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

In the Matter of	)	
	)	
The Media Bureau Seeks Comment for	)	MB Docket No. 15-43
Report Required by the STELA	)	
Reauthorization Act of 2014	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

Rick Kaplan
Jerianne Timmerman
Benjamin F.P. Ivins
Scott Goodwin

Theresa Ottina
NAB Research

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)[1] is pleased to provide comment and information to assist the Commission in preparing its report on Designated Market Areas (DMAs) required by the STELA Reauthorization Act of 2014 (STELAR).[2] Section 109 of STELAR directs the Commission to report on DMAs and "considerations for fostering increased localism."[3] Specifically, Congress asks the FCC to: (1) examine consumers' access to broadcast programming from out-of-market television stations; (2) analyze "whether there are technologically and economically feasible alternatives" for defining markets that would "provide consumers with more programming options," and how those alternatives potentially

[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] *See Media Bureau Seeks Comments for Report Required by the STELA Reauthorization Act of 2014*, Public Notice, MB Docket No. 15-43, DA 15-253 (Feb. 25, 2015) (Notice).

[3] Pub. L. No. 113-200, § 109, 128 Stat. 2059, 2065 (2014).

could impact localism and broadcast television; and (3) make recommendations on fostering "increased localism in counties served by out-of-State" DMAs, particularly in rural areas.[4]

The Commission reviewed several of these same issues less than four years ago. In August 2011, the Commission, as directed by the Satellite Television Extension and Localism Act of 2010 (STELA), reported to Congress on "whether there are alternatives to the use" of DMAs "to define markets that would provide more consumers with in-state broadcast programming."[5] In that earlier proceeding, NAB and other parties showed the plethora of in-state and out-of-state broadcast television stations that consumers received both over-the-air and via multichannel video programming distributors (MVPDs) and demonstrated the efficacy of the DMA system. In its report, the Commission did not endorse any alternatives to DMAs for defining TV markets and did not recommend any notable changes to the DMA system.

The Commission should reach a similar conclusion in its current review. There are still no feasible alternatives to the DMA system and no compelling reasons to substantially modify it. The concerns raised about access to in-state programming in certain markets can best be addressed through existing, targeted mechanisms. These concerns also are ameliorated by continuing technological innovations that expand access to in-state news and information. Replacing the DMA structure underpinning the entire local television and advertising marketplaces "[s]urely" would be "burn[ing] the house to roast the pig."[6]

In our comments below, NAB explains that DMAs are not created by Nielsen out of whole cloth. Rather, DMAs appropriately reflect consumers' actual (and changing) viewing patterns and population and economic realities. As explained in the attached report from

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[4] *Id*.

[5] STELA, Pub. L. No. 111-175, 124 Stat. 1218, § 304 (2010).

[6] *Butler v. State of Michigan*, 352 U.S. 380, 383 (1957).

Norman Hecht Research, "[c]learly defined, stable DMAs are essential to an efficient marketplace."[7] They make possible the efficient buying and selling of advertising time on local TV stations, ensuring that local advertisers reach potential customers who can purchase their products and services locally. Alterations to the DMA system that reduce its efficiency or usefulness for advertisers will inevitably harm broadcasters' ability to earn advertising revenue that supports the very locally-oriented programming that Congress wants to promote.

NAB has previously demonstrated that viewers under the DMA system have extensive programming options from in-state and out-of-state stations (including in-state, but out-of-market, stations). Other mechanisms, moreover, exist within the present system to increase viewers' access to broadcast stations and programming, including the MVPD delivery of "significantly viewed" signals and the recently expanded process for making case-by-case modifications to the markets of individual stations, for purposes of cable and now satellite carriage.

NAB also stresses that *no* changes to current law or the DMA system are required for MVPDs to provide viewers with non-duplicative out-of-market programming, including the local news, weather and sports of in-state stations. If members of Congress believe that more viewers want access to the local programming of out-of-market TV stations in their state, they should encourage local MVPDs to reach additional agreements with broadcasters for the retransmission of their local programming – permission which local stations have every incentive to grant and which they have already granted in a number of cases. MVPDs' often expressed wish to import *duplicative national* network and syndicated programming into local markets, however, has no bearing on consumers' access to locally-oriented programming,

[7] Attachment A, Norman Hecht Research, Inc., *Designated Market Areas: How They Relate to Viewers and a Vital Local Television Marketplace*, at 4 (May 2015) (Norman Hecht DMA Report).

including local news. Indeed, importing duplicative national and syndicated programming would further undermine the economic viability of in-market stations already carrying that same national programming and their ability to produce high-quality, relevant local programming.

Importantly, technological innovation continues to increase consumers' access to in-state news and information, including those residents of counties assigned to out-of-state DMAs. According to the Radio Television Digital News Association, *every* television station that provides local news also has a website that provides local news, and increasingly that means the streaming of full newscasts online in addition to text news stories, pictures and video clips. Consumers have responded favorably to these increased online offerings, as page views and unique visitors to TV station websites have soared, almost doubling in the last year.

There are, moreover, no rational, viable alternatives currently available for defining television markets. The Commission utilizes DMAs for a range of regulatory purposes, and expressly concluded that DMAs are the best method of delineating TV markets "based on viewing patterns," as Congress directed the Commission to determine in the Telecommunications Act of 1996. When the Commission asked for comment on alternatives to DMAs in 2011, both broadcasters and MVPDs pointed out that material changes to the structure of television markets would cause serious disruptions to millions of consumers; would likely cause *more* viewers to experience a lack of local programming; and would disrupt cohesive local advertising and retail markets. MVPDs, particularly satellite operators, also previously described the technical impracticability and even infeasibility of implementing redefined markets. In short, NAB knows of no "technologically and economically feasible" alternatives to DMAs.

NAB strongly believes that the Commission and Congress can successfully promote localism, but not by undermining the DMA system. The challenges broadcast television stations face in providing local service, especially in rural areas, arise from the economic realities of TV broadcasting and local news production in medium and small markets. Because altering the mechanics of defining markets will not address these fundamental economic issues, the Commission must look elsewhere for ways to enhance local service. To effectively promote localism, including in rural areas, NAB urges the Commission to: (1) preserve TV translators and low power TV stations in the incentive auction process; (2) adopt rational ownership rules, including ones that recognize the special challenges faced by TV stations in smaller markets; (3) refrain from altering the rules governing retransmission consent to tilt negotiations in favor of consolidated MVPDs; (4) refrain from undermining broadcast stations' ability to enter into and enforce exclusive programming contracts with networks and syndicators; and (5) require DIRECTV to provide local-into-local service in all 210 DMAs. All of these actions would foster increased localism, consistent with congressional intent and long-standing FCC policy.

II. CURRENT DATA AND PREVIOUS ANALYSES ARE AVAILABLE TO INFORM THE REQUIRED REPORT TO CONGRESS ON VIEWERS' ACCESS TO BROADCAST PROGRAMMING

Section 109(a)(1)(A) of STELAR directs the FCC to analyze "the extent to which consumers in each local market have access to broadcast programming from television broadcast stations located outside their local market." NAB is unaware of any single data source that would enable the Commission to determine consumer access to out-of-market broadcast programming across all distribution technologies.[8] While the Commission states it has access to data for analysis of over-the-air reception and DBS carriage of out-of-market

[8] *See* Notice at 3.

broadcast stations, it asks about availability of similar data for cable and telephone MVPD carriage of out-of-market stations.[9] NAB notes that, as part of the requirements for the cable compulsory license, local cable systems must file semi-annual Statements of Account with the Copyright Office that provide a listing of all television stations they carried.[10] This listing of carried stations includes all the television stations located within the cable system's own television market, as well as out-of-market television stations being carried.[11] Telephone companies providing MVPD service and taking advantage of the cable compulsory license must make these filings as well. This data submitted to the Copyright Office may be useful to the Commission in its analysis.[12]

NAB observes that the legislative history of Section 109 makes clear that Congress' concern about consumers' access to "local programming" includes television programming originating from and about the DMA in which a consumer resides and also programming originating from and about the State in which a consumer resides.[13] In 2011, NAB and BIA/Kelsey conducted extensive analyses showing the large number of in-state TV stations consumers receive over-the-air and via cable and satellite operators.[14] BIA found, for example, that consumers across all counties nationwide received over the air, on a weighted

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[9] Notice at 3-4.

