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Committee on Commerce, Science and Transportation
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Good morning, Chairman Kerry, Ranking Member Ensign and members of the Subcommittee. My name is Paul Karpowicz. I am President of the Meredith Broadcasting Group, which owns and operates 11 television stations in small, medium, and large markets throughout the United States. I am also chair of the Television Board of the National Association of Broadcasters (NAB), on whose behalf I appear today.

I appreciate the opportunity to talk with you today about issues of profound importance to the local television service we provide to our communities. Television broadcasters like Meredith urge you to ensure that service to local viewers is not undermined in the reauthorization of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).

I. THE TWO OVERRIDING PUBLIC POLICY OBJECTIVES

Two public policy objectives should guide Congress's actions in reauthorizing SHVERA—preserving the important local broadcast service local stations provide, i.e., “localism,” and respecting the private-party contractual arrangements entered into in a free marketplace for the distribution of television programming. Both the Federal Communications Commission (FCC) and Congress have found that these national policies serve the public interest.

Localism is a bedrock principle, rooted in the Communications Act of 1934 (Act), that has guided both Congress and the FCC in implementing communications policy for decades. Localism has also been an integral part of satellite carriage policies since they were adopted in 1988. These policies promoting localism have benefited all Americans, whether they watch television over-the-air or subscribe to cable or satellite.

What does localism mean for the public served by local television broadcasters? Localism is coverage of matters of “local” importance for local communities, such as local news, school closings, high school sports, severe weather and emergency alerts, local elections, and public affairs. Localism is also support for local charities, civic organizations, and community events. Local broadcasters help create a sense of community. They address the needs of the public, based on a familiarity with and commitment to local communities.

The second Congressional policy objective is that the government should respect contracts freely entered into by private parties for distribution of television programming, especially since Congress and the FCC have found that honoring those contracts fosters localism, diversity, competition, and high quality service to the public. As the FCC has pointed out: “[W]e do not deem it in the public interest to interfere with contractual arrangements that broadcasters have entered into for the very purpose of securing programming content that meets the needs and interests of their communities. Such interference would contradict our own requirements of broadcast licensees and would hinder our policy goals.”¹ The Act and the FCC’s rules respect and enforce contracts, freely negotiated among the parties, that encourage the creation and distribution of a diverse mix of broadcast television programming that serve the needs and interests of local viewers throughout the country.

II. MARKET MODIFICATION PROPOSALS

The first specific issue I wish to address is our concern about market modification proposals that have been a major topic of debate in connection with SHVERA. These market modification proposals would allow satellite and cable companies to import *duplicating* content from distant in-state stations into counties located in the same state as the distant stations. While broadcasters are sensitive to the concerns of Members that underlie these proposals, the proposals would not advance localism goals, but would in fact undermine sound public policy and harm consumers. Moreover, Members’ concerns can otherwise be addressed without changing the law and without adverse consequences to the viewers of local stations.

My point can be illustrated by WHNS, a station Meredith operates in Greenville, South Carolina. Thirty-four percent of the households in its Designated Market Area (DMA) are located in North Carolina and four percent in Georgia. WHNS provides locally-attuned service to those North Carolina and Georgia communities, just as it does to the South Carolina communities within its coverage area. The nearest North Carolina city of license to these North Carolina counties is Charlotte, which is 95 miles away from Spotsylvania County, NC. Greenville is only 25 miles away.

These out-of-state communities within WHNS’s market have close weather, topography, economic, and cultural ties with Greenville, South Carolina. Accordingly, WHNS airs news stories of specific relevance to these local out-of-state counties. The market modification proposals would undermine the economic base for this localized service. They would do so (1) by overriding contractual relationships entered into by Greenville market stations with national networks and national syndicators for the distribution of their programming, and (2) by interfering with the retransmission consent process.

