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**VIA ELECTRONIC FILING**

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

Re: GN Docket 17-199 – Inquiry Concerning Deployment of Advanced Telecommunications Capability; WT Docket 17-69 – Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless; MB Docket No. 17-105 – Modernization of Media Regulation Initiative; MB Docket 14-50 *et al.* 2014 Quadrennial Regulatory Review *etc.*  
**Notice of Ex Parte Presentation**

Dear Ms. Dortch:

On October 26, 2017, the undersigned, along with Mr. Richard Bilotti, Portfolio Manager for Special Situations for P. Schoenfeld Asset Management LP, met with Commissioner Michael O’Rielly; Brooke Ericson, Esq., Commissioner O’Rielly’s Chief of Staff and Media Advisor; Amy Bender, Esq., Commissioner O’Rielly’s Legal Advisor for Wireline; and Erin McGrath, Esq., Commissioner O’Rielly’s Legal Advisor for Wireless.

The purpose of the meeting was to encourage the Commission to revise its policies regarding media ownership, cross-ownership, horizontal ownership, and market share to account for the significant competitive and technological changes that have occurred in the markets for wireline and wireless broadband, mobile wireless, broadcast television, and cable television.

Consistent with the attached Agenda provided to the meeting participants, Mr. Bilotti discussed the substantial changes in penetration, connections, download speeds, and data usage, all of which militate toward a finding that fixed and mobile broadband are substitutable products for purposes of measuring both broadband deployment and competition. Mr. Bilotti therefore urged the Commission, among other things, to revisit its vacated cable horizontal ownership limits and find that such limits are unnecessary in today’s broadband market, where fixed and mobile providers compete directly and where video and voice products have become “applications” delivered over a broadband data system.

With regard to the mobile wireless market in particular, Mr. Bilotti proposed that the Commission should broaden its perspective of competitors to include mobile virtual network operators (“MVNOs”) in circumstances where an MVNO owns a portion of the network

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elements or the spectrum used to provide its services. In such circumstances, Mr. Bilotti posited the Commission should treat MVNOs as facilities-based providers. Mr. Bilotti similarly argued that the 25 Mbps downstream, 3 Mbps upstream standard the Commission adopted in 2015 is arbitrary given existing technologies that allow high-definition video to be transmitted at 8 Mbps.

In connection with broadcast ownership issues, Mr. Bilotti proposed that the Commission take a fresh look at the media marketplace and acknowledge the competition that has developed among national, regional, and local broadcasters, cable operators, cable networks, satellite providers, mobile and wireline telephone companies, and on-line "over-the-top" services. Given such competition, Mr. Bilotti observed that the Commission's duopoly, cross-ownership, and foreign ownership rules have become anachronistic. In particular, Mr. Bilotti noted that (i) consumers' ability to substitute forms of content, (ii) advertisers' ability to substitute types of advertising, and (iii) the unrestricted transformation of print, audio, and video content from one format to another over the internet, has rendered the Commission's historical view of the market excessively narrow.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), an original and one copy of this notice are being submitted to the Secretary's Office, copies are being provided to the Commission participants in the meeting, and electronic copies are being filed through the Commission's electronic comment filing system for the above-referenced dockets.

Kindly contact the undersigned if you have any questions regarding the foregoing.

Respectfully submitted,



Gary S. Lutzker  
Counsel to P. Schoenfeld Asset Management LP

Encl: Meeting Agenda

cc: Commissioner Michael O'Rielly  
Brooke Ericson, Esquire  
Amy Bender, Esquire  
Erin McGrath, Esquire

