Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS OF ABC TELEVISION AFFILIATES ASSOCIATION

The ABC Television Affiliates Association[1] (the "ABC Affiliates") submits these reply comments in response to the Notice of Inquiry ("*Notice*"), released July 20, 2012, seeking data, information, and comment on the state of competition in the marketplace for the delivery of video programming during 2011 and 2012, including, among other things, with respect to the structure, conduct, and performance of the broadcast television industry.[2] In particular, the Commission seeks information pertaining to broadcast station revenues derived from retransmission consent fees and the effect of "reverse compensation" on station revenues.[3] Retransmission consent fees and reverse compensation should be considered in the context of the relationships between networks and their affiliates and between affiliates and their multichannel video programming distributors ("MVPDs") as well as with respect to the overall state of competition by all video platforms in the delivery of video programming, including network

[1] The ABC Television Affiliates Association is a non-profit trade association whose members consist of some 170 local television broadcast stations throughout the country affiliated with the ABC Television Network.

[2] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, FCC 12-80 (released July 20, 2012).

[3] *See Notice* at ¶¶ 47, 53, 56.

236386.10

programming and local news and information programming.

It would be difficult to overstate the importance of retransmission consent to the economic sustainability of network-affiliated, local television stations. Without retransmission consent revenues, local stations simply could not afford today to purchase popular, national network entertainment and sports programming or to produce the expensive local news, weather, sports, public safety, and public interest programming upon which the American people have come to rely. The economic environment of television has changed in dramatic ways over the years, from a time when local broadcast stations were the only local video distribution platforms for network programming to an environment today in which local stations compete head-to-head with 800 cable and satellite networks[4] and countless new online video distributors ("OVDs").

In short, the local video distribution market is intensely competitive. Robust competition between video distributors affords program producers and aggregators (i.e., national networks and syndicators) the option of multiple program distribution platforms. Having produced or acquired expensive national program content, broadcast networks, understandably, have a fiduciary duty to their shareholders to maximize the return on that investment, and, in doing so, they now (unlike the past) have the ability to select among competing platforms for the most financially advantageous distribution arrangement.

To be competitive, local network-affiliated television stations seek the best programming. That programming, obviously, is not free—including that produced by the affiliated stations' networks. Local network affiliates now have to compensate their networks for programs, not only, as in the past, by providing them significant amounts of local advertising inventory (*i.e.*,

---

[4] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Report, FCC 12-81 (released July 20, 2012) ("*Fourteenth Video Competition Report*", at ¶ 43 n.96.

"barter") for network commercials, but also, unlike the past, by paying large program license fees, sometimes referred to as "reverse compensation," for the right to broadcast network programs. If affiliates are financially unable to pay market-based program license fee rates, the networks, understandably, will place programs that otherwise would be on a free, over-the-air broadcast platform on an alternative "fee-based platform," i.e., cable, satellite, or the Internet. This result is simply a function of today's highly competitive program distribution market—a public policy goal long advocated by policy makers, including the Commission, and public interest and consumer groups.

To illustrate, The Walt Disney Company, which owns and operates both the ABC Television Network and ESPN, competes directly against CBS, FOX, NBC, Turner, and other program aggregators for the right to televise expensive sports programming. After acquiring that programming, Disney must decide which video distribution platform—the ABC Television Network or ESPN—will yield the highest return on its investment in that programming. Placement of sports programming on ESPN reportedly yields Disney program license fees in excess of $5.00 per subscriber per month for each cable and satellite subscriber, plus substantial cable and satellite commercial advertising inventory.[5] If Disney should decide to place its sports programming on the ABC Television Network for free, over-the-air broadcast, Disney now demands and receives from its affiliates both commercial advertising inventory within that programming and, in addition, a new program license fee. Otherwise, Disney, understandably, has no choice but to place its most expensive and popular sports programming on ESPN for distribution by cable and satellite. Given consumer acceptance of and the growth of fee-based

---

[5] *See* Alex Sherman, *For Sports Networks, You Gotta Pay to Play*, BLOOMBERG BUSINESSWEEK (Apr. 5, 2012), http://www.businessweek.com/articles/2012-04-05/for-sports-networks-you-gotta-pay-to-play/ (citing SNL Kagan data that Disney receives $5.06 per subscriber per month for ESPN).

video services, it is hardly surprising that so many of the most popular and highly rated broadcast sports programs have migrated in recent years to ESPN's dual revenue stream-based cable and satellite platforms.