Proponents of market modification suggest their proposals are necessary to enable viewers to watch local news, weather, and local programming originated by stations located in

¹ ‘FCC, Retransmission Consent and Exclusivity Rules; Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (Sept. 8, 2005) at ¶ 50 (FCC Retransmission Report).

their home states. We respectfully disagree. Cable and satellite carriers may import, with the consent of the originating stations, the locally originated in-state news, weather, sports, and public affairs programming from distant, in-state stations without any change in the law, and quite a number of cable systems do so today. Cable systems in Virginia, South Carolina, Georgia, Colorado, Tennessee, Wisconsin, and various other states import the *local* programming of in-state, out-of-market stations.

In fact, Meredith's CBS affiliate in Atlanta, Georgia recently signed agreements with Comcast to begin retransmitting non-duplicating programming to Georgia residents in the Chattanooga, Tennessee DMA. This service, offered for no additional charge to Comcast customers, highlights the actuality of these private sector agreements being completed in the marketplace. Satellite carriers may also retransmit the local programming of in-state, distant station—but, regrettably, they have refused to do so.

Market modification proposals would have a very different effect. They would:

- allow the importation of duplicative, national programming into local markets where local stations have bargained for the exclusive right to show that programming in their home markets. That result would harm local service by fractionalizing the viewer and advertiser base that underwrites the localized services provided by broadcasters to their home-market viewers, in-state and out-of-state. This would be the antithesis of localism;

- allow satellite and cable carriers to replace local station signals with the signals of distant stations affiliated with the same network, thereby undermining the retransmission consent rights of local stations; and

- override and strike down the contractual provisions between local broadcasters and their programming providers (e.g., between local affiliates and their networks, syndicators, and sports leagues) --thereby eroding the ability of content providers to negotiate fair compensation for their programs and the ability of local broadcasters to provide the highest quality programming to their local service areas².

I am sure you are aware of the most recent struggles, caused by harsh economic conditions, of local television stations to maintain their local news. The market modification

² The FCC has found that these contractual arrangements serve the public interest. In 1988, it reinstated rules it had earlier repealed that allow local stations to enforce their syndicated program exclusivity arrangements. The FCC concluded that broadcasters' "inability to enforce exclusive contracts puts them at a competitive disadvantage relative to their rivals who can enforce exclusive contracts; their advertisers' abilities to reach as wide an audience as possible are impaired; and consumers are denied the benefits of full and fair competition: higher quality and more diverse programming, delivered to them in the most efficient possible way." Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988), at ¶ 62. The same considerations apply with equal force to the FCC's network nonduplication rules, which would also be overridden by the market modification proposals.

proposals would severely damage the economic ability to provide local broadcast news — and local sports, weather, emergency alerts and public affairs programming.

To deny local television stations the ability to enforce exclusive program contracts with their program suppliers—yet allow satellite and cable companies to enforce exclusive program contracts with their program suppliers would create an unfair and highly discriminatory regulatory scheme and would drive quality programming from free over-the-air television to pay services.

III. GRANDFATHERING

The so-called "grandfathering" issues relate to subscribers that, for various reasons, historically were unable to receive the signal of one or more of their local network stations and who have legally been receiving distant signals, but who now can receive good reception from the local network station signals over the air. The questions, which are many and complicated, relate to which of those subscribers should be allowed to keep their distant signals even though they can receive the very same network programming *free*, from a local station.

While each SHVA renewal has raised a unique set of grandfathering questions, the issues this time around are particularly complicated because of the digital transition. Because there is no current definition of an "unserved" household with respect to digital signals, as a technical matter beginning last year, much of the country has been eligible to receive distant digital signals. While the DBS industry has committed not to exploit this unintended situation, Congress should codify the promise.

It would be contrary to the core Congressional policies underlying the satellite act and harmful to local television broadcast service to allow satellite carriers to exploit the digital transition by expanding, through grandfathering, the scope of their government-granted compulsory copyright license.

In the spirit of compromise, we will not oppose satellite carriers retaining their existing lawful distant signal subscribers who were unable to receive a Grade B analog signal from a local network station—even though those subscribers may now (post digital transition) receive a perfectly good digital network signal from that same local network station. We also would not oppose allowing satellite carriers to deliver a distant network signal to subscribers in non-local-into-local markets who would qualify under the new digital service standard, but who previously did not qualify to receive a distant analog signal under the Grade B analog standard. In short, in this respect, the satellite carriers will receive the best of both worlds.