[10] 17 U.S.C. § 111(d). Satellite carriers have a similar requirement. *See* 17 U.S.C. § 119(b).

[11] NAB 2011 Comments at 17-18, n.37.

[12] NAB realizes that cable data from the Copyright Office are not reported on a DMA or state basis, which makes comparisons to data for over-the-air stations and DBS more difficult. The cable data are, however, comprehensive and cover out-of-market TV stations.

[13] S. Rep. No. 113-222, at 15 (2014) (Senate Commerce Committee STELAR Report).

[14] *See* Comments of NAB, MB Docket No. 10-238 (Jan. 24, 2011) (NAB 2011 Comments) and Attachment A, BIA/Kelsey, *Analysis of In-State and Out-of-State Reach by Local Television Stations* (Jan. 24, 2011) (BIA 2011 Study); Reply Comments of NAB, MB Docket No. 10-238 (Feb. 22, 2011) (NAB 2011 Reply Comments) and Attachment A, BIA/Kelsey, *Further Analysis of In-State and Out-of-State Reach by Local Television Stations* (Feb. 22, 2011). We incorporate these comments in this proceeding by reference.

average basis, 17.6 in-state television stations (and an additional 4.5 out-of-state stations) when all stations, including Class A, low power and translators, were considered.[15] In addition to analyzing consumers' over-the-air access to television stations on a county and DMA basis, BIA analyzed consumers' access to in-state (and out-of-state) TV stations via cable and satellite.[16] Interestingly, BIA found that cable systems carry significant numbers of *out-of-market, but in-state*, stations. Of the 12,931 "distant" television stations from other markets being carried by local cable system reporting units, more than half (6,983) were *in-state* stations.[17] This type of data, which can be derived from the Copyright Office reports of entities using the cable compulsory license, appears relevant to Congress' concern about consumers' access to programming from broadcast stations "located outside their local market."[18]

Given Congress' direction for the Commission to analyze consumers' access to broadcast "programming" specifically, rather than just broadcast stations, NAB also observes that consumers have more broadcast programming options today than ever before due to the rapid growth of multicasting. In 2011, NAB reported there were approximately 1,500 broadcast multicast channels.[19] According to SNL Kagan, the total number of over-the-air broadcast channels offered by full-power, Class A and low power stations rose from 4,785 in February 2013 to 5,511 in February 2014.[20] This growth in multicasting has fueled the

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[15] NAB 2011 Reply Comments at 2, 4-5.

[16] *See* BIA 2011 Study at 9-16; NAB 2011 Comments at 17-18. *See also* NAB 2011 Reply Comments at 2, n.6; 4-5 (summarizing results).

[17] NAB 2011 Comments at 20 n.40; BIA 2011 Study at 12.

[18] STELAR, § 109(a)(1).

[19] NAB 2011 Comments at 35.

[20] Justin Nielson, *TV station multiplatform analysis update: digital multicast, mobile channels on the rise; huge leaps in social media*, SNL Kagan (Mar. 12, 2014). (SNL Kagan has not yet released its full 2015 multiplatform analysis.) Sixty individual subchannels were launched on full-power stations in the

expansion of digital multicast networks, including multiple Spanish-language networks and other demographically-targeted networks such as Bounce TV.[21] Multicasting also has brought more local major network affiliates to smaller markets, which previously did not have a full complement of stations affiliated with ABC, CBS, Fox and NBC, "thereby increasing access to popular network programming and local news and public interest programming tailored to the specific needs and interests of the local community."[22] As the Commission explained, "a local network affiliate is more likely to carry local emergency information" and "local news programming tailored to the needs of the local community than a distant market affiliate imported by an MVPD."[23]

To provide a complete picture of consumers' access to broadcast programming today, whether from stations located in a consumer's DMA and/or state, the Commission should analyze their access to *all* broadcast channels, not just stations' primary streams, across all relevant distribution technologies.[24]

III. THE CURRENT DMA SYSTEM ALLOWS BROADCAST STATIONS TO SERVE THEIR VIEWERS AND LOCAL ADVERTISERS

A report to Congress on the DMA system should make clear the fundamental role DMAs play in the efficient functioning of the video marketplace. As defined by Nielsen, DMAs are geographic areas characterized by a close and natural nexus between consumers and

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second quarter of 2014, climbing to 101 subchannels in the third quarter and to 155 in the fourth. Michael Malone, *Diginets Future May Just Be Now*, Broadcasting & Cable (Feb. 9, 2015).

[21] SNL Kagan 2014 Multiplatform Analysis at 2.

[22] *2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4400 ¶ 69 (2014) (2014 Quadrennial NPRM).

[23] *Id*. at n.171.

[24] *See* Notice at 5 (inquiring whether FCC's report to Congress should consider multicast programming streams and seeking comment on availability of data). Both SNL Kagan and BIA/Kelsey have comprehensive lists of all stations' multicast streams.

their television viewing habits; between television stations and their service areas; between population centers and their economic, labor and housing patterns; and between advertisers and their potential customers. As discussed in detail below, DMAs appropriately reflect these marketplace realities, and, more importantly, allow local stations to serve their viewers and local advertisers.

A. Television Markets Reflect Consumers' Actual Viewing Patterns And Population And Economic Realities

A DMA is a group of counties served by the local TV stations licensed to communities in those counties. Almost every county and every TV station in the country are assigned to one and only one DMA based on the viewing preferences of the population in that county.[25] Nielsen uses samples of households to produce DMA audience estimates (*i.e.*, ratings) for local TV stations, which broadcasters use to sell the local, regional and national advertising that supports stations' programming and services.[26]

The foundation of the Nielsen DMA system is the Metropolitan (or Micropolitan) Statistical Area (MSA), a geographical area defined by the U.S. Office of Management and Budget. Each MSA consists of one or more counties and contains the relevant core urban area and any adjacent counties that have a "high degree of social and economic integration" (as measured by commuting patterns) with the population core.[27] Population centers near state boundaries – such as Washington, D.C. or New York City – inevitably draw people who

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[25] A small number of counties in Alaska are presently unassigned to a specific DMA. Senate Commerce Committee STELAR Report at 11. In a few cases, Nielsen divides counties and assigns them to different DMAs.

[26] Norman Hecht DMA Report at 1.

[27] U.S. Census Bureau, *Metropolitan and Micropolitan Statistical Areas Main*, http://www.census.gov/population/metro. A metro area contains a core urban area of at least 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but less than 50,000) population.

live in communities in adjacent states to the urban core by offering employment, entertainment, and cultural and shopping opportunities. To accurately reflect these socially and economically integrated populations, both MSAs and, thus, DMAs must sometimes cross state lines.[28]

In addition to counties within the MSA, DMAs often include adjacent or non-MSA counties. The determination of which adjacent counties to include in a DMA is based on the actual TV viewing patterns of the consumers residing in those counties.[29] Viewers essentially select their DMAs based on which local stations they view – Nielsen measures those viewing choices and assigns markets accordingly.[30] In a few instances involving large rural counties, Nielsen splits counties and assigns different sections of a county to different DMAs, so as to more accurately reflect viewing patterns.

Importantly, DMAs are not static. They change as market conditions change and viewer preferences evolve. Nielsen analyzes these viewer preferences each year and makes changes as warranted by actual viewing data—for example, by moving a particular county from one DMA to an adjacent DMA.[31] These changes can result in counties moving from an out-of-state DMA to an in-state DMA (or vice versa).[32]

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[28] Norman Hecht DMA Report at 2.

[29] *Id*.

[30] Obviously, these viewing choices are influenced by the actual reach of stations' signals and size of their coverage areas. Over-the-air viewers in particular watch the signals of stations that are closest to them because they can receive those signals – signals that, by their nature, do not stop at state borders. Thus, DMAs are also a function of the physics of broadcasting and stations' technical coverage. *See* NAB 2011 Comments at 10-11.

