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

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	MB Docket No. 10-71
Related to Retransmission Consent	)	

Comments of WTA – Advocates for Rural Broadband

I. Introduction

WTA – Advocates for Rural Broadband ("WTA")[1] offer this response to the Federal Communications Commission's Further Notice of Proposed Rulemaking soliciting additional comment on whether the FCC should eliminate or modify its network non-duplication and syndicated exclusivity rules.[2]

WTA's members are rate-of-return regulated incumbent local exchange carriers ("RLECs") that serve some of the most rural and remote areas of the country with voice and data services. Many of these companies and cooperatives have also entered the video market utilizing a variety of distribution technologies that vary from company to company and often within a company's geographically large service area. These technologies include telco-IPTV, coaxial cable systems, and other forms of innovative

[1] WTA – Advocates for Rural Broadband is a national trade association representing
[2] *In re* Amendment of the Commission's Rules Related to Retransmission Consent, Federal Communications Commission, MB Docket No. 10-71, Further Notice of Proposed Rulemaking (Adopted March 31, 2014).

managed online streaming services where local channels and other content are combined with over-the-top online streaming options.

As small new entrants in the video market, RLECs have faced consistent challenges in obtaining broadcast network and non-broadcast television programming at affordable rates as compared to the rates paid by national multichannel video programming distributor (MVPD) competitors. Specifically, retransmission fees have increased in the range of 50% to 100% or more for many rural MVPDs. These increases are the result a several factors including increased competition in the MVPD market, the small size of rural MVPDs, and a variety of regulatory advantages that broadcast stations and networks enjoy, including the network non-duplication rule.

Given the current realities faced by RLEC MVPDs, the network non-duplication rule has outlived its usefulness to protect the localism and diversity of television programming in rural markets. Eliminating the network non-duplication rule is unlikely to lead to many instances of duplicative network signals on small rural MVPD systems because such duplication in uneconomical for small MVPD systems already coping with runaway content costs. Even in cases where a small MVPD determines that there is some benefit to obtaining a duplicative network signal from a nearby market, private network-station contracts combined with consumer demand for local content are likely to make such a scenario infeasible. However, there may be scenarios where local television stations and small rural MVPDs could come to an innovative and mutually beneficial arrangement that otherwise could be stifled by the network non-duplication rule currently in place.

Any such arrangement that results in duplicative network signal on a small rural MPVD is unlikely to greatly affect any one television station's revenue stream due to the small subscriber base of RLEC MVPDs and broadcast stations' decreased reliance on advertising revenue and increased reliance on retransmission consent fees that have increased at record rates. To truly assist RLEC MVPDs in offering their customers the most relevant local programming, the FCC should allow more flexibility and reform the process by which MVPDs can change which designated market area (DMA) -- all or parts of their service area -- are located.

II. Eliminating the Network Non-Duplication Rule is unlikely to result in duplication of network programming by small rural MVPDs

As members of small rural communities, RLECs have a built in incentive to provide their customers with the most relevant local programming available. Indeed, many RLECs provide free programming of local events such as high school sporting events and other public interest programming. Additionally, the already high retransmission consent fees RLEC MVPDs pay for local broadband stations, combined with the fiber or satellite transport costs that would be necessary to obtain out-of-market broadcast signals, would cause RLECs unsustainable financial burdens if they sought to carry duplicative broadcast networks. In fact, many RLECs are already forced to pay signal transport costs in addition to their retransmission fees where the supposed "local" broadcast signal is not strong, or clear, enough to be pulled in over the air.

The only scenario where transporting a distant broadcast signal may make economic sense in the short term would be in the case of a lapsed retransmission consent agreement. In this event, it is likely that the out-of-market broadcast station's contract with its national network affiliate would prohibit it from supplying replacement programming. Even if the station-network contract were silent on this point, the cost of obtaining the retransmission consent agreement combined with the expense of transporting the signal through a fiber or satellite connection and consumer demand for relevant local content, would make distant signal importation economically unreliable for small rural MVPDs. Ultimately, repealing the network non-duplication rule would not have substantial effect on the cost or availability of retransmitted broadcast programming. However, repealing the network non-duplication rule could provide smaller rural MVPDs and some broadcast stations with the regulatory flexibility to seek mutually beneficial agreements without threatening localism or programming diversity.

III. The FCC should increase the MVPD system subscriber count exception to the network non-duplication rule in order reflect current broadcast television and MVPD market realities

If the FCC determines that maintaining the network non-duplication rule is necessary for larger MVPD systems, the FCC should increase the small MVPD exemption to the network non-duplication rules. By establishing a 1000 subscriber exemption to the network non-duplication rule, the FCC implicitly recognized that duplication of network signals on smaller MVPD systems would not have a noticeable impact on network ratings or on diversity and localism.[3]

