

Testimony of Paul A. Karpowicz
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Committee on Energy and Commerce
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Good morning, Chairman Boucher, Ranking Member Stearns 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.

Local broadcasters 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 INTEREST PRINCIPLES

Two principles should guide Congress's actions when reauthorizing SHVERA – localism and respect for 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 principles 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 from the outset, 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 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 principle is that government policy should respect contractual relationships freely entered into by private parties, especially since it has found that those contracts foster localism, diversity, competition and high quality service to the public. The role of the government is properly to enforce these relationships that serve the public interest, not override them. 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 the relationships, freely negotiated among the parties, that create and distribute the diverse mix of broadcast television programming that addresses the needs and interests of the viewers local stations serve throughout the country.

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*).

II. MARKET MODIFICATION PROPOSALS

The first specific issue I wish to address concerns market modification proposals that, while not included in the draft legislation we are discussing today, have been a major topic of debate in connection with SHVERA. These market modification proposals would allow satellite and cable carriers to import distant, but in-state signals, including their *duplicative national* content, into counties located in the same state as the distant stations but in a different state from the local-market stations that serve these counties. 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 two examples. Meredith operates WHNS 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 the same weather as Greenville, South Carolina. They share the same topography, and close economic and cultural ties link the in-state and out-of-state counties that comprise the Greenville, Spartanburg, SC/Asheville, NC/Anderson, SC DMA. Accordingly, day after day after day, 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.

Let me explain, as a practical matter, what would occur. WHNS is a Fox affiliate with exclusive rights, from Fox and syndicators, to air popular programming, including *American Idol*, *House*, *24* and *The Simpsons*, in its local market. If a satellite or cable operator could import the signal of a Fox station from Charlotte, NC (including duplicative Fox network and national syndicated programming) into WHNS's market, that would significantly reduce WHNS's viewership and advertising revenues. As a result, WHNS would have fewer resources to serve its viewers (whether located in South Carolina, North Carolina or Georgia) with local programming, including news and emergency information, and other local services. In addition, a satellite or cable operator in a retransmission consent dispute with WHNS could choose to drop our station in these North Carolina communities and instead carry the distant Fox affiliate in Charlotte, thereby depriving local viewers of local information important to them and undermining the retransmission consent negotiation process.

Or consider our Kansas City, MO station, KCTV, 35 percent of whose market population resides in Kansas. Of course, our station in Kansas City provides coverage attuned to the needs of these Kansas viewers. This service to our Kansas viewers, and to our Missouri viewers as well, would be damaged by the market modification proposals that have been floated in connection with SHVERA.

These proposals are touted as enabling viewers to watch programming originated by stations located in their home states, even though these stations may be hundreds of miles away.

To the extent that policymakers want to enable viewer access to in-state news and information, cable and satellite carriers can already import this programming into distant, in-state counties *without any change in the law*, and quite a number of cable systems do so today. For example, the Comcast cable system in Las Cruces, NM, which is located in the El Paso, TX, television market, imports the local news and weather programming of KOAT-TV, Albuquerque, NM. Other examples exist in southwestern Virginia, northeast South Carolina, southwestern Colorado and eastern Tennessee.

The market modification proposals would have a very different effect. They would:

- allow the importation of *duplicative, national* programming into local markets where the local stations have bargained for the exclusive right to show that programming in their home markets. That result would not promote localism goals and in fact would harm the public's 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;
- 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 that Congress guaranteed in the 1992 Cable Act, which help support the localized broadcast services on which the public relies;
- override the contractual relationships between local broadcasters and the content community (e.g., between local affiliates and networks and between local affiliates and syndicators) -- thereby eroding the ability of content providers to negotiate fair compensation for their product and the ability of local broadcasters to provide the highest quality programming to their service areas;²

² The FCC has found that these contractual arrangements serve the public interest. Thus, in 1988, it reinstated its rules that allow parties in the program distribution chain to rely on and enforce these 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* (continued...)

- eliminate the retransmission consent rights of distant in-state stations; and
- nullify the distant signal copyright fees required by Congress for the importation of distant signals.