[31] Norman Hecht DMA Report at 2. Over the last ten years, the average number of DMAs affected by county reassignments was 17 per year (out of 210 DMAs) and the average number of counties reassigned to a neighboring DMA was ten per year (out of more than 3,000 counties). *Id*.

[32] For example, Pemiscot County, Missouri was previously assigned to the Memphis, TN DMA but is now in the Paducah, Kentucky-Cape Girardeau, Missouri DMA. Similarly, Thomas County, Nebraska

Thus, not only are DMAs based on marketplace realities and consumers' actual viewing preferences, they are sufficiently flexible to reflect marketplace changes. Nielsen has a clearly defined process for changing the counties comprising DMAs when warranted by the facts. Any proposed alternative to the DMA system would need to be similarly flexible and grounded in economic reality and reflective of consumer viewing habits.

B. Clearly Defined, Stable DMAs Are Essential To An Efficient Marketplace

The DMA system "support[s] and make[s] efficient the buying and selling of ad time on local TV stations," permitting local stations to earn the revenue "vital" for station operations.[33] As explained in more detail in the attached report from Norman Hecht Research, providing "consumers with quality local programming supported by the buying and selling of local TV advertising time requires an efficient marketplace." Local advertisers want their messages to reach consumers "who can purchase their products and services locally." Because stable, clearly defined DMAs ensure that advertisers know who they are reaching, DMAs are "essential to an efficient marketplace."[34] Marketing and advertising executives and local advertisers also have attested to the efficiency of the DMA system for placing advertising that reaches the intended audience.[35]

In real-world terms, for example, a local car dealership needs to reach the audience most likely to purchase its cars, and those buyers are most likely to come from the dealer's local DMA. After placing ads on a local TV station, the car dealership need to examine the

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recently has been reassigned from the Sioux Falls (Mitchell), South Dakota DMA to the in-state North Platte, Nebraska DMA.

[33] Norman Hecht DMA Report at 1, 4.

[34] *Id*. at 3-4.

[35] *See Ex Parte* Submission of Joint Television Network Affiliates, MB Docket No. 10-238 (May 3, 2011) (attachments and exhibits) (Network Affiliate *Ex Parte*).

effectiveness of its purchase to make rational, efficient advertising decisions in the future. And, of course, the TV station needs to attach a price for its available commercial time based on its relative competitive position in the local market. DMAs and their related measurements make all of this possible.

In considering any alternatives to, or modifications of, the current DMA system, the Commission must recognize the "essential" role that DMAs play in the advertising marketplace.[36] Alterations to the DMA system that reduce its efficiency and usefulness for advertisers will inevitably harm broadcasters' ability to earn the advertising revenue that supports the very locally-oriented programming that Congress wants to promote.

C. The Current DMA System Provides Viewers With Abundant Programming Options And Significant Local Service

As discussed above and in more detail in NAB's 2011 comments, viewers under the current DMA system have extensive programming options from in-state and out-of-state stations (including in-state, but out-of-market, stations). NAB also emphasizes that viewers resident in DMAs that cross state lines receive significant "local" programming – that is, programming that serves the particular interests of local audiences. In its analysis of localism and "local" service, the Commission should not regard programming from in-state, but out-of-market, stations as inherently local or as more locally relevant than programming from in-market stations that may be located across a state boundary but within a socially and economically integrated area.

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[36] NAB notes that the advertising industry has utilized DMAs, and before that the very similar Areas of Dominant Influence, to define TV markets for about 50 years. Erwin Ephron, *The Birth of ADI*, Inside Media (Mar. 4, 1992) (ADIs were created in 1966). This long history attests to the necessity of a DMA-like structure to a rational advertising market.

It should be plain why stations serve viewers residing in their markets but across a state line. To achieve the highest possible ratings and advertising revenue, stations need to serve consumers in all counties within their DMAs.[37] In many cross-border DMAs, significant portions of a station's in-market viewing audience are located out-of-state;[38] stations simply cannot afford to ignore large portions of their potential audience. Unsurprisingly, extensive evidence shows how TV stations in cross-border DMAs serve all their viewers, including specifically those across state lines.[39]

Other mechanisms, moreover, exist within the current system to increase viewers' access to broadcast stations and programming, including in small markets and rural areas. Congress has long permitted satellite operators to distribute distant network signals to "unserved households" unable to receive an adequate broadcast signal over the air.[40] In addition, both cable and satellite operators may deliver certain "significantly viewed" signals to consumers residing in a DMA adjacent to the DMA from which a signal originated. If a broadcast station has a significant level of viewers in an area outside of its home market, that station may seek carriage by MVPDs into that out-of-market area.[41] Moreover, the MVPD does not incur any additional copyright fees for carrying such stations. MVPD carriage of

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[37] Norman Hecht DMA Report at 2.

[38] *See, e.g.*, Comments of The Local Television Broadcasters, MB Docket No. 10-238, at 4-10 (Jan. 24, 2011) (giving multiple examples of stations whose out-of-state audiences comprise a fifth or more of the total TV households in their DMAs, and one example where a station's out-of-state audience comprised *over 70 percent* of all TV households in the DMA). Locally, only a small percentage of the total audience of Washington, D.C.-licensed TV stations actually reside in the District of Columbia.

[39] *See, e.g.*, Comments of Local Television Broadcasters, at 3-10; Reply Comments of the Joint Television Network Affiliates, MB Docket No. 10-238, at 2-6 (Feb. 22, 2011); NAB 2011 Comments at 20-22; NAB 2011 Reply Comments at 6-7.

[40] *See* Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat. 3935, at § 202 (1988).

[41] Senate Commerce Committee STELAR Report at 4.

significantly viewed stations thus increases consumer access to a broader range of broadcast signals and programming, including from out-of-market, but in-state, stations.[42]

In addition, the Commission has a well-established mechanism for making case-by-case changes to the markets of particular stations, for purposes of cable carriage, pursuant to the market modification mechanism set forth in Section 614(h)(1)(C) of the Act.[43] In 2011, the Commission reported that it had "granted a significant number of market modifications, successfully modifying the market definition for cable operators and broadcasters in specific jurisdictions."[44] As part of STELAR, Congress adopted, as recommended by the FCC, a similar market modification process for purposes of satellite carriage of broadcast stations;[45] the FCC is currently conducting a rulemaking to implement this provision.[46] This change in the law "could potentially expand the number of local stations available to consumers via" DBS and "facilitate greater access to local information" in particular cases, including those involving DMAs that cross state lines.[47]

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[42] For example, in Oklahoma, viewers in the far northeastern county of Ottawa, which is part of the Joplin, MO-Pittsburg, KS DMA, are able to view two in-state significantly viewed Tulsa stations. Similarly, in Virginia, viewers in southern Mecklenburg county, which is part of the Raleigh-Durham, NC DMA, are able to view in-state significantly viewed stations from both Richmond and Roanoke.

[43] 47 U.S.C. § 534(h)(1)(C). *See also* 47 C.F.R. § 76.59.

[44] In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010, MB Docket No. 10-238, DA 11-1454, at ¶ 56 (Aug. 29, 2011) (FCC 2011 DMA Report). As just one example, WBBJ, the ABC affiliate in Jackson, TN, partnered with local cable providers in two successful FCC market modification petitions; as a result, WBBJ and its local news programming is now seen in an additional 31 out-of-market communities within Tennessee as well as Kentucky and Mississippi.

[45] STELAR, § 102.

[46] *Amendment to the Commission's Rules Concerning Market Modification*, Notice of Proposed Rulemaking, MB Docket No. 15-71, FCC 15-34 (Mar. 26, 2015).

[47] FCC 2011 DMA Report at ¶¶ 57, 59; *see also* Senate Commerce Committee STELAR Report at 11.