The 1000 subscriber exemption has been quickly outpaced by the market and should be updated to reflect existing market realities. In 1994, two years after the 1000 subscriber exemption was instituted in 1992, the MVPD market had 59.7 million subscribers,[4] as compared with the present day subscriber count of 101 million subscribers.[5] Still, most small rural MVPD systems hover around or below the 1000 subscriber mark,[6] despite the over 69% increase in MVPD subscribers in the market from 1994 to present day. Increasing the subscriber count exception would allow small rural MVPDs to better compete in an increasingly competitive rural MVPD market, dominated by large national DBS MVPDs.[7]

Even if the repeal of the network non-duplication rules results in some duplicative network programming, the shift in television station revenues from advertising to retransmission consent fees demonstrates that eliminating the network non-duplication

---

[3] *In re Network Non-Duplication and Syndicated Exclusivity Rules*, Federal Communications Commission, Further Notice of Proposed Rulemaking, MB Docket No. 10-71, ¶ 30 (Apr. 10, 2014), *available at* http://www.gpo.gov/fdsys/pkg/FR-2014-04-10/pdf/2014-08114.pdf.

[4] *3rd Annual Video Competition Report*, Federal Communications Commission, CS Docket No. 96-133, ¶ 14 (rel. Jan. 2, 1997), *available at* *http://transition.fcc.gov/Bureaus/Cable/Reports/fcc96496.txt.*

[5] *15th Annual Video Competition Report*, Federal Communications Commission, MB Docket No. 12-203, ¶ 3 (rel. Jul. 22, 2013), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-99A1.pdf [*hereinafter* 15th Annual Report].

[6] 15th Annual Report at ¶ 138.

[7] 15th Annual Report at ¶ 323.

rules will have minimal impact on television station revenues, especially where the duplicative programming occurs on a small rural MVPD. Rural MVPDs typically obtain their retransmitted broadcast programming from nearby urban centers where broadcasters rely on greater population density for advertising revenue. Retransmission consent fees are expected to account for 23% of broadcast station revenues by 2018, compared with around 4.5% in 2008,[8] thereby decreasing the broadcast stations' reliance on local advertising revenues that are still expected to grow 8% in the near future.[9] The increased reliance on revenues from retransmission consent is likely offset by any decrease in advertising revenues resulting from the duplicative signal.

III. The FCC should give rural increased MVPDs flexibility in changing their assigned DMAs for all or portions of their serve area

While eliminating the network non-duplication rule may help RLEC MVPDs develop innovative solutions to serve the demands of their customers, the FCC can more directly enable RLEC's ability to offer their customers the most relevant local programming by reforming the waiver method through which MVPDs can change the designated market areas (DMAs) in which all or portions of their service area are located. RLECs must often contend with illogical DMAs and broadcast signals that fail to reach all or portions of their service areas. Since RLECs operate in large sparsely populated geographic areas,

---

[8] Roger Yu, *Retransmission fee race poses questions for TV viewers*, USA TODAY (Aug. 2, 2013), http://www.usatoday.com/story/money/business/2013/07/14/tv-retrans-fees/2512233/.

[9] Jon Lafayette, *Local TV Ad Revenue Expected to Grow 8%*, BROADCASTING AND CABLE (Apr. 24, 2013), http://www.broadcastingcable.com/news/currency/local-tv-ad-revenue-expected-grow-8/130687.

consumers in some portions of their service area may prefer to receive broadcast signals from a different DMA because they feel more connected to the local programming of one area over another. The process for changing DMAs in fraught with complexity and is often complicated by fights between broadcast stations that hope to retain their existing retransmission consent contracts. The FCC can markedly simplify the DMA classification process by allowing RLECs to conduct customer surveys in their service area to determine which broadcast station signals their consumers want to receive. This would enable a truer form of localism, one that is determined through consumer demand rather than regulatory mandates.

IV. Conclusion

The network non-duplication rule has become an unnecessary relic of a bygone era that has prevented small rural MVPDs from being able to innovatively compete in the rural MVPD market currently dominated by large national direct broadcast system MVPDs. Although the added cost of obtaining a duplicative network signal makes it unlikely that small rural MVPDs would be able to sustain any prolonged retransmission of duplicative network signals, the non-duplication rules make it less likely that small MVPDs can come to creative commercial agreements with multiple broadcast stations in order to provide rural consumers with all of the relevant programming they demand. Further, existing contracts between national networks and their local broadcast affiliates are likely to enforce non-duplication requirements. In the rare event that duplication of network signals occurs, it is unlikely to have a significant impact on the ratings or revenue of broadcast stations due to the small subscriber count of rural MVPD systems and broadcast stations' decreased reliance on advertising revenue derived from their ratings. Even if the FCC determines not to eliminate the network non-duplication rule, it should update the rule according to existing market realities and increase the number of subscribers and system can have to qualify for an exemption from the rule. Finally, the FCC should address the complexity of the waiver process by which MVPDs can alter which DMA their service areas are located in order to allow rural consumers to have greater control of the content they wish to watch.

WTA – Advocates for Rural Broadband
By: /s/ Derrick Owens
Derrick Owens
Vice President of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202
derrick@w-t-a.org

By: /s/ Noah Cherry
Noah Cherry
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202
noah@w-t-a.org

Dated June 26, 2014