Local television journalism is the most utilized and the most trusted source of news for the American public -- year after year. The threats to its economic viability have not yet progressed as far as the erosion of newspapers' viability. But the trend is rapidly headed in the same direction and with the same dire consequences for the proper and healthy functioning of our democracy. One cannot pick up a daily trade publication without reading about the most recent struggles, caused by harsh economic conditions, of local television station to maintain their local news. The market modification proposals we have been discussing would severely damage local broadcast news – and local sports, weather, emergency alerts and public affairs, as well. Ninety eight out of the nation's 210 television markets -- nearly 400 stations -- would be impacted by these proposals. And for a great many of these stations, like the Meredith stations in Greenville and Kansas City, 30 percent, 40 percent, even 60 percent of their viewing households reside in other states. The public's localized service would be weakened or destroyed not only for out-of-state counties but also for in-state counties.

In sum, these market modification proposals are not what they seem. They would hurt localism, not serve it. They would not give choice to the viewers, but to the satellite and cable carriers. They would radically disrupt a private marketplace that the government has found effectively serves the goals of localism, competition and diverse and high quality service to 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.

public. And they would mandate a solution for a problem that doesn't exist under current law. We urge the Committee to continue to resist these proposals.

III. LOCAL-INTO-LOCAL

The second crucial issue involved in the reauthorization of SHVERA is the local-into-local issue that Congressman Stupak has championed and that a number of you support. The original Communications Act drafted 75 years ago explicitly called for distribution of communications services to as many localities as possible. Localism has been a beacon of communications policy ever since. The satellite legislation of 1999 made it possible for satellite carriers to compete effectively with cable operators by providing the compulsory copyright privileges they 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 the American public. The principles of localism and universal service for all Americans should prevail. Accordingly, satellite operators should carry

the local stations in *all* of the country's television markets -- small and large, rural and urban, poor and wealthy.

A related issue is short markets, which in satellite-speak means markets not served by local stations that carry the programming of all four major national broadcast networks. With the advent of digital, this problem 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 (often accompanied by *local* news and informational programming). Thus, WBOC-TV, the CBS affiliate in Salisbury, Maryland, now carries Fox network programming on a multicast channel and presents local news and other localized program services on that channel as well. With the switch to digital last Friday, this trend will continue and the number of short markets should be substantially and rapidly reduced. NAB is committed to cooperating to resolve this issue. It emphasizes that resolution of this issue must be coupled with a full local-into-local requirement.

IV. OTHER PROVISIONS

The current SHVERA reflects a basically sound approach. The local-into-local compulsory license is permanent and effectively serves the public interest. The distant signal compulsory license, which expires this year, should be phased out in the near future. Requiring local-into-local service, which we strongly urge, would make this step both more possible and more desirable. Congress should also resist the various market modification proposals that are unnecessary to meet their intended goals and that would injure the public's local television service. In addition, Congress should:

- 1) amend the current statute to make clear that “white areas” are to be determined in terms of digital service, not analog service, which as of last Friday no longer exists (except in the case of low power stations), and make other technical language changes to reflect that broadcasters no longer operate in an analog world;
- 2) adopt the digital predictive methodology, recommended by the FCC at Congress’s direction, for determining whether households are unserved; and
- 3) clarify that subscribers receiving network programming on broadcasters’ multicast channels are “served,” and therefore, satellite carriers may not import distant signals containing this duplicative, national programming.

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Finally, broadcasters note that the SHVERA reauthorization process should not be used as a vehicle for re-opening a range of well-established retransmission consent issues. And intentionally or not, the 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.

In any event, there is no need to change the present retransmission consent process, which works as Congress intended.³ Congress should continue to rebuff the efforts of the satellite and cable industries to persuade the government to intervene in free-market

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 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”).

retransmission negotiations, which the FCC has expressly found benefit cable/satellite operators, broadcasters and, “[m]ost importantly, consumers.” *FCC Retransmission Report* at ¶ 44.

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