D. No Changes To Current Law Or The DMA System Are Required For MVPDs To Provide Viewers With Non-Duplicative Out-of-Market Programming, Including Local News And Sports

NAB stresses that neither Congressional nor Commission action is necessary to provide consumers with additional non-duplicative "in-state" programming beyond what they already receive. Neither the Copyright Act nor the Communications Act nor state boundaries nor DMA boundaries prevent MVPDs from retransmitting in-state local news, sports and weather, or other non-duplicative programming, to viewers who reside in DMAs served primarily by out-of-state stations. MVPDs can obtain a private copyright license and retransmission consent from a particular station to retransmit the station's local programming into out-of-market areas without any change in law or regulation. In short, nothing currently prevents MVPDs from exporting stations' local news, weather, sports or public affairs programming to in-state, out-of-market subscribers upon agreement with the stations.

More specifically, television stations, in virtually all cases, own and control the copyrights to their own locally produced programming—*i.e.*, local news, local weather and local public affairs programming. MVPDs may secure a private copyright license from in-state, out-of-DMA stations to import in-state local news and informational programming and avoid payment of the distant signal compulsory copyright license fee.[48] The record in the 2011 DMA proceeding is replete with examples where stations and MVPDs have entered into these arrangements. Thus, no change in the Copyright Act is necessary to give MVPDs access to out-of-market signals that provide station-produced in-state programming.

[48] As an alternative, cable operators may use a compulsory license and pay any applicable fees to import the entire in-state, out-of-market signal, while deleting the duplicative programming pursuant to network non-duplication and syndicated exclusivity requirements. *See* 17 U.S.C. § 111.

Nor is any change in the Communications Act necessary. Although MVPDs may not retransmit, with a few exceptions, a television station's signal without the station's consent,[49] stations may, and do, grant such consent in the private marketplace. Just as a station may grant an MVPD a private copyright license to retransmit its local programming without any change in copyright law, a station may grant an MVPD the right to retransmit the signal containing the local programming without any change in communications law.

DMA boundaries simply are no obstacle to delivering non-duplicative locally-produced programming into in-state, out-of-market areas when MVPDs are willing to deliver the programming. Local stations can—and do—grant MVPDs a private copyright license and retransmission consent to export their local news, weather, sports, public safety and informational programming across DMA lines to serve in-state viewers in other DMAs. The only issue is the extent to which MVPDs are willing to provide the programming, which they can easily place on a low-tier public access channel without disrupting or supplanting another cable programming channel. The result is a private marketplace transaction in which the MVPD, the local station, and the in-state, out-of-market viewers all benefit at no cost to any of the parties.

In DMAs throughout the country, viewers served primarily by out-of-state television stations in fact have access to in-state television programming. As NAB and other commenters have documented, in a number of instances MVPDs import out-of-market, but in-state, television programming via agreements with broadcasters.[50]

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[49] *See* 47 U.S.C. § 325(b).

[50] For example: (1) Charter Cable in Johnson City, and Bristol, Tennessee (in the Tri-Cities Tennessee/Virginia DMA) imports the local newscasts of WBIR-TV located in the Knoxville, Tennessee DMA; (2) cable companies in the southern Colorado counties of Montezuma and La Plata, which are in the Albuquerque, New Mexico DMA, import the local in-state news from KUSA in Denver; (3) DIRECTV exports the local programming of KATV in Little Rock, Arkansas, into the counties in southwest

In sum, if members of Congress believe that viewers desire to have access to locally-produced news, weather, sports, public affairs and informational programming from out-of-market television stations in their state, they should encourage local MVPDs to retransmit those in-state stations. The originating in-state stations have every incentive to consent to the retransmission of their *local* programming, and are doing so today. MVPDs, therefore, have every tool needed to retransmit local programming from in-state, out-of-market stations. To the extent that MVPDs do not pursue carriage of in-state local programming to in-state, out-of-market subscribers, it is the result of their own business decisions—not a result of any prohibition in the law, Commission rules or the DMA system.

IV. Technological Innovation Has And Will Continue To Increase Viewers' Access To In-State News And Information

It is almost a cliché to observe that Americans today have more access to more news and information – global, national, regional, local – than ever before. Most pertinent to this proceeding, content accessed via the Internet can "foster increased localism in counties served by out-of-State" DMAs, including in rural areas.[51] Nearly all Americans today can obtain information pertaining to their state, their neighboring state, and the 48 other states if they so choose. Consumers residing in a county assigned to an out-of-state DMA may easily access the websites of in-state television and radio stations, newspapers, magazines, and other sources to obtain news and information relevant to the state where they live.

Consider, for example, La Plata and Montezuma counties in the southwestern corner of Colorado, which are assigned to the Albuquerque-Santa Fe, New Mexico DMA, and which

Arkansas assigned to the Shreveport, Louisiana DMA; and (4) Comcast imports the local news programming of KOAT-TV, Albuquerque, New Mexico, into Las Cruces, New Mexico, which is located in the El Paso, Texas, DMA. *See also* Joint Television Network Affiliates Reply Comments at 7-9 (citing numerous examples).

[51] STELAR, § 109(a)(2), (b)(2).

have been cited as leading examples of the DMA "problem." As noted above, cable companies in those counties carry the local programming of KUSA, the NBC affiliate in Denver. Residents of La Plata and Montezuma counties also can readily access online a wide range of Colorado-based broadcast stations and other media outlets. KUSA offers its local newscasts live every day on its website. The Denver ABC affiliate, KMGH-TV, offers a free mobile app that provides live streaming of its newscasts as well as breaking news alerts to anyone with a smartphone. According to a recent Pew Research Center report that studied the news environment in Denver, consumers have access to an "abundance of offerings," including 25 digital-only news sites, 35 specialty/ethnic news outlets, and seven local TV stations, all of which maintain a website with local news and information.[52] The Huffington Post maintains a Denver-based landing page that includes many Colorado-focused stories. And the Rocky Mountain PBS I-News provides in-depth and investigative news stories and makes them all available online, for free.[53] All consumers interested in news sites focused on Denver or Colorado – including those in La Plata and Montezuma counties – may access them online via a range of devices.

The Colorado example represents the "new normal," as technological changes have significantly increased "the extent consumers have access to broadcast stations located outside their local markets."[54] In today's digital world, television stations across the country are leading online sources for local news and information (although they are hardly alone).[55]

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[52] *The News Environment in Denver*, *Colorado*, Pew Research Center (Mar. 5, 2015), http://www.journalism.org/2015/03/05/the-news-environment-in-denver-colorado/.

[53] *See* http://inewsnetwork.org/.

[54] Notice at 2.

[55] *See* Amy Mitchell, *State of the News Media 2015*, Pew Research Center (Apr. 29, 2015), http://www.journalism.org/2015/04/29/state-of-the-news-media-2015/ (noting that "digital news

According to a recent report by the Radio Television Digital News Association (RTDNA), *every television station that provides local news also has a website that provides local news.*[56] Those websites are becoming increasingly dynamic as local stations and their news directors see their websites not as ancillary to their core business, but as an integral part of their connection with viewers. For example, in addition to the text, photos and video clips that have been staples of local news offerings on TV stations' websites for several years, more stations are streaming, both live and recorded, the entirety of their local newscasts. For example, in the top 100 TV markets, about 70 percent of local news stations provide live newscasts on their websites.[57] Substantial numbers of stations include more information online than they do on-air – including blogs from local reporters, podcasts, event calendars, live camera access, and more.[58]

Viewers have responded favorably to these increased online offerings. According to the RTNDA Online Study, page views and unique visitors to TV station websites soared in the last year, almost doubling overall.[59] In the top 25 markets, for example, TV stations reported an

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entrants and experimentation, whether from longtime providers or new, are . . . now so numerous and varied that they are difficult to keep track of").

[56] Bob Papper, *Tracking what's new online*, RTNDA (Apr. 20, 2015) (RTNDA Online Study) (also showing that more than 75 percent of radio stations in markets of all sizes that air local news include local news on their websites), http://www.rtdna.org/article/research_tracking_what_s_new_online#.VUfg-dJVhBc. With only a few exceptions, the local news on stations' websites is freely available. *See id*. (only four TV stations in the country that responded to the survey reported including some content behind a paywall).

[57] RTNDA Online Study. In markets 1-25, 70 percent of stations' websites include live newscasts; in market 25-50, 82.5 percent of websites have live newscasts; and in markets 51-100, 67.9 percent do so.