**MR. RICHARD BILOTTI**  
**P. SCHOENFELD ASSET MANAGEMENT LLC (PSAM)**

**COMPETITION AND MARKET CHANGE**

**Agenda for 2:00 p.m., October 26, 2017 Meeting with Commissioner Michael O’Rielly.**

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1. **Measuring Broadband Market Share.** The Commission’s 2016 Section 706 Notice of Inquiry found that deployment of advanced telecommunications capability (“ATC”) required access to both fixed and wireless broadband service. In the 2017 *Thirteenth Section 706 Notice of Inquiry*, however, the Commission asked whether it should analyze fixed and mobile broadband separately, and whether it should consider coverage by either fixed or mobile broadband to be sufficient for determining whether ATC is being deployed in a reasonable and timely manner. (Para. 9).
  - **The Commission should modify its evaluation of fixed and mobile services to reflect significant and on-going changes in the market and in consumer behavior.**
    - The documented acceleration of smartphone penetration, wireless connections, wireless download speeds, and average data usage per connection reflected in the record of several Commission proceedings demonstrates that mobile broadband service has already become a substitute for fixed broadband service. The Commission therefore should acknowledge that a combined view of fixed and mobile broadband is a more appropriate and realistic measure of both deployment and market share.
      - Current 4G/LTE networks support real-world download speeds of 20 Mbps per device, and the latest releases of 4G/LTE can support speeds of 60-80 Mbps per device.
      - To ensure a level playing field between fixed and wireless broadband, the Commission should revisit its vacated cable horizontal ownership limits and find that no such limits are necessary.

2. **Defining Competitors in the Mobile Wireless Market.** The Commission's recent *Twentieth Report* regarding mobile wireless competition concluded, "there is effective competition in the mobile wireless services marketplace." (Para. 8). In compiling its data, however, the Commission noted it had followed prior practices in identifying market competitors notwithstanding marketplace changes. For example, it continued to attribute the subscribers of mobile virtual network operators ("MVNOs") to their host facilities-based service providers (para. 33, n.99) despite the entrance or imminent entrance of the nation's two largest cable operators as MVNOs. (Para. 16).
- **The Commission should expand its view of wireless service provider competitors to include MVNOs and other non-traditional providers under specific conditions.**
    - The Commission should adopt the following conditions for counting MVNOs as competitors in the mobile wireless services marketplace:
      - An MVNO that owns a portion of the network elements or spectrum is a real competitor, and the Commission should include such MVNOs as competitors in its analysis of the market.
        - Examples include (i) a cable network that combines an owned Wi-Fi network with an MVNO to supplement coverage, and (ii) a company that owns spectrum and rents the different physical elements such as towers, back haul and core networks.
      - An MVNO that does not own any network elements is not a significant competitor, and the Commission should exclude such MVNOs from its competitive analysis.
    - The Commission's traditional standards for identifying competitors in the mobile wireless market are overly narrow in today's market because:
      - the Commission's secondary market policies already permit "mobile wireless licensees to lease all or a portion of their spectrum usage rights for any length of time within the license term and over any geographic area encompassed by the license" (para. 39, n.125);
      - nationwide cable operators have entered or are about to enter the market as MVNOs; and
      - "traditional" wireless service providers continue to outsource much of their physical facilities (*e.g.*, towers, cell sites, *etc.*).
    - Due to the ever-weakening distinctions between facilities-based and non-facilities-based competitors in today's market, the Commission should acknowledge that its traditional standard for identifying competitors in the mobile wireless service market, which includes only "facilities-based" providers, has become under-inclusive.



3. **Measuring Broadcast Television Market Share.** The Commission is well aware of how rapidly changing technologies are transforming virtually every industry it regulates. Given the convergence of and cross-platform competition among national, regional, and local broadcasters, cable operators, cable networks, satellite providers, mobile and wireline telephone companies, and on-line “over-the-top” services, historical methods of measuring broadcast market share have become unrealistically narrow.

- **The broadcast industry represents only a part of the media market.** The Commission should take a fresh look at competition in the media marketplace consistent with statutory constraints. For example, inasmuch as newspapers and other entities have a meaningful presence on the Internet and rely heavily on video content, the Commission should look beyond the number of broadcasters in a geographic market in measuring market share. Instead, a broader view of audience share, where the real competition is for advertising revenue, may be a more appropriate vehicle for assessing the relevant market and its competitors.
  - New and different forms of media provide alternative platforms for audiences to consume content and corporations to buy advertising. As a practical matter, the internet has rendered the traditional local silos irrelevant in today’s markets.
  - The purpose and effectiveness of the Commission’s duopoly and cross-ownership rules are compromised by (i) consumers’ ability to substitute forms of content, (ii) advertisers’ ability to substitute types of advertising, and (iii) the unrestricted transformation of print, audio, and video content from one format to another as the content is continually repurposed on the internet.