The same migration to a dual revenue stream distribution platform is occurring with traditional entertainment programming. The same distribution platform choices for that programming are made by the parent companies of the CBS, FOX, and NBC Television Networks.

As the Commission is aware, before the advent of hundreds of satellite-delivered cable networks and the Internet, television networks paid their affiliates to distribute of network programming. Indeed, in the not distant past, network compensation was the largest revenue stream for network-affiliated stations after advertising revenue.[6] As recently as 1996, network compensation to all affiliates totaled $607 million, the highwater mark.[7]

Now, however, few remnants of network compensation to affiliates remain. Instead, virtually all affiliates now pay reverse compensation to the more popular networks. FOX, for example, requires its affiliates to pay as much as $0.50 per MVPD subscriber per month in certain markets.[8] The ABC Network, in general, requires its affiliates to pay the greater of a specified program license fee or a percentage (currently 50%) of retransmission consent revenues. It is estimated that CBS affiliates will pay the network $0.61 per MVPD subscriber

---

[6] *See Fourteenth Video Competition Report* at ¶ 221.

[7] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 7.

[8] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 7.

per month by 2016 under CBS's new arrangements with its affiliates.[9] SNL Kagan currently estimates that Big 4 network affiliates paid their networks $125 million in 2011 and will pay $451 million in 2012,[10] an increase of 260% in one year, and $721 million in 2013, a further increase of 60% from 2012 levels. SNL Kagan projects affiliates of the Big Four Networks will pay their networks a whopping $1.013 billion in 2014 and $1.263 billion in 2015.[11]

In another market reversal, not only do local stations now compete with cable, satellite, and other video distributors for program content, they also compete head-to-head with cable, satellite, and other distributors for audience share and advertising revenue. Insightfully, Congress recognized in 1992, with adoption of the current statutory retransmission consent requirement, the inherent anti-competitive unfairness of allowing *competitors* of local television stations to resell their signals for profit without their consent. In enacting retransmission consent in the 1992 Act, Congress adopted a regulatory framework to allow local television stations to negotiate with MVPDs at arm's length in the increasingly competitive video distribution market for consent to retransmit and resell their signals.

Congress, in short, concluded that laws that prohibit MVPDs from retransmitting and reselling the signals of local television stations without their consent are just as important to assure a competitive video market as laws that have traditionally prohibited a local broadcast

---

[9] *See* Jon Lafayette, *Analyst: Retrans Revenues Growing Faster Than Expected; CBS to Benefit As Payments Reach $2 Per Sub*, BROADCASTING & CABLE (Sept. 10, 2012), http://www.broadcastingcable.com/article/print/489277-Analyst_Retrans_Revenues_Growing_Faster_Than_Expected.php.

[10] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 11.

[11] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 11.

station from retransmitting the signals of other broadcast stations without their consent.[12]

In furtherance of the same underlying policy rationale of promoting fair competition within the highly competitive video distribution market, the Commission should categorize certain online video distributors ("OVDs") as "MVPDs" and apply the Commission's retransmission consent regulations to them.[13]

It is indisputable that in order to compete with cable, satellite, and OVD companies (with their dual fee-based and advertiser-based revenue streams), local television stations must, of necessity, charge fees to their *competitors* for the retransmission and resale of their signals. Obviously, if the ability of local stations should be handicapped, compromised, or impaired by the Commission in developing a fee-based revenue stream from the resale of their signals by competitive video distributors, local television stations simply will not exist—they will not be able to acquire or produce the most valued entertainment, sports, news, and other programming.