[58] *Id.*

[59] *Id.*

average of more than 2.5 million unique visitors last year. Even smaller market TV stations (markets 51-100) reported an average of about 588,000 unique visitors in the last year.[60]

Local TV newsrooms are doing more than providing a website where viewers/readers can access local news; they are also reaching out to those viewers through aggressive use of social media. According to another recent RTDNA survey, TV news directors are using social media to actively engage with users.[61] In the top 50 markets, for example, about 80 percent of stations responding to the survey indicated that their TV newsrooms "constantly" use Twitter to provide updated local information and news. Even in small markets (DMAs 101-210), about 55 percent of TV stations reported using Twitter "constantly," while another 35 percent of stations reported using it "daily."[62]

In addition, nearly 88 percent of TV stations responding to RTDNA's survey reported that they have mobile applications.[63] This is critical because even those Americans that do not have in-home broadband Internet access can easily access information if they have a smartphone.[64] Indeed, a recent Pew Research Center survey of Internet users reported that 87 percent of online adults say the Internet and mobile phones have "improved their ability to

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[60] *Id.* Looking at the top ten largest TV station group websites, SNL Kagan reported that from January 2013 to January 2014 the number of unique viewers grew 30.9 percent, from 17.5 million to 23 million total monthly unique viewers. SNL Kagan 2014 Multiplatform Analysis at 3.

[61] Bob Papper, *Stations grow in social, mobile*, RTDNA (May 4, 2015), http://www.rtdna.org/article/research_stations_grow_in_social_mobile#.VUfeXtJVhBc.

[62] *Id.*

[63] *Id.*

[64] About two-thirds of all Americans now own a smartphone, up from only 35 percent in the spring of 2011. *See* Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center (Apr. 1, 2015). "A majority of smartphone owners use their phone to follow along with breaking news, and to share and be informed about happenings in their local community." *Id*.

learn new things," and that 62 percent of Internet users say that the Internet and mobile phones help them be "better informed than 5 years ago" about "local news" specifically.[65]

In light of these developments, the Commission should consider the online availability of local broadcast content as it prepares its DMA report.[66] Given the increasing accessibility of in-state news and information to consumers, including those in out-of-state DMAs, there is no compelling reason to now disrupt the DMA system, which ensures an efficient TV marketplace enabling local stations to earn the revenues that support their on-air *and* online services.

V. NO RATIONAL, VIABLE ALTERNATIVE EXISTS FOR DEFINING TELEVISION MARKETS

Section 109(a)(1)(B) of STELAR directs the FCC to analyze "alternatives to the use" of DMAs to define markets that would "provide consumers with more programming options . . . ." NAB is unware of any "technologically and economically feasible" alternatives to DMAs.[67] Indeed, the Commission has recognized DMAs as the best method of determining viewer preferences and has utilized them for a range of regulatory purposes.

In the Telecommunications Act of 1996, Congress expressly provided that a broadcasting station's market shall be determined "by the Commission by regulation or order using, where available, commercial publications which delineate television markets *based on viewing patterns*,"[68] which, as discussed above, Nielsen does when delineating DMAs. When the Commission adopted DMAs as the appropriate determinant of local television markets in 1996, it found that:

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[65] Kristen Purcell, *Americans Feel Better Informed Thanks to the Internet*, Pew Research Center (Dec. 8, 2014).

[66] *See* Notice at 5 (asking whether FCC should include "online access to broadcast programming" in its report).

[67] STELAR, § 109(a)(1)(B).

[68] 1996 Act, § 301(d) Market Determinations (emphasis added). Congress did not alter this language when enacting STELAR.

> Nielsen's DMA market assignments provide the most accurate method for determining the areas served by local stations. . . . DMAs have become the television market standard for commercial purposes . . . . and represent the actual market area in which broadcasters acquire programming and sell advertising. . . . Thus, we conclude that the DMA market designations will provide the best method of "delineat[ing] television markets based on viewing patterns" over the long term.[69]

As the Commission observed more recently, "[w]e have long recognized . . . that DMAs are the relevant geographic market in which television stations compete."[70]

Less than four years ago, moreover, the Commission, as directed in Section 304 of STELA, reported to Congress on "alternatives to the use" of DMAs to define local markets. Although the Media Bureau had sought comment on three possible alternatives,[71] the final report to Congress in August 2011 recommended none of them. Commenters in that proceeding, both broadcasters and MVPDs, criticized those alternatives on a variety of grounds.[72] NAB explained how revisions to the DMA structure would move away from current assessments of consumers' real-world "viewing patterns"[73] and toward a market definition divorced from the actual "market in which television stations compete."[74] Certainly, a more

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[69] *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order, 11 FCC Rcd 6201, 6220 ¶ 39 (1996) (quoting Section 614(h)(1)(C), 47 U.S.C. § 534(h)(1)(C), as amended by the 1996 Act). Prior to the adoption of DMAs, the FCC utilized Arbitron's analogous Areas of Dominant Influence (ADIs) to determine local TV markets. In adopting and implementing the Cable Television Consumer Protection and Competition Act of 1992, both Congress and the Commission relied on ADIs. When Arbitron ceased its television research business, the FCC launched a proceeding to redefine market areas and adopted Nielsen's DMAs. *See* NAB 2011 Comments at 12 & n.28.

[70] *2010 Quadrennial Regulatory Review*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, ¶ 38 (2011) (2010 Quadrennial Review NPRM).

[71] Specifically, the Bureau in 2011 requested comment on (i) defining geographic markets based on the 50 states, plus the District of Columbia; (ii) dividing states into multiple markets based on the stations covering different portions of a particular state; or (iii) modifying DMAs so that they do not cross state lines by reassigning counties from one state currently included in the DMA of another state to a neighboring DMA in their home state. FCC 2011 DMA Report at ¶ 45.

[72] *See id*. at ¶¶ 47-50, 53.

[73] 1996 Act, § 301(d).

[74] 2010 Quadrennial Review NPRM at ¶ 38.

static system based in whole or in part on unchanging state boundaries would not create more rational or useful markets.[75] Attempting to redefine TV markets, particularly on state lines or similar boundaries, simply would not work "because no other aspect of the television industry is organized that way."[76] Nothing has occurred in the past four years to undermine the validity of that conclusion.

More importantly, material changes to the structure of television markets would cause serious disruptions to consumers and affirmatively harm stations' abilities to serve viewers and advertisers. Altering the DMA system would "risk upsetting the legitimate expectations of millions of viewers,"[77] by, for example, requiring MVPDs "to delete one group of broadcast stations in favor of another."[78] Indeed, both broadcasters and MVPDs previously commented that redefining TV markets would in all likelihood cause more viewers to "face a dearth of adequate local programming,"[79] contrary to the intent of Congress.

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[75] *See* NAB 2011 Comments at 22-27; NAB 2011 Reply Comments at 7-10; BIA 2011 Study at 18-26. As the BIA Study and NAB's comments explained, for example, many states have multiple sizeable population centers separated by considerable distances and could not serve as rational television markets, as they do not reflect viewing patterns or the local TV advertising marketplace. Modifying DMAs so that they do not cross state boundaries would result in arbitrary and irrational markets that do not reflect real-world population patterns or economic activity. There are numerous instances where certain areas of states are most closely aligned with counties in adjoining states rather than other counties in their own states, which is why both DMAs and MSAs cross state boundaries. In addition, redefining DMAs so that they do not cross state lines would result in many reassigned counties becoming part of TV markets where the stations are geographically very distant and have few, if any, ties to those counties. The comments of NAB and other commenters provided numerous detailed examples of these serious, practical problems with altering the structure of DMAs. *See, e.g.*, Comments of Local Television Broadcasters, at 3-10 (discussing 17 different markets).

[76] Comments of LIN Television Corp., MB Docket No. 10-238, at 7 (Jan. 24, 2011). *Accord* NAB 2011 Reply Comments at 8 (explaining that many aspects of video distribution and regulation, including broadcast television ownership, MVPD carriage agreements and regulations, several copyright laws, affiliation agreements between local stations and networks and advertising contracts, are DMA-based).

[77] Comments of DIRECTV, Inc., MB Docket No. 10-238, at 7 (Jan. 24, 2011).