We do not believe, however, it is fair or reasonable to also allow satellite carriers to retain subscribers that have been receiving a network signal from a local network stand-alone digital station (i.e., one that never had a companion analog signal) or from a digital multicast channel affiliated with a network. If that subset of distant signal households can, on the date of enactment, receive that same network from a local digital station (regardless of whether the channel is labeled a multicast or primary channel), such households should not be permitted to

continue to receive a duplicating distant network station. That was never the intent of the Act-- and to permit it now would be to allow the satellite carriers to exploit the digital transition for private gain.

New digital multicast broadcast networks are now being formed (ethnic, minority, and other specialized and general audience networks) for digital multicast channels and the existing major networks are affiliating with these multicast channels in smaller markets that previously did not have a full complement of network affiliates. For example, the Hearst television stations located in Albuquerque, West Palm Beach, Orlando, and Tampa have entered into network affiliation agreements on digital multicast channels with a new Hispanic program network. Other TV stations have done the same. This new network and its specialized Hispanic programming will not survive if Congress allows satellite carriers to retransmit the very same programming into these local markets. The result will be that viewers who otherwise would have access to those networks for free from these local stations will have to pay to get them. Congress should not be a party to facilitating that result.

Finally, as I mentioned earlier, every household in America, except those households that can receive a Grade B analog signal from a local low power or translator station, can now legally receive a duplicating network signal by satellite from a distant network station. We urge that this legislation prevent that unintended result by enforcing the oral promise made by satellite carriers to Congress not to exploit this aspect of the digital transition. As noted earlier, Congress should codify that promise.

Cable is not permitted to import duplicating digital multicast network signals. The FCC applies its cable network and syndex non-duplication rules to digital multicast signals the same as it does to all other digital and analog signals. There is no reason why satellite carriers should be given a competitive advantage over cable in this respect.

Moreover, a prohibition against grandfathering would prevent the importation of distant duplicating national programming and, in turn, create an economic incentive for DIRECTV and DISH to extend their local-into-local satellite service to all 210 markets

IV. PROTECTING EXCLUSIVITY FOR PROGRAMMING CARRIED ON MULTICAST SIGNALS

The importance of local market program exclusivity to localism and the network affiliate relationship cannot be overstated. By that I mean the ability of local stations to secure and enforce the right to be the exclusive provider of a network or syndicated program in their local market. Local stations, particularly those in small markets, can survive only if they can generate advertising revenue based upon local viewership. If satellite carriers can override the copyright interests of local stations by offering the same programs on stations imported from other markets, the viability of local stations, and their ability to serve their communities with the highest quality programming, is put at risk.

Local market program exclusivity is no less important to stations' multicast signals than it is to their primary signals. One of the major advantages of the digital conversion is that it provides stations with the ability to provide *multiple* signals, each with separate, and additional, programming. Stations are using this technological advance in many new and exciting ways. In "short markets" – those without a full complement of existing major networks – stations are using multicast to provide locally the programming of some networks that previously were available only from distant signals, or not at all. As stated earlier, many stations are using multicast to start new programming services aimed at minority and other specialized audiences.

The survival of these new and emerging networks is just as dependent, and perhaps more so, on local program exclusivity as existing major networks. That is why it is imperative that the satellite rules protecting program exclusivity with respect to a station's primary signal apply with equal force to its multicast signals.

The Senate Judiciary Committee's approach to this issue is to provide protection to multicast signals immediately. NAB commends Senators Leahy, Sessions, and the other members of that Committee for recognizing the importance of providing this protection for multicast signals immediately. In this regard, I would note that cable has always provided program exclusivity protection to multicast signals. Cable, in this respect, should not be competitively disadvantaged by a different standard for satellite carriers.

V. LOCAL-INTO-LOCAL

NAB strongly supports the extension of local-into-local service in all 210 markets. Localism is a beacon of Congressional communications policy. The satellite legislation of 1999 made it possible for satellite carriers to compete effectively with cable operators by providing the compulsory copyright privileges needed to retransmit local stations' signals. Satellite operators took advantage of these new capabilities, and the result, as the FCC has repeatedly reported to Congress, was that the satellite operators rapidly became competitive with cable carriers, to the benefit of American consumers. Offering local service also enhanced satellite operator profitability.

But the satellite operators do not provide local-into-local service in all markets. They avoid many smaller markets, so that, today, satellite subscribers in, for example, Columbus, Georgia, cannot receive news, weather and sports from their local-market stations via satellite.

Currently, DIRECTV does not serve some 50 smaller markets, and EchoStar does not serve some 30 smaller markets. The satellite carriers no longer claim, seriously, that providing local-into-local service is technically impossible. They say it is expensive. But expense is always involved in providing program service to all of the American public.

The House version of SHVERA renewal provides a mechanism whereby DISH's right to again provide distant signals to unserved households would be restored in exchange for its commitment to provide local into local service in all 210 markets. NAB does not oppose this provision. While the Senate Judiciary bill does not contain these provisions, it does have a

mechanism to facilitate providing local into local in short markets by allowing carriers to import a missing affiliate from an adjacent market and treating it as local signals for purposes of the compulsory copyright license. With the advent of digital, the number of “short markets” is rapidly diminishing because local stations, with a primary affiliation with one major network, are using their multicast capacity to carry a second major network (typically accompanied by local news and informational programming). Thus, KBAK-TV, the CBS affiliate in Bakersfield, California, now carries Fox network programming on a multicast channel and presents separately originated local news and other localized program services on that channel as well. With the switch to digital last June, this trend will continue and the number of short markets should be substantially and rapidly reduced.

VI. OTHER ISSUES

There are other major issues affecting the reauthorization. Specifically, we would urge Congress to:

1) amend the current statute to make clear that “unserved households” are to be determined in terms of *digital* service, not only analog service, and incorporate into the statute a “noise limited service” standard which is the FCC’s definition of a good quality digital signal;

2) adopt the digital signal predictive methodology, recommended to Congress by the FCC at the direction of Congress, for determining whether households are unserved;

3) reject proposals to reduce the area of protected program exclusivity from the interference-free service area to the *lesser* of that area or the DMA in which the station is located except, perhaps, to facilitate carriage of a missing major affiliate in short markets. To do otherwise would reduce and marginalize the exclusive program service area of local stations; serve no useful public policy objective; and be harmful to viewers who depend upon free local broadcast service; and

4) assure satellite carriers do not import HD and multicast signals into “significantly viewed” areas in a local market from an adjacent market without also carrying the HD and multicast signals of the in-market stations.

Finally, the SHVERA reauthorization process should not be used as a vehicle for re-opening a range of well-established retransmission consent issues. The various market modification proposals advanced in the context of SHVERA would, in fact, erode local broadcasters’ retransmission consent rights at the expense of the public’s local broadcast service.

There is no need to change the present retransmission consent process, which works as Congress intended.³ Congress should continue to reject the efforts of the satellite and cable

³ FCC Retransmission Report at ¶ 34 (recommending no revisions to statutory or regulatory provisions related to retransmission consent). See also Empiris LLC, Jeffrey A. Eisenach, Ph.D., *The Economics of Retransmission Consent* (March 2009) at Executive Summary (concluding

industries to persuade the government to intervene in free-market retransmission negotiations, which the FCC has expressly found benefit cable/satellite operators, broadcasters and, “[m]ost importantly, consumers” FCC Retransmission Report at ¶ 44.

Thank you. I look forward to responding to any questions Members of the Subcommittee may have.

that retransmission consent has achieved Congress’ intended purpose in enacting it, and has “benefited consumers by enriching the quantity, diversity, and quality of available programming, including local broadcast signals”).