SNL Kagan estimates that in 2011 Big 4 network-affiliated stations received $573 million in retransmission consent fee revenues.[14] Put in perspective, in 1996, Big 4 network affiliates *received* $607 million in network compensation, as illustrated below:

---

[12] *See* 47 U.S.C. § 325(a).

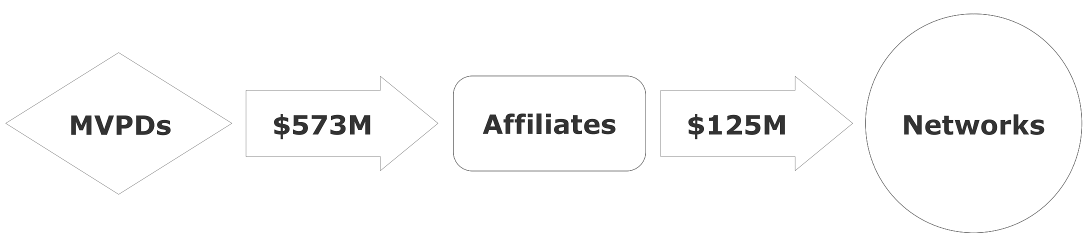
[13] *See* Comments of ABC Television Affiliates Association, CBS Television Network Affiliates Association, and NBC Affiliates, *Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" As Raised in Pending Program Access Complaint Proceeding*, MB Docket No. 12-83 (filed May 14, 2012); Reply Comments of ABC Television Affiliates Association, CBS Television Network Affiliates Association, and NBC Affiliates, *Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" As Raised in Pending Program Access Complaint Proceeding*, MB Docket No. 12-83 (filed June 13, 2012).

[14] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 11.

1996

Just 15 years later they were *paying* their networks, as noted above, $125 million in program license fees, a *negative* swing of *$732 million*. As of 2011, the loss of network compensation was partially offset by the development of the new revenue source, retransmission consent fees, but it did not close the gap. Even with the growth of retransmission consent revenue, Big 4 network-affiliated stations in 2011 were still $159 million down in terms of where they had been fifteen years earlier[15]—a decade and a half that saw broadcast industry outlays in the billions of dollars for the digital transition, the production of more local news than ever before at a cost in the billions of dollars each year,[16] the Great (Advertising) Recession, the explosive growth in cable networks as audience and advertising competitors, and the birth of the latest competitive threat, OVDs.

2011



2011 Net to Affiliates Compared to 1996: <u>Minus</u> $159 Million

In 2012, SNL Kagan estimates that local Big 4 network-affiliated stations will receive

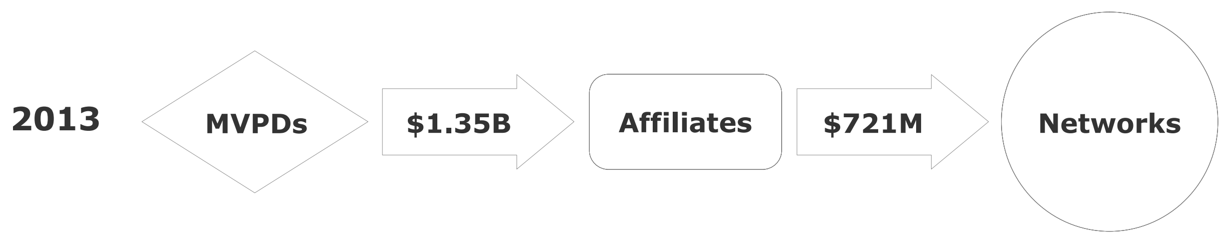
---

[15] These comparisons are in non-inflation adjusted dollars. The real effect on local network-affiliated stations is even greater in constant dollars.

[16] *See infra* at 8.