[78] Comments of National Cable & Telecommunications Association (NCTA), MB Docket No. 10-238, at 2 (Jan. 24, 2011).

[79] DIRECTV Comments at 8. *Accord* LIN Television Comments at 7-8; NCTA Comments at 5-6.

Restructuring TV markets, for instance, could easily result in viewers – particularly MVPD subscribers -- receiving service from geographically more distant stations with lesser connections to those viewers. Obviously, residents of Arlington County, Virginia would be startled and displeased if stations in Richmond or Roanoke suddenly became their "local" stations carried on all MVPDs. Even though located out-of-state, Washington DC stations clearly offer consumers in Arlington "content" more "relevant to [their] daily life," including "news, sports, [and] weather," than in-state, but more distant, stations would provide.[80] The same is true of many other cross-border DMAs. For example, the Spokane, Washington DMA includes the northern panhandle of Idaho. That area is economically and socially integrated with Spokane, and is in the Pacific time zone like Washington state, rather than the Mountain time zone as the rest of Idaho. Spokane is located very near to the Idaho border and is connected to northern Idaho by Interstate 90, while Boise, the largest city in Idaho, is hundreds of miles to the south. No interstate highway connects the panhandle to Boise or the rest of the state.[81]

In addition, because DMAs "reflect cohesive local advertising and retail markets,"[82] undermining the DMA structure would disrupt the efficient functioning of the advertising marketplace and harm stations' ability to earn ad revenue. As described in the attached

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[80] Senate Commerce Committee STELAR Report at 15.

[81] Similarly, if Dona Ana County, New Mexico (currently part of the adjacent El Paso, Texas market) were reassigned to the in-state Albuquerque market, the viewers would then receive via MVPDs "local" television from Albuquerque stations located 200 miles away, rather than from El Paso stations only 50 miles away. It is highly unlikely that these Dona Ana county consumers would receive more relevant local programming, especially local news, weather and emergency information, from stations so much more distant. Local businesses in or near Dona Ana county would be forced to advertise on distant Albuquerque stations – and pay to reach Albuquerque residents unlikely to patronize their businesses – to try to reach local viewers in Dona Ana county. *See also* Comments of Local Television Broadcasters at 3-7 (discussing other examples).

[82] Network Affiliates *Ex Parte* at 2.

report, a change in the way markets are structured could inaccurately and artificially shrink the size and perhaps the rank of some stations' markets and artificially increase the size and rank of other markets. Such a decrease in the size or rank of a station's market may preclude it from being included in national advertising campaigns and have a negative impact on station revenues.[83] Moreover, a market structure that does not appropriately account for population centers (including those that cross state boundaries), as the DMA system does, would likely look like a group of counties gerrymandered together and result in inefficient buys for advertisers trying to reach consumers in their particular areas.[84] In this inefficient market, advertising dollars would migrate to other media outlets, ultimately reducing the ability of local stations to deliver quality, locally-oriented programming. Everyone loses in this scenario – viewers, stations and advertisers.[85]

Beyond the economic infeasibility of upending the commercial television industry and the television advertising marketplace, major changes to the existing DMA structure are also, in many cases, technically impractical or even infeasible for both broadcasters and MVPDs. The placement of broadcast towers and the physically-limited reach of broadcast signals would prevent stations from aligning their coverage areas with changed market definitions, including those based on state boundaries. If market boundaries are realigned, cable and satellite operators could have difficulties with receiving a "good quality signal" from a broadcaster to the cable headend or satellite uplink facility. According to the satellite carriers, redefining markets so that they include significantly more stations could increase carriage

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[83] Norman Hecht DMA Report at 3.

[84] *See* BIA 2011 Study at 19; Norman Hecht DMA Report at 3-4.

[85] *See* Norman Hecht DMA Report at 4 (also discussing how television advertising has major stimulative effect on U.S. economy as a whole).

obligations so as to "overburden satellite capacity,"[86] and their systems also may be unequipped to match redefined local markets.[87]

For all these reasons, NAB does not believe any "technologically and economically feasible" alternative to DMAs exists. That explains why no one has yet proposed a feasible alternative and why the Notice in this proceeding offered no alternatives.

VI. THE COMMISSION AND CONGRESS CAN SUCCESSFULLY PROMOTE LOCALISM, BUT NOT BY UNDERMINING THE DMA SYSTEM

A. Challenges to Providing Local Service, Especially In Rural Areas, Arise From The Economic Realities Of Television Broadcasting

The language and legislative history of Section 109 of STELAR show particular concern about rural areas and the availability of local programming in those areas.[88] But the challenges broadcast television stations face in providing local service in rural markets stem from the fundamental economics of television broadcasting, not from the mechanics of defining television markets.

Free over-the-air broadcast television stations need a relatively large economic (*i.e.*, population) base to survive. As a result, full-power television stations are much less numerous than full-power radio stations – only 1,785 television compared to 15,442 radio -- and these limited numbers of television stations are concentrated in larger population centers.[89]

[86] FCC 2011 DMA Report at ¶ 53.

[87] *See* DIRECTV Comments at 8 (asserting that its spot beam satellites are calibrated to match the location of markets under the current DMA system and that those spot beams "cannot be changed").

[88] *See* STELAR, Section 109(b)(2) (directing FCC to consider the impact that DMAs have "on local programming in rural areas" in making recommendations for fostering localism). *Accord* Senate Commerce Committee STELAR Report at 15.

[89] *Broadcast Station Totals as of March 31, 2015*, FCC News Release (Apr. 9, 2015). This population-based distribution of television stations not only explains the fewer number of stations in rural areas but also the concentration of stations in New York City and Philadelphia, rather than in communities in bordering New Jersey. *See* STELAR, § 109(b)(3) (asking FCC to examine local programming in "States served exclusively by out-of-State" DMAs).

In addition, the smaller television stations in rural markets are less able to afford the type of local news, information, sports and weather that Congress and the Commission particularly value.[90] The Commission itself has observed that smaller markets may be less able to support multiple local television news operations than larger markets.[91] Numerous studies have shown that television stations in larger markets have "greater revenue potential" than small market stations and thus "tend to provide more local news programming than stations in smaller markets."[92] Because the population base – and thus the potential advertising revenue available – are significantly lower in rural markets than in urban ones, rural areas have fewer television outlets and those outlets have less resources to acquire and produce programming, including costly local news programming.[93] Changing the DMA system will not alter these basic economic facts about advertiser-supported local television broadcasting.[94]

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[90] *See* Senate Commerce Committee STELAR Report at 15 (identifying "news, sports, weather, and other programming containing content relevant to a consumer's daily life" when discussing the FCC's report on consumer access to local programming).

[91] *See* 2010 Quadrennial Review NPRM, at ¶ 53 & n.117.

[92] Philip Napoli, *Television Station Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data*, 6 Info: The Journal of Policy, Regulation, and Strategy for Telecommunications, Information, and Media 112, 119 (2004) (also concluding that public affairs programming "is a function of station revenues"). Multiple empirical studies have similarly found "a positive and statistically significant relationship between revenue and local news production." J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 45-46 & Table 8 (June 2011), attached to NAB Reply Comments, MB Docket No. 10-71 (June 27, 2011) (Scale and Scope Study).

[93] Numerous studies submitted to the FCC have demonstrated the limited pool of total advertising dollars available to television stations in small markets. *See, e.g.,* NAB Comments, MB Docket No. 14-50, at 56-57 & Attach. D (Aug. 6, 2014) (NAB 2014 Quadrennial Comments). In 2013, stations in the *ten largest* DMAs received 38 percent of the total television station advertising dollars in all 210 markets combined, while stations in the *smallest 110* DMAs (ranked 101-210) received only ten percent of all TV ad dollars. *Id*. at Attach. D.

[94] NAB observes that allowing MVPDs to import distant, out-of-market signals carrying *duplicative national* network and syndicated programming would only exacerbate the economic challenges of producing *local* news and other local programming in rural markets and would not promote *local* programming in "States served exclusively by out-of-State" DMAs. STELAR, § 109(b)(3).

