

September 9, 2015

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

Re: Notice of Ex Parte Communication
MB Docket No. 10-71

Dear Ms. Dortch:

On September 1, 2015, the attached list of broadcasters and representatives met with Commissioner Ajit Pai and his Legal Advisor Alison Nemeth, and separately with Commissioner Michael O’Rielly and his Chief of Staff and Senior Legal Advisor Robin Colwell to make the case for the retention of the Commission’s program exclusivity rules, which provide a clean, efficient and nearly costless mechanism for helping local TV stations preserve their bargained-for exclusivity within their local market.

In the meeting, broadcasters expressed their concern that elimination of the rules, as Chairman Wheeler has proposed, would lead to greater importation of distant signals by cable operators, diminished financial viability of local TV stations that will suffer lost advertising revenue, and, eventually, a reduced local media product for consumers, especially those in smaller TV markets. The conceivable upside of the eliminating the rules? Massive and increasingly consolidated cable operators will have much more flexibility to move the signal of one station into multiple different markets, increasing their leverage in retransmission consent negotiations and marginalizing their primary competitor for the sale of local advertising.

The broadcasters also made it clear that the “this can all be handled by contract” argument is severely flawed. First, who is a broadcaster supposed to sue when its exclusivity is undermined by a cable operator? It cannot sue the cable operator – especially during a retransmission consent dispute – because it presumably will not have a direct contract with that cable operator to sue over. It cannot sue the imported TV station for the same reason. It might be able to sue its network partner – presuming its affiliation agreement includes appropriate language that might provide a remedy, although that is hardly a given. But even then, to somehow prevent the distant station from allowing its signal to be exported into another market requires the network to act as an enforcer against its own interest. The only viable remedy in that situation would be for the network to stop providing its

programming to that distant market broadcaster, leaving consumers in that market without that network's content.

Any way one plays out that litigation scenario shows a lose-lose-lose consequence for everyone involved, everyone that is except the offending cable operator. It is no wonder cable industry lobbyists have been pushing for elimination of these rules. Their industry has everything to gain and absolutely nothing to lose.

In the meetings, broadcasters urged Commissioners Pai and O'Rielly to consider how eliminating the program exclusivity rules will affect local stations and their ability, evermore important in an age of declining local media from other sources, to maintain expensive news operations. As broadcasters have previously noted in the context of the Commission's various and unfinished ownership reviews, broadcast stations in smaller markets have far less wiggle room to absorb unexpected costs like litigation. It bears repeating that maintaining these rules is virtually costless for the Commission. But eliminating the rules could burden the local broadcast industry with millions of dollars in new litigation expenses – millions of dollars that otherwise would be reinvested into local news operations and equipment.

We want to thank the Commissioners for graciously allowing us to express our concerns in person. We hope that hearing stories for station owners and operators, and not just lawyers and lobbyists, has shown the Commissioners and their staff how critical these rules remain for stations around the country.

With warm regards,

/s/ Kent Cornish

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The following broadcasters and broadcaster representatives attended both meetings:

- Steve Dant, KXRM/KXTU, Colorado Springs, CO
- Evan Pappas, KOAA, Colorado Springs, CO
- Tim McVay, WSB-TV, Atlanta, GA
- Bill Stewart, WJBF-TV, Augusta, GA
- Joan Barrett, KWCH-TV Sunflower Broadcasting Wichita, KS
- Roger Brokke, WIBW-TV, Topeka, KS
- Ariel Robin, KETV, Omaha, NE
- Scott Goodwin, National Association of Broadcasters
- Justin Sasso, Colorado Broadcasters Association
- Bob Houghton, Georgia Association of Broadcasters
- Jim Timm, Nebraska Association of Broadcasters

These broadcasters and representatives attended only the meeting with Commissioner O’Rielly:

- Sally Brown, WSBT-TV South Bend, IN
- Tracey Rogers, WMC-TV, Memphis, TN
- Dan Cates, WJHL-TV, Johnson City, TN
- Tom Tolar, WRCB-TV, Sarkes Tarzian, Chattanooga, TN
- George DeVault, WKPT-TV, Kingsport, TN
- Whit Adamson, Tennessee Association of Broadcasters

cc: Commissioner Pai
Commissioner O’Rielly
Alison Nemeth
Robin Colwell