstar Broadcasting Group	KFDX	NBC	Mission Broadcasting	KJTL	FOX
Wichita Falls & Lawton	142	Drewry Broadcast Group	KSWO	ABC	Hoak Media	KAUZ	CBS
Lubbock	143	Nexstar Broadcasting Group	KLBK	CBS	Mission Broadcasting	KAMC	ABC
Erie	146	Nexstar Broadcasting Group	WJET	ABC	Mission Broadcasting	WFXP	FOX

46 Instances of Separately Owned, Same-Market Broadcasters Affiliated with a Big 4 Network Simultaneously Negotiating Retransmission Consent With an MVPD Using a Single Representative

		Station #1			Station #2		
DMA	DMA Rank	Owner (also Controlling Entity)	Call Letters	Affil.	Owner	Call Letters	Affil.
Erie	146	SJL of Pennyslvania	WICU	NBC	Lilly Broadcasting	WSEE	CBS
Sioux City	147	Titan TV Broadcast Group	KPTH	FOX	Waitt Broadcasting	KMEG	CBS
Anchorage	148	Coastal Television Broadcasting	KTBY	Fox	Vision Alaska	KYUR	ABC
Joplin-Pittsburg	149	Nexstar Broadcasting Group	KSNF	NBC	Mission Broadcasting	KODE	ABC
Joplin-Pittsburg	149	Saga Communications	KOAM	CBS	Surtsey Media	KFJX	FOX
Rochestr-Mason City-Austin	153	Quincy Newspapers	KTTC	NBC	SagamoreHill Broadcasting	KXLT	FOX
Terre Haute	154	Nexstar Broadcasting Group	WTWO	NBC	Mission Broadcasting	WFXW	FOX
Abilene-Sweetwater	164	Nexstar Broadcasting Group	KTAB	CBS	Mission Broadcasting	KRBC	NBC
Billings	168	Nexstar Broadcasting Group	KSVI	ABC	Mission Broadcasting	KHMT	FOX
Casper-Riverton	196	Mark III Media	KGWC	CBS	Silverton Broadcasting	KTWO	ABC
					Wyomedia	KFNB	FOX
San Angelo	197	Nexstar Broadcasting Group	KLST	CBS	Mission Broadcasting	KSAN	NBC

Note- Yellow Highlight Denotes Instance Not Previously Identified by ACA