B. The FCC And Congress Should Take Other Actions To Promote Local Broadcast Service, Particularly In Rural Areas

Because the DMA structure is not the root cause of concerns about local broadcast service, the Commission must look elsewhere for ways to address Congress' clear intent to "foster[] increased localism," especially in rural areas.[95] To effectively promote localism, NAB calls for the Commission to act, and, as appropriate, urge Congress to act in the following areas:

Preserve TV translators and low power TV stations in the incentive auction process. NAB's 2011 analysis showed the important role that translators and low power stations play in increasing broadcast television service to consumers. For example, consumers across all counties nationwide received over the air, on a weighted average basis, 17.6 in-state television stations when all stations – including translators, Class A and low power stations – were considered, but only 12.2 in-state stations when just full-power stations were counted.[96] The record in the incentive auction proceeding confirmed that TV translators are essential for many full-power stations, especially in sparsely populated areas in the West, to reach significant numbers of viewers.[97] However, the FCC's current incentive auction and repacking rules ignore the important role of translators, including specifically in rural areas where there is little, if any, demand for additional wireless spectrum, and will needlessly force many translators and low power stations off the air.[98] The Commission should alter its auction and

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[95] STELAR, § 109(b).

[96] NAB 2011 Reply Comments at 4-5.

[97] *See* NAB Reply Comments, GN Docket No. 12-268, at 48-50 (Mar. 12, 2013) (citing examples of extensive translator use to provide service ranging from New Mexico to Oregon to the Florida Keys).

[98] As NAB has previously explained in detail, the FCC is not ensuring that translators in use today will have a channel following repacking, which means many will be displaced. In addition, the FCC's determination to use a variable band plan will displace translators in many rural regions by recovering more spectrum in those regions than in congested markets.

repacking rules to prevent this needless loss of service, especially in rural regions highly dependent on translators.

Adopt rational ownership rules, including ones that recognize the special challenges faced by television stations in small markets. NAB and many other parties have repeatedly demonstrated that the FCC's local ownership restrictions – none of which have been reformed since the last century – must be updated to reflect current marketplace realities.[99] Despite the urgent need for reform, the Commission still has not completed its statutory-required 2010 quadrennial ownership review, let alone the 2014 review. This inaction has compromised the competitiveness of local broadcasters against increasingly consolidated MVPDs and online outlets, and has had particularly deleterious effects on local TV stations in small markets.[100] Given the economic hardship that even many major network affiliated stations experience in smaller markets, relatively few, as discussed above, have the wherewithal to maintain local news operations. This problem will only worsen due to the FCC's action last year effectively prohibiting stations from forming joint sales agreements (JSAs) and requiring the unwinding of long-standing joint arrangements.[101] If the Commission wants TV stations in medium and small markets to serve their local communities effectively, it must reform its local TV ownership rule to allow stations to take advantage of economies of scale and scope by combining more freely.[102]

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[99] *See, e.g.,* NAB 2014 Quadrennial Comments; NAB Comments, MB Docket No. 09-182 (Mar. 5, 2012).

[100] *See, e.g.*, NAB *Ex Parte* Submission, MB Docket No. 09-182, at 3-10 (Mar. 21, 2014); NAB 2014 Quadrennial Comments, at 50-59 & Attach. B, D; NAB Reply Comments, MB Docket No. 09-182, at 12-13 & Attach. A (Apr. 17, 2012) (demonstrating the greater financial challenges faced by local TV stations in smaller markets, especially those not among the very top ranked in their local markets).

[101] Bipartisan legislation recently has been introduced in the Senate to grandfather pre-existing JSAs affected by the FCC's decision.

[102] *See, e.g.,* Scale and Scope Study at 2 (in general, "[r]egulations that limit realization of economies of scale and scope result in higher costs, lower revenues, reduced returns on invested capital, lower

Refrain from altering the rules governing retransmission consent to tilt negotiations to favor of consolidated MVPDs. Local TV stations' economic viability increasingly depends on their ability to negotiate for compensation with MVPDs that resell those stations' signals for profit.[103] More importantly from a consumer perspective, retransmission consent revenues have improved the quantity and quality of broadcast programming, including local television news.[104] In fact, "the $3.3 billion television stations received in retransmission consent revenues in 2013 accounted for 34 percent of their spending on programming"; in other words, "in the absence of retransmission consent compensation broadcasters would have had to reduce the amount they spend producing content by more than a third."[105] To enable local stations to continue providing costly programming services, including local news, the Commission and Congress should resist calls from MVPDs to alter the retransmission consent process in ways that tilt negotiations in their favor and hurt local stations' ability to negotiate a fair, market-based price for retransmission of their signals. Small stations and station groups – which are already at a disadvantage in negotiations with large, consolidated MVPDs – would be particularly harmed.[106]

Refrain from undermining broadcast stations' ability to enter into and enforce exclusive programming contracts with networks and syndicators. NAB has previously explained in detail how elimination of the network nonduplication and syndicated exclusivity

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output and, potentially, fewer firms," and in TV broadcasting specifically, will result in "disproportionate[]" declines in "local news production").

[103] *See, e.g.*, Scale and Scope Study at 3-4; J.A. Eisenach, NERA Economic Consulting, *Delivering for Television Viewers: Retransmission Consent and the U.S. Market for Video Content*, at i-ii, 26-27 (July 2014) (NERA Retransmission Consent Study).

[104] NERA Retransmission Consent Study, at 29-32.

[105] *Id.* at 28.

[106] *See, e.g.*, NAB Supplemental Comments, MB Docket No. 10-17, at 8-11 (May 29, 2013); NAB *Ex Parte* Communication, MB Docket Nos. 09-182, 10-71, at 5-7 (Mar. 24, 2014).

rules would deter broadcast investment in content, including local content, and inflict serious harm on local broadcasters and the audiences they serve.[107] Regulatory or legislative action undermining stations' ability to enforce exclusivity would increase the importation of duplicative national network and syndicated programming from distant markets, ultimately undermining local programming options.[108] The diversion of audiences to distant, imported stations will reduce local stations' audiences and devalue the advertising spots that allow advertisers to reach their intended local customers, thereby resulting in a loss of ad revenue for local stations. As Congress has repeatedly recognized, local stations then would have fewer resources to devote to programming, including local news, weather, sports and emergency information.[109] The Commission should decline to undermine localism and the public interest in this way.

Require DIRECTV to provide local-into-local service in all 210 DMAs. While NAB takes no position on whether the proposed merger between DIRECTV and AT&T should be approved, we continue to urge the FCC to consider conditions on this merger to promote localism, including a requirement that DIRECTV offer consumers local broadcast stations in all 210 markets in which it operates.[110] DIRECTV still does not offer its subscribers local TV

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[107] *See, e.g.*, NAB Comments in MB Docket No. 10-71, at 15-19 (June 26, 2014) and Appendix B, Decl. of Mark Israel and Allan Shampine, at 22-31.

[108] Eliminating the ability to enforce program exclusivity while cable operators enjoy the benefits of below market rates provided by a compulsory copyright license that precludes other means of enforcing exclusivity would be particularly harmful.

[109] *See, e.g.,* Senate Commerce Committee STELAR Report at 2 (the importation of "non-local or 'distant' signals" would "tak[e] viewers away from local broadcast television stations that provide community-focused programming such as local news and weather"). *See also* Norman Hecht DMA Report at 2-3 (describing the harm to viewers, local stations and advertisers from the importation of TV signals from non-local DMAs).

[110] *See* NAB Comments, *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Licenses and Authorizations*, MB Docket No. 14-90, at 7-8 (Sept. 16, 2014).

broadcast signals as part of its packages in 13 of the 210 DMAs where it operates. Making available to viewers in these rural markets the local news, weather, emergency information and other programming provided by local TV stations would clearly promote localism and viewing options in rural markets. All of these actions described above would foster increased localism, consistent with congressional intent and long-standing FCC policy.