$903 million in retransmission consent fees.[17] While the increase of $330 million, or 57.6%, from 2011 may, on the surface, appear substantial, *virtually every dollar of the increase ($326 million) is going straight to the affiliates' networks in program license fees*.

Only by next year, 2013, are network-affiliated stations projected to have regained the ground on which they stood in 1996. Big 4 network affiliates are estimated to receive $1.346 billion in retransmission consent revenue,[18] while paying out $721 million in reverse compensation, for net retrans-related revenues of $625 million in 2013, which is less, when adjusted for inflation, than the $607 million affiliates received in network compensation 17 years earlier in 1996.



2013 Net to Affiliates Compared to 1996: $18 Million

Certain MVPDs complain about the increases in retransmission consent fees local stations seek in retransmission consent negotiations, but clearly those increases are not dropping directly to the bottom lines of local stations. As noted earlier, stations, of necessity and understandably, pay program license fees to their networks to enable them to produce or acquire the rights to the most popular television programming available for broadcast over-the-air by local stations. Stations also use their retransmission consent revenues to invest heavily in the

---

[17] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 11.

[18] *See* SNL Kagan, ECONOMICS OF BROADCAST TV RETRANSMISSION REVENUE (2012 ed.) at 11.

production of local news—expenditures few local cable companies make and none, of course, by satellite companies and OVDs.

Indeed, local stations would be unable to afford to produce and broadcast local news, weather, sports, public safety, and public interest programming without a market-based revenue stream derived from retransmission consent. The amount of local news produced today by local broadcast stations is at an all-time high—5 hours and 48 minutes per day, nearly one-quarter of the broadcast day, for network-affiliated stations.[19] And the cost of local news production is not cheap. A 2010 survey showed that the average station spends more than $4,000,000 per year producing local news, more than a quarter of the average station's operating budget, plus an additional $700,000 per year in capital expenditures for news production, an amount that represents more than half of the average station's capital budget.[20] Aggregated across all local broadcast stations originating local news, local stations spent approximately $3.1 billion in production costs and $545 million in capital costs in 2010 to produce local news.[21]

The $3.6+ billion expended by local stations to produce and broadcast local news dwarfs the $573 million they received in 2011 from MVPDs in retransmission consent fees. It is indisputable that network-affiliated local stations cannot continue to produce the quality and quantity of local news they now produce without securing fees from competitive cable, satellite,

---

[19] *See* Bob Papper, Radio Television Digital News Association, *2012 TV and Radio Staffing and News Profitability Survey; Part II: A Record Amount of News . . . Again*, http://www.rtdna.org/media/Parttwo.pdf.

[20] *See* Comments of National Association of Broadcasters, *Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25 (filed May 7, 2010), Exhibit B, p. 13.

[21] *See id*. As the report notes, these aggregated estimates do not include expenses for unbudgeted emergency journalism or for the lost advertising revenues attendant upon wall-to-wall local coverage during such emergencies.

and OVDs who retransmit and resell their signals.

In short, if local television stations are not permitted to compete, at arm's length, in the new competitive market, the best national entertainment and sports programming will quickly migrate to subscription-based video distribution platforms, and viewers and consumers will ultimately have no choice but to pay for that programming. Worse, the production and distribution of local news, weather, public affairs, and public safety programming will simply cease to exist.

Conclusion

For the foregoing reasons, ABC Affiliates respectfully urge the Commission to consider the broader competitive framework in which national video programming and local news programming is distributed and to refrain from impairing the ability of local television stations to control the distribution of their signals by other competitive video distribution platforms.

Respectfully submitted,

ABC TELEVISION AFFILIATES ASSOCIATION

/s/
Wade H. Hargrove

/s/
Mark J. Prak

/s/
David Kushner

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.
Wells Fargo Capitol Center, Suite 1600
150 Fayetteville Street (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300

Counsel for ABC Television Affiliates Association

October 10, 2012