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January 30, 2019

**VIA ELECTRONIC FILING**

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

Re: Notice of *Ex Parte* Communication, MB Docket No. 18-349, 2018 *Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (Diversification of Ownership and Advancing Minority Ownership)

Dear Ms. Dortch:

Pursuant to the Commission’s *ex parte* rules, 47 CFR § 1.1206 (permit but disclose), this is to report that on January 28, 2019, Armstrong Williams, the sole owner of Howard Stirk Holdings, LLC and Howard Stirk Holdings II, LLC (together “HSH”), and HSH’s wholly owned, sole member, African American owned companies which hold the licenses for seven television stations,<sup>1</sup> met with Commissioner Michael O’Rielly. During their meeting they discussed the value of advancing diversity and minority ownership.

In the meeting, Mr. Williams explained his view that the 2018 Quadrennial Review needs to address the continuing decline in minority and new entrant broadcast ownership. For example, HSH’s seven stations represent a majority of the stations licensed to companies owned by African Americans in the United States today. HSH’s stations in Saginaw (Flint) and Florence (Myrtle Beach), which were two of only three African American owned stations at the time (2014), were stations acquired and operated using Joint Sales Agreements (JSAs) and Shared Services Agreements (SSAs). Those stations are the engines that have allowed HSH to expand ownership of its additional stations and Mr. Williams emphasized that without the ability to enter into JSAs and SSAs, as an African American, he would not have been able to fulfill his lifelong dream of being a TV station owner. HSH’s shared service agreements allowed him to obtain

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<sup>1</sup> HSH’s sole member companies hold the following licenses: WEYI-TV, Saginaw, MI; WWMB-TV, Florence, SC; WXBW-TV, Lancaster, PA; WSES-TV, Tuscaloosa, AL; WGWW-TV, Anniston, AL; KHSV-TV, Las Vegas, NV; and WGWW-TV, Charleston, SC.

access to capital that would have otherwise been unavailable to him, and that access to capital and financing are the single biggest obstacles to new entrant and minority ownership. In HSH's experience, shared service arrangements provided the means over that obstacle, and accordingly advanced diversity, open equal opportunity, and generally serve the larger public interest.

Mr. Williams further noted that he understood that his shared service arrangements had been specifically designed to comply with the Commission's ownership (duopoly) rules, and not, as some claim, to circumvent them. Shared service arrangements were widely used prior to 2014, when the Commission hastily implemented ownership attribution to such agreements, effectively killing their ability to enhance minority ownership and diversity.<sup>2</sup> The Commission wisely reversed itself in 2017 and repealed the attribution of TV JSAs.<sup>3</sup> Shared service agreements help insure minority owners like HSH to survive and compete in an extremely competitive marketplace. Minorities and new entrants need the Commission's help in promoting the use of shared service arrangements and recognizing them as one of the few opportunities for successful ownership.

Successful ownership also allows an increase of equal opportunity and employment. HSH, for example, employs a diverse and multiracial workforce. Over fifty percent of its employees are minorities. The company boasts diversity from entry-level positions to upper-level management positions. Minorities are employed as station general managers, directors of operations and creative directors. None of these important advancements would have been possible without the opportunities afforded with the use of JSAs and SSAs.

The Commission has acknowledged the need to enhance minority ownership for more than forty years. *Statement of Policy on Minority Ownership of Broadcast Facilities, Public Notice*, 68 FCC 2d 979 (1978). Congress also has recognized the poor state of minority ownership. The Telecommunications Act of 1996 contains language aimed at increasing female and minority ownership of broadcast licenses and other important communications mediums. 47 U.S.C. §257, §309(j) The Act requires the Commission to limit and remove "market entry barriers for entrepreneurs and other small businesses" and to do so by "favoring diversity of media voices."<sup>4</sup>

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<sup>2</sup> 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014), vacated and remanded, *Prometheus Radio Project v. FCC*, 824 F.3d 33 (3d Cir. 2016) (Commission failed to determine if the local television ownership rule remained necessary pursuant to Section 202(h)).

<sup>3</sup> *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets (Reconsideration)*, FCC 17-156, released November 20, 2017.

<sup>4</sup> While Section 257 is contained within Title II of the Communications Act and thus does not directly encompass broadcast services, the Commission has interpreted some aspects of the language of §257 to apply to broadcast licensing. In 1998, the Commission stated: "While telecommunications and information services are not defined by the 1996 Act to encompass broadcasting, Section 257(b) directs the Commission to 'promote the policies and purposes of this Act favoring diversity of media voices' in carrying out its responsibilities under Section 257 and, in its Policy Statement implementing Section 257, the Commission discussed market entry barriers in the mass media services." See FCC 98-281, *Report and Order: In the Matter of 1998 Biennial Regulatory Review* --

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The possibility after so many decades of making genuine progress in advancing minority ownership in the context of revising and relaxing the use of shared service agreements during this round of the quadrennial review creates a special obligation on the Commission.

In its *TV JSA Recon Oder* (at ¶ 101), the Commission reinstated the position it had maintained for nearly twenty years prior, holding there was no adequate record to conclude that television JSAs confer on the brokering station a sufficient degree of influence or control over the core operating functions of the brokered station to warrant attribution. Moreover, the Commission noted that the record on television JSAs contained ample evidence of the public interest benefits they provide, and even if the Commission had correctly determined that television JSAs involving more than 15 percent of the brokered station's weekly advertising time confer sufficient influence to warrant attribution, it nevertheless concluded that the potential benefits of television JSAs outweigh the public interest in attributing such JSAs (*supra.*). HSH believes the use of shared service arrangements to advance (and increase) minority, under represented, and new entrant communities is precisely the "potential benefit" intended. The Commission should align its ownership rules to facilitate the use of shared service agreements to actively advance the 40-plus year dream of increasing minority ownership.

In accordance with Section 1.1206(b) the Commission's rules, this notice is being filed in the Commission's Electronic Comment Filing System.

Respectfully submitted,



Colby M. May

CMM:gmc  
xc: Commissioner Michael O'Rielly