VII. CONCLUSION

For all the reasons set forth above, NAB believes no "technologically and economically feasible" alternative to DMAs currently exists. No compelling reasons, moreover, justify the severe disruptions that would result from attempting to replace or modify the DMA structure. Various mechanisms already exist to increase viewers' access to broadcast programming, including local news, sports, weather and other locally-produced content. The Commission must also consider the growing online availability of TV stations' locally-oriented content when evaluating consumers' access to news and information about their state.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Jerianne Timmerman

Rick Kaplan
Jerianne Timmerman
Benjamin F.P. Ivins
Scott Goodwin

Theresa Ottina
NAB Research

May 12, 2015

Attachment A

NORMAN HECHT
RESEARCH INC.

May 2015

Designated Market Areas:

How They Relate to Viewers and a Vital Local Television Marketplace

Designated Market Areas (DMAs) play an important role in the local TV marketplace. This paper defines what a DMA is and describes how the DMA facilitates the buying and selling of television advertising time, enabling local stations to serve their communities with local news, weather and sports, coverage of community affairs and events, public service announcements, and other important local information, including vital emergency and disaster relief information.

Revenue from the sale of advertising time supports these important and costly local broadcast services. Nielsen's DMAs were defined to support and make efficient the buying and selling of ad time on local TV stations.

A DMA is a group of counties served by the local TV stations licensed to communities within those counties. There are 210 DMAs in the U.S. Every county in the U.S. is assigned to one and only one DMA. DMAs are ranked by number of TV households (the New York DMA is the largest DMA in the country, with approximately 7.4 million TV households). Nielsen uses samples of households (and persons therein) to produce DMA audience estimates (e.g., ratings) for local TV stations. Stations use these DMA ratings to sell local, regional and national advertising.

The basic building block of a DMA is the Office of Management and Budget's Metropolitan (or Micropolitan) Statistical Area (MSA). In the absence of an MSA, a group of counties, including the home county of the originating station, serves as the central area of the DMA.[1] An MSA is a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and

[1] Metropolitan and Micropolitan Statistical Areas include about 94 percent of the U.S. population and not all counties in the U.S. (http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b13-01.pdf).

social integration with that core.[2] **MSAs are not bound by state lines.** Therefore, DMAs are not bound by state lines. For example, the Chicago DMA contains counties in Illinois and Indiana. The Washington, DC DMA contains the District of Columbia, and counties in Maryland, Pennsylvania, Virginia and West Virginia. The Memphis DMA contains counties in Arkansas, Mississippi and Tennessee. Stations are motivated to serve consumers in all counties of their DMA in order to achieve the highest possible ratings and advertising revenue.

In addition to counties within the MSA, a DMA most often includes adjacent (non-MSA) counties. The determination of which adjacent counties to include in the DMA is based on the TV viewing behaviors of the consumers residing in those counties. These consumer behaviors are examined by Nielsen annually in a formal, statistically accepted manner. County reassignments change the size of DMAs and also can change the rank of DMAs, both of which can impact stations' advertising revenues. Over the last 10 years, the average number of counties reassigned to a neighboring DMA was 10 per year (out of more than 3,000 counties) and the average number of DMAs affected by county reassignments was 17 per year (out of 210 DMAs).[3]

Congress and the Federal Communications Commission (FCC) have long recognized the importance of maintaining America's unique system of free, over-the-air TV stations licensed to serve local communities. Local stations supported by ad revenue provide important locally-oriented information and services to all. Congress has acted consistently to preserve this free, locally-oriented TV system by, *inter alia*, adopting rules for the carriage of local TV stations on cable and satellite systems so that *all* viewers – including those choosing to receive television through a subscription service – can continue to receive critical local news and other local services (not just national cable channels).

The importation of TV signals from distant DMAs would undermine this system of local TV service, and thus could have a number of negative consequences for viewers, local

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[2] www.census.gov/population/www/metroareas/aboutmetro/html
[3] Analysis of Nielsen DMA Region County Assignment Changes 2005-2006 to 2014-2015 TV Seasons

TV stations, and for advertisers (or any entity) trying to reach consumers with an advertising (or informational) message. If the importation of a distant TV signal changes viewing patterns as some viewers watch the distant station, then a county or counties where those viewers reside may be reassigned, reducing the size of the DMA and perhaps also its rank. A drop in rank may preclude a DMA from being included in national spot buys (e.g. Top 10, Top 25, Top 50 markets), negatively impacting ad revenues for stations in the market. The reassignment to a different DMA of a county in which one particular station had strong ratings, relative to its local station competitors, will negatively impact that station's ad revenues, thereby affecting the station's ability to provide vital community services. DMAs could be disrupted so that they include more non-contiguous counties, resulting in geographically inefficient buys for advertisers (or other entities) trying to reach consumers and a shift in ad spending from TV to other media. This would ultimately undermine local stations' ability to deliver quality, locally-oriented programming, and could result in a lack of choice for viewers if some stations are no longer financially viable.

Furthermore, the importation of distant TV signals would interfere with program exclusivity arrangements freely negotiated between broadcasters and program suppliers (e.g., networks and syndicators), and would run counter to Congress' and the FCC's localism goals. Television viewers could end up being served by distant (perhaps in-state, but non-local) stations, and consumers could lose access to local news, emergency information, weather alerts and other local interest programming on TV.

Providing consumers with quality local programming supported by the buying and selling of local TV advertising time requires an efficient marketplace. Local advertisers are interested in having their advertising messages reach consumers who can purchase their products and services locally. National advertisers buy commercial time on local DMA stations to augment network television buys and to reach specific targets with an advertising message. For example, national home improvement chains buy time on local DMA stations to advertise seasonal products (e.g., lawn mowers, snow blowers) in specific areas of the country. Movie studios buy time on network television for general release movies and on local DMA stations for limited release movies. Car manufacturers buy time on network television to build brand/model awareness, and local dealer associations buy time on local DMA stations to generate showroom traffic. Clearly defined, stable DMAs are essential to an efficient marketplace – advertisers need to know who they are reaching. Clearly defined, stable DMAs are just as important to the emergency services notification process – emergency services personnel need to know who they are reaching.

Advertising revenue is vital to the operation of a local television station. In its absence, a station cannot function. Advertising revenue literally "keeps the lights on" at stations, paying for the electricity that transmits entertainment and informational programming, including important emergency information. Beyond paying for local, syndicated and network programming, ad revenue allows stations to reinvest in the community, developing and executing locally-driven initiatives, be it locally-oriented public service announcements, more local event coverage, or raising awareness of and money for local civic organizations and charities.

Ad revenue also pays the salaries of tens of thousands of Americans who are employed by local TV stations nationwide (many of whom are directly involved in the gathering and reporting of local news, sports, weather and emergency information) and hundreds of thousands more who provide goods and services to local TV stations. As with almost every business, human resources are TV stations' largest expense.

A 2014 study by Woods and Poole Economics in Washington, DC estimated the importance of local television and radio broadcasting to the U.S. economy.[4] This study estimated that local television broadcast stations directly generate approximately 189,000 jobs and over $32 billion in economic output, and that the stimulative effect of local television broadcasting on the U.S. economy as a whole (primarily through advertising) is many times greater, reaching close to $617 billion.

[4] *Local Broadcasting: An Engine for Economic Growth,* Woods & Poole Economics (2014).

Overall, the local TV broadcast industry suffered greatly during the economic downturn starting in 2008. Ad revenues continue to slowly recover from the low-point in 2009, but still have not returned to the high-point of 2006 and are not projected to do so until 2020. For the ten years from 2005-2014, the advertising revenue of broadcast TV stations had a *negative* compound annual growth rate (CAGR) of (0.2).[5] As a result of these trends, a number of broadcast station groups have been forced to sell their local TV station properties or merge with larger groups to survive.

Local TV ad revenues will continue to be challenged going forward.[6] Upending the definition of local TV markets (DMAs) now would further destabilize the local television industry and have a significant negative impact on local advertisers trying to reach potential customers and, most importantly, on local viewers, as choice and robust local programming would inevitably be diminished.

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[5] Derek Baine, *Domestic ad rev up 4.4% to $229B in 2014,* SNL Kagan (Dec. 5, 2014).

[6] *See, e.g., ibid.* (estimating that mobile will have the highest growth rate of any advertising sector during the next decade).