

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

In the Matter of)
) MB Docket No. 04-233
Broadcast Localism)

To: The Commission



REPLY COMMENTS

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I. INTRODUCTION

The American Cable Association (“ACA”) commends the Commission’s expressed intention to open a rulemaking to ensure that cable customers receive access to in-state broadcast signals they may not currently receive.¹ To effectively address this issue, the Commission must investigate how current retransmission consent practices restrict cable customers’ access to important regional and local programming.

Presently, the “Big Four” broadcast networks (NBC, ABC, CBS, FOX) and their affiliates prevent many cable customers from receiving in-state broadcast signals by contractually prohibiting their affiliates from granting retransmission consent to cable systems in adjacent DMAs. The networks and their affiliates do so even when this practice results in cable customers having limited or no access to in-state broadcast signals. In some circumstances, especially in rural markets, this practice prevents cable customers from receiving in-state news, sports, weather, public affairs programming, and even political advertising for state elections. The proposed rulemaking should address this retransmission consent practice.

About ACA. ACA represents nearly 1,100 small and medium-sized cable companies that serve more than 7.5 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in

¹ *In the Matter of Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd. 1324, ¶ 50 (2008) (“*Broadcast Localism Report*”) (“[W]e will commence a rulemaking proceeding to address the need to ensure that all cable and satellite subscribers have access to television broadcast stations licensed to communities within the viewers’ home state.”).

virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. THE COMMISSION SHOULD ADDRESS CURRENT RETRANSMISSION CONSENT PRACTICES TO ENSURE THAT CONSUMERS HAVE ACCESS TO IMPORTANT LOCAL AND REGIONAL PROGRAMMING IN ADJACENT DMAs.

In other proceedings, ACA has provided detailed information to the Commission on how the retransmission consent practices of broadcast networks and their affiliates impede access to broadcast stations in neighboring DMAs.² ACA has also proposed retransmission consent adjustments that would help address these problems.³ The Commission can use this information to help guide its rulemaking and ensure that small and medium-sized cable operators and their customers gain access to broadcast stations carrying programming of local and regional significance.⁴

² *In the Matter of Petition for Rulemaking to Amend 47 CFR 76.64, 76.93 and 76.103 Retransmission Consent, Network Non-Duplication, and Syndicated Exclusivity*, MB Docket No. RM-11203, Petition for Rulemaking of American Cable Association at 2-6 (filed Mar. 2, 2005) (“ACA Retransmission Consent Petition”); *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Comments of the American Cable Association at 4-6 (filed Nov. 29, 2006).

³ *ACA Retransmission Consent Petition* at Exhibit A; *In the Matter of Implementation Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 07-198, Comments of the American Cable Association at 24-27, Appendix 1 (filed Jan. 3, 2008).

⁴ The Commission has repeatedly emphasized the important public interest of promoting localism. See, e.g., *Broadcast Localism Report*, ¶ 4; *In the Matter of Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd. 21,912, ¶¶ 22-23 (2007).

In certain circumstances, small and medium-sized cable operators are denied carriage of broadcast signals in the same state because the Big Four networks use affiliation agreements to prohibit in-state affiliates from granting out-of-DMA retransmission consent.⁵ The result? Cable operators and their customers often do not have access to in-state, out-of-DMA stations carrying local and regional programming.

As an example, some ACA members report that because their state capital falls into a different DMA, their customers cannot receive access to important local public and political programming, including political advertising. Instead, because of this broadcast network practice, the only signal available covers distant, out-of-state politics.

With Commission action, cable operators, especially those serving rural markets, would have better access to broadcast stations carrying important local and regional programming.


III. CONCLUSION

ACA encourages the Commission to open this rulemaking. By addressing the broadcast networks' refusal to grant retransmission consent for cable systems in adjacent, yet in-state, DMAs, the Commission can ensure that cable customers receive local news, sports, weather and public affairs programming.

⁵ *ACA Retransmission Consent Petition* at 5.

Respectfully submitted,

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