Mediacom

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

<u>Study: Multiple Stab Wounds May Be Harmful to Monkeys</u>

Dear Ms. Dortch:

The caption above was the tagline for a 2007 report by *The Onion News Network* with this lead-in:

> Could multiple stab wounds mean shorter lives? A new study on primates from the National Institute of Health says it's possible.[1]

Of course, the story was apocryphal, a spoof by a parody news network mocking organizations that waste time and money on some "study" or another designed to prove the patently obvious.[2] The fake news report was very professionally produced, and even included an interview with a "scientist," decked out in a lab coat and sitting in front of a microscope, making, with a serious demeanor, totally ridiculous statements, such as that the control group of monkeys had been "merely punched" instead of stabbed. It was so slickly done that, if not for the story's inherent absurdity, one might have believed the piece to be a real news report.

Knowing of the *Onion* satire, when we recently read a press release[3] by the National Association of Broadcasters (NAB) announcing a "study" proving that a local television station will enjoy better ratings and economic results when it has an FCC-protected monopoly over popular network programs than when it competes with other stations offering the same shows,

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[1] See http://www.theonion.com/video/study-multiple-stab-wounds-may-be-harmful-to-monke,14150/.

[2] The skit may also have been a commentary on the fact that large numbers of animals are subjected to horrendous pain and suffering in scientific experiments, including many for which there is no compelling need. *See* http://www.peta.org/issues/animals-used-for-experimentation/.

[3] National Association of Broadcasters, *Exclusivity Rules Foster Investment in Localism by Broadcast TV Stations, New Study Finds,* Jul. 24, 2014, *available at* http://www.nab.org/documents/newsRoom/pressRelease.asp?id=3468.

our first reaction was to assume that it was a lame knock-off parody produced by some of the lesser talents in the broadcast television industry with too much free time on their hands. Who, after all, would spend good money commissioning a study to prove a point that even Captain Obvious might be embarrassed to make?

We had second thoughts after discovering that the study really exists and has been filed in this proceeding.[4] Since NAB apparently was not joking, we thought that a brief response would be in order.

In the spirit of the NAB press release, we begin by stating the obvious: The NAB release states the obvious.

Any business offering a product or service that consumers value will do better if it is the sole source of supply. To paraphrase a Mel Brooks line, it is good to be a monopoly. That is true not only of local broadcast stations, but also of book stores, plumbers, restaurants offering tomato-based dishes and virtually every other kind of enterprise.

There is no doubt that if we were silly enough to waste the money, we could secure a research report establishing that cable television companies had more video customers before the Commission made spectrum available for DBS service and would do better financially if we no longer faced competition. Of course, derision would greet any suggestion that, on the strength of those conclusions, the Commission should revoke the spectrum licenses granted to Dish Network and DirecTV. NAB, on the other hand, seems to seriously believe that the fact that broadcast stations generate better financial returns for their owners when they are monopolies is sufficient reason for the Commission to continue to allow them to enjoy network exclusivity.

We could spend some time rebutting that proposition on the off chance that there are some who do not find it absurd on its face. Fortunately, that is not necessary because, in this proceeding, Mediacom is not opposing broadcasters' retention of network non-duplication rights—as long as the stations do not block MVPD subscribers from continued access to their signals as a tactic in retransmission consent negotiations. If, on the other hand, a broadcaster voluntarily chooses to stop retransmission by an MVPD in order to gain negotiating leverage, it should not be allowed to prevent importation of a distant station with the same network affiliation, whether by virtue of a Commission rule or an agreement with the network.

Detailed arguments in support of that position can be found in other comments filed in this proceeding.[5] Our purpose in this letter is simply to state that the findings of the study filed by NAB do not weaken those arguments.

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[4] The study is attached as Appendix A to NAB's Reply Comments dated July 24, 2014.

[5] See, for example, the Joint Comments of Mediacom Communications Corporation and Cequel Communications, LLC d/b/a Suddenlink Communications filed in this docket on June 26, 2014.

NAB's fundamental point in producing the study is that network non-duplication rights are necessary to enable local stations to retain enough viewers to secure advertising rates that generate economic returns sufficient to keep them in business and support continued investment in local programming. Ignoring the facts that the study does not actually prove that point and that a high percentage of stations produce no local news and little of the local programming that is produced is unique,[6] NAB's rationale for allowing network exclusivity to endure is not persuasive in the case of blackouts initiated by stations.

When a station forces an MVPD to cease retransmitting its signal by denying an extension of an existing retrans agreement, it does so with knowledge that the result will be loss of a significant number of its viewers and a resulting loss of advertising revenues. Indeed, a station forcing a blackout can never be sure that any significant number of affected subscribers will switch to an alternative reception method, and so it knowingly assumes the risk of a worst-case scenario in which it will lose all or most of the MVPD's customers as viewers and see its advertising rates and sales plummet. Instead of living with the consequences of its decision, however, the station expects the Federal government to protect it from itself by allowing it to block those viewers from access to any alternative source of the blacked-out network shows.

It is simply the height of chutzpah to call upon the Commission to help a broadcaster keep the viewers that it has voluntarily chosen to shut-off. When there is a blackout, the existence of non-duplication rights means that consumers are forced to either forego viewing the blocked station or suffer the not-insignificant cost and inconvenience of switching providers. Neither alternative is desirable from the perspective of those consumers or in the public interest. It is difficult to see why the Federal government should help a station avoid or minimize the negative consequences of its own action motivated by a desire to improve its stockholders' financial returns and undertaken with utter disregard for the disruption and extra expense suffered as a result by a significant number of the viewers it claims to serve.

In adopting the 1992 Cable Act, Congress clearly intended the Commission to have both the duty and the power to safeguard MVPD subscribers against interruptions of service and increases in the cost of viewing broadcast television due to retransmission consent. The immunity of a local station from competition for viewers who value network programs is the primary reason that blackouts have been increasing dramatically and retransmission consent fees,

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[6] In its press release and elsewhere, NAB inflates the contribution to the public interest deriving from a station's provision of local news, sports, weather and emergency information. NAB also has asserted that allowing importation of a distant signal during a blackout would hurt blacked-out consumers because the out-of-market station would not supply this vitally important local information. In reality, virtually all of that information is available from other sources, including radio, the Web and, in some markets, local cable television news. Moreover, most markets have multiple broadcast stations that offer local news shows, and, to our knowledge, there has never been a case in which all local stations in a market offering news went dark at the same time. Anyone who watches local broadcast news knows that there is a high degree of overlap in coverage among stations—if the local CBS station is blacked-out for my MVPD, then I can tune into the local ABC, NBC or FOX station for coverage of the same news, sports and weather events as the CBS station covers. Moreover, in a blackout, MVPD subscribers who do not switch are not viewing the blacked-out station's programming whether or not a distant signal is being offered by the MVPD as a substitute.

which ultimately are borne by MVPD subscribers, have, as Chairman Wheeler has observed, "skyrocketed from $28 million in 2005 to $2.4 billion in 2012—a nearly 8,600 percent increase in seven years."[7]

In the end, what should determine the Commission's course of action in its examination of network non-duplication is not the best interests of the stockholders of broadcast stations, but the best interests of the viewing public. We do not need a study by someone in a lab coat to conclude that allowing stations to insulate themselves from competition is harmful to consumers in blackout situations.

When a station voluntarily causes a blackout, the primary function of network exclusivity switches from maximizing the rates paid by advertisers to maximizing the retransmission consent fees paid by MVPD subscribers in order to watch network shows. After all, the best way for a station to keep its viewers is to refrain from blacking them out in the first place.[8]

In a shutoff, network non-duplication becomes the equivalent of a knife by which a station owner is able to inflict a "stab wound" on the affected MVPD each time a subscriber switches providers until the bleeding becomes so severe that the MVPD caves in to the broadcaster's demands. Because consumers are the real victims of the blackouts imposed and retrans fee increases coerced by broadcasters, it is incumbent upon the Commission to take the knife away.

Thank you for your consideration.

Very truly yours,

Joseph E. Young

[7]http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition.

[8]We note that broadcasters frequently claim that coverage of local news and emergencies is the primary source of value that justifies high and rapidly escalating retrans consent fees; if that is true, then allowing an MVPD to import an out-of-market station with the same network affiliation should not harm the station's leverage in securing a favorable retransmission consent deal since the distant station would not be a substitute source for the valuable local coverage offered by the blacked-out station.