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March 30, 2018

**By ECFS**

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

**Re: Notice of Ex Parte Communication**

**MB Docket No. 17-318  
Amendment of Section 73.3555(e) of the Commission's Rules,  
National Television Multiple Ownership Rule**

Dear