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

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

COMMENTS OF NBCUNIVERSAL MEDIA, LLC

NBCUniversal Media, LLC ("NBCUniversal"), which owns and operates the NBC Network and 10 television stations affiliated with the network, respectfully submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking* on proposals to eliminate the network nonduplication rule (the "Rule").[1]

I. INTRODUCTION

As we demonstrate below, the Rule should be retained because it continues to play a key role in the network/affiliate distribution system, which for decades has been the single most successful vehicle for promoting the production of high-quality and diverse national <u>and</u> local programming and delivering it to viewers. Although viewers enjoy a constantly expanding array of video programming choices and platforms on which to watch them, prime-time programming on the major broadcast networks consistently has been – and remains – the most popular consumer choice.[2] Studies also confirm that consumers rely on their local broadcast stations – more than any other source – for the local news, public affairs, weather, emergency and other

[1] *Amendment of the Commission's Rules Related to Retransmission Consent*, Further Notice of Proposed Rulemaking, FCC 14-29 (rel. March 31, 2014) ("*Further Notice*"). The *Further Notice* also proposes to eliminate the syndicated exclusivity rules. Many of the arguments advanced herein with respect to the role of network nonduplication protection in enhancing program value, which in turn encourages program production, apply with equal force to syndicated programming.

[2] *See* SNL Kagan, TV Network Summary, http://www.snl.com/interactivex/tv_NetworksSummary.aspx (last visited June 20, 2014) (showing major broadcast networks leading in average prime-time ratings from 2010 to 2012).

community information that is so vital to their daily lives.[3] The limited protection against duplication of network programming supported by the Rule is a core component of the network/affiliate distribution system and business model, and elimination of the Rule would jeopardize broadcasters' ability to continue delivering the unique combination of high-quality national and local content that is the hallmark of the system and on which millions of viewers across the nation have come to depend.

II. NETWORK NONDUPLICATION PROTECTION SUPPORTS A VIRTUOUS CYCLE THAT BENEFITS CONSUMERS

Congress and the Commission have consistently recognized that the Rule ultimately supports the delivery of high-quality national and local programming to broadcast viewers.[4] Broadcast networks' grant of limited nonduplication protection to their affiliates is intended to preserve the full value of network programming for the affiliates.[5] That value is fundamental to

[3] *See*, *e.g.*, Amy Mitchell, *State of the News Media 2014*, Pew Research Center (March 26, 2014), http://www.journalism.org/2014/03/26/state-of-the-news-media-2014-overview/ (noting that local television remains the primary place American adults turn to for news); Amy Mitchell, Mark Jurkowitz, Jodi Enda and Kenny Olmstead, *How Americans Get TV News at Home*, Pew Research Center (October 11, 2013), http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/ (noting that local television remains the most popular way of accessing news).

[4] *See*, *e.g.*, H.R. REP. NO. 106-464 at 92 (1999) (endorsing this "national network structure" and the FCC's program exclusivity rules); *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, 2005 FCC LEXIS 4976* , at *48 (¶ 33) (Sept. 5, 2005) (explaining to Congress that the "non-duplication and syndicated exclusivity protect localism by facilitating enforcement of contractual arrangements that limit importation of duplicative broadcast signals into local markets"); *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, Memorandum Opinion and Order, 4 FCC Rcd 2711, 2715 (¶24) (rel. Mar. 21, 1989) ("In reinstituting our syndex rules, we are attempting to remove unnecessary impediments on broadcasters' right to contract (thereby enhancing competition) and to provide an environment that is more conducive over the long run to the production, diversity, responsiveness, quality and distribution of programming in order to ensure that consumers receive an optimal mix of programming.").

[5] The Commission's rules do not confer network nonduplication or syndicated exclusivity rights on stations. Rather, these rights must be conferred in a binding contract between the program source (network or syndicator) and the station. Further, the Commission's rules impose territorial limits on the scope of any such rights conferred by contract. Although networks generally affiliate with a single station in each Nielsen Designated Market Area ("DMA"), a station's network nonduplication rights are not co-extensive with the boundaries of its DMA. The Commission's territorial exclusivity restrictions limit a station's network nonduplication and syndicated exclusivity rights to a circumscribed radius of 35 miles (in larger markets) or 55 miles (in smaller markets) around the reference points for the station's community of license specified in the Commission's Rules. *See* 47 C.F.R. §§ 73.658; 76.53,

the dual-revenue stream model – comprised of advertising revenues and retransmission consent fees – that local broadcasters rely upon to finance local program production and acquisition and to help offset network programming production and acquisition costs. Specifically, nonduplication protection within a station's local television market allows the station to avoid the audience fragmentation that occurs when multiple network-affiliated stations with duplicative programming serve the same market. By maximizing local viewership in this manner, stations' advertising revenues are increased, which allows network-affiliated stations to produce community-focused newscasts and public affairs programming, engage in investigative journalism, provide vital weather and emergency information and otherwise respond to the information needs of their communities. It is no coincidence that affiliates of the major broadcast networks generally are the only stations in their markets that produce regularly scheduled, long-form local newscasts.[6]

Quality local programming attracts viewers to a station's entire programming line-up, including the network offerings. And quality network programming drives viewers to the local network affiliate in their market, creating a virtuous cycle that increases both network and affiliate advertising revenues and allows investment in both local news and information programming <u>and</u> network programming, including the broadcast rights for major sports and special events programming such as NFL games and the Olympics. As a result, audiences

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76.92. In most cases, this area will be smaller than the area encompassed by the DMA boundaries. Moreover, the Rule cannot be asserted by in-market stations against significantly viewed stations imported into their markets.

[6] Available data indicates that the vast majority of stations producing regularly scheduled local newscasts are affiliated with a major network. *See* Bob Papper, Hofstra Univ., *More stations producing local news*, RTDNA (June 16, 2014), http://rtdna.org/article/more_stations_producing_local_news#.U6LG67GmWGQ (citing data showing that stations affiliated with major networks account for more than 91% of all local-news producing stations). The Commission's own in-depth analysis of the local TV news marketplace cited no examples of independent or minor network-affiliated stations offering newscasts. *See* Steven Waldman and the Working Group on Information Needs of Communities, THE INFORMATION NEEDS OF COMMUNITIES 72-102 (July 2011), http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf.

benefit from a high-quality mix of content created for national audiences and community-focused, professionally produced local programming unmatched by any other source of electronic content.

Network nonduplication protection, therefore, serves the Commission's longstanding policy goals of localism and diversity in broadcasting. Without the full value of their respective networks' programming to rely on, local stations would be undermined in their efforts to deliver locally produced news and information to their communities. Without the structural support of the network/affiliate relationship for multiple stations affiliated with multiple networks in a local market, the Commission's vision of ready consumer access to competing broadcast voices within a community would be dimmed.

III. THE RULE IS AN INDISPENSABLE TOOL FOR PRESERVING THE BENEFITS OF CONTRACTUAL NETWORK NONDUPLICATION PROTECTION AND OFFSETTING THE POTENTIAL ADVERSE EFFECTS OF THE COMPULSORY COPYRIGHT SYSTEM

The Rule is more than a simple endorsement of the well-recognized benefits of network nonduplication, however. It is also an integral part of the complex web of compulsory copyright licenses, retransmission consent rules and program exclusivity rights that govern the distribution of broadcast programming by multichannel video programming distributors ("MVPDs"). Opponents of the Rule claim that it provides broadcasters with artificial rights that are antithetical to free marketplace negotiations between television stations and MVPDs and tip the scale in favor of the stations. In fact, the Rule serves as a counterweight to some of the potentially adverse effects on broadcasters of the compulsory copyright system, which allows MVPDs to import duplicating network and syndicated programming under the distant signal copyright license. Such duplicative programming fragments the audience for the local network affiliate and weakens that affiliate's bargaining position in retransmission consent negotiations, thereby undermining the local station's ability to generate advertising revenues and retransmission consent fees to support the production of local and network programming.

Advocates for repeal of the Rule also claim that it is superfluous because local stations have private means of enforcing their nonduplication rights. In fact, the Rule provides the most direct and efficient means of protecting those rights. In the first place, these rights are not free-standing rights that could be enforced by affiliates in the courts if the Commission eliminated the underlying regulatory framework. Network affiliation agreements, including those of the NBC Network, typically grant network nonduplication protection with express reference to the Rule. Eliminating a key pillar of that regulatory framework – enforcement by the Commission – will weaken the entire edifice.

Second, there is a lack of privity among the parties in this complex set of relationships that impedes the ability of stations to enforce these rights directly against MVPDs. As the NBC Television Affiliates explained in their comments filed in this proceeding in 2011,[7] in order for affiliates to enforce these rights in court, all network affiliation agreements would have to prohibit affiliates and the networks' owned stations from granting retransmission consent outside of their markets, and each affiliate would have to be a third-party beneficiary under the other affiliates' agreements. Each affiliate would also need to obtain a contractual commitment from local MVPDs not to carry duplicating programming from a distant network station – a contract term the Commission itself has proposed to declare a *per se* violation of the good faith negotiation rules.[8] Because the Commission is the expert agency with respect to all of these

[7] Comments of the NBC Television Affiliates, *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71 (filed May 27, 2011).

rules, the policy objectives behind them, and the interplay among them, it is appropriate and consistent with the Commission's goals and objectives for the agency to enforce the Rule.

IV. CONCLUSION

The broadcast network/affiliate relationship has supported the delivery of locally focused content and high-quality network programming to viewers for generations, and the Rule is part of the regulatory framework that supports that relationship. Elimination of the Rule will jeopardize a business model that has successfully delivered on the Commission's policy goals of localism and diversity. The Rule should be retained.

Respectfully submitted,

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[8] *See Amendment of the Commission's Rules Related to Retransmission Consent,* Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011).