Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF VERIZON[1]

The record in this proceeding confirms that the Commission's network non-duplication and syndicated programming exclusivity rules contribute to skewing commercial negotiations for retransmission consent by providing television broadcast stations with substantial leverage that they would not have without such artificial regulatory preferences.[2] While some broadcasters claim that these rules remain necessary to achieve the Commission's original goals of protecting local broadcast stations' revenue streams and ability to produce local programming,[3] there is no basis to conclude that these regulations continue to serve those purposes – much less that any benefits outweigh the market-distorting effects of these rules.

The environment in which these rules operate has changed significantly since their adoption, so as to render these rules unnecessary and harmful rather than helpful. First, the video distribution market is undergoing a seismic shift and restructuring. Today, broadcast stations, cable companies, Direct Broadcast Satellite providers and other Multichannel Video

[1] The Verizon companies participating in this filing (Verizon) are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.
[2] *See, e.g.*, Comments of AT&T, at 3-7; Comments of Cablevision Systems Corp. and Charter Comms., at 6-8; Comments of CenturyLink, at 10-18; Comments of DirecTV and DISH Network, at 2; Joint Comments of Mediacom Comms. Corp., *et al.*, at 6-14; Comments of NTCA – The Rural Broadband Association, at 5-6; Comments of Time Warner Cable, at 4-14; Comments of The United States Telecom Assoc., at 12-14.
[3] *See, e.g.*, Comments of the ABC Television Affiliates Assoc., at 12-18; Comments of the CBS Television Network Affiliates Assoc., at 2-8; Comments of the FBC Television Affiliates Assoc., at 4-6; Comments of the National Assoc. of Broadcasters, at 15-20.

Programming Distributors (MVPDs) all are competing against each other for the same sets of viewers, offering consumers in local markets three, four or more choices for delivery of video programming.[4] In addition, facilities-based market participants increasingly face competition from a variety of online video providers, such as Netflix, Hulu, iTunes, Amazon Video, Apple TV, Roku, YouTube, and others, as well as broadcasters and other MVPDs who offer consumers access to video online. As the Commission recognizes, the network non-duplication and syndicated programming exclusivity rules were adopted for a completely different video marketplace, based on local TV stations vs. monopoly cable companies.[5]

Given the expansion of competition among video distribution platforms, a video distributor no longer poses the type of competitive or existential threat to local broadcast stations that was feared in the 1960s, 1970s and 1980s – particularly when that distributor is a competitive entrant in the marketplace. Broadcast stations and cable systems now are competing against multiple cable systems and online video distributions systems for viewers, and the record shows that the fees broadcasters are now able to obtain through the retransmission consent process are growing rapidly. In other words, there is no evidence at all that the broadcasters need regulatory assistance to protect themselves in this marketplace.

Moreover, a rule that provides one market participant with territorial exclusivity over two, three, or more competitors, while other market participants operate completely outside these rules, creates more than just leverage in one-on-one negotiating positions. The rule creates a situation in which broadcasters have substantial leverage over any particular video distributor.

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[4] *See Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, ¶ 60 (2014) ("today consumers may choose among several MVPDs and also may access video programming on the Internet") ("*Retrans. FNPRM*"); *see also* Comments of AT&T, at 3-4; Comments of Cablevision and Charter, at 6-8; Comments of CenturyLink, at 13-14; Joint Comments of Mediacom, *et al.*, at 6-9; Comments of Time Warner Cable, at 5-9.

[5] *See Retrans. FNPRM*, ¶ 60.

This is because the broadcasters have multiple avenues for reaching consumers – over-the-air, over-the-Internet, or through multiple competing distributors – while a distributor continues to have but one source for the popular programming carried by broadcasters. A distributor that fails to carry such programming finds itself at a substantial competitive disadvantage in the marketplace, as consumers have shown a willingness to abandon distributors who do not carry the programming they demand. These rules thus give broadcast stations more than just an opportunity to provide a revenue stream for local programming – they provide substantial leverage in negotiations with multiple competitors to achieve whatever over-market fees the station desires.[6]

The video marketplace is also changing in another significant way. There are now numerous large broadcast station ownership groups that have changed the landscape for negotiating retransmission consent. From a report by Broadcasting & Cable, in mid-2013, there were at least 20 station groups that owned or controlled more than a dozen full-power commercial TV stations, with each groups' stations spread over multiple markets.[7] And, during the past year, some of these groups have merged, or have proposed to merge, creating even larger television ownership groups.[8]

Retransmission consent negotiations now frequently bring to the table large television ownership groups with significant television holdings in multiple markets. Again, broadcast stations in these groups have more leverage over MVPDs because failure in negotiations may

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[6] *See* Comments of AT&T, at 4 (more competitive market allows broadcasters to play off one MVPD against others).

[7] Broadcasting & Cable, "Top 25 Station Groups 2013" (April 8, 2013), available at http://www.broadcastingcable.com/file/10464-Top_25_Station_Groups_2013.pdf?force=true.

[8] *See Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co.*, Memorandum Opinion and Order, 28 FCC Rcd 16867 (2013); *J. Stewart Bryan III and Media General Comms. Holdings (Transferor), et al*. Memorandum Opinion and Order, 28 FCC Rcd 15509 (2013); *Media Bureau Announces Filing of Applications Seeking Consent to Transfer Control of the Licensee Subsidiaries of Albritton Communications Co. to Sinclair Television Group, Inc.*, Public Notice, 28 FCC Rcd 12213 (2013).

result in loss of programming in not just one, but multiple markets – at the same time.[9] Given their size and multimarket clout, today's broadcast station groups certainly do not need government-mandated preferences in order negotiate carriage of their programming.

The changing video marketplace means that Congress and the Commission should reconsider how to achieve balance in retransmission consent negotiations. The mandates instituted over the past several decades may have appeared to achieve that balance in the 1990s, but now they prevent the marketplace for broadcast programming from functioning like a normal competitive market. By eliminating outdated regulations that are no longer needed in today's vibrant video marketplace, broadcast stations and MVPDs would be able to negotiate on an equal footing. And, specifically, eliminating the network non-duplication and syndicated programming exclusivity preferences would be an important step to fix the artificial imbalance in negotiating strengths that tip the scales in favor of broadcasters. Simply giving MVPDs an opportunity to seek alternative sources for programming blacked-out by a broadcast station would provide some protections to MVPDs and consumers against service disruptions and increased prices.

[9] *See* Comments of Cablevision and Charter, at 3-4 (listing multimarket blackouts).

For the reasons set forth in Verizon's initial comments and above, the Commission should find the public interest demands that it eliminate its network non-duplication and syndicated programming exclusivity rules.

Respectfully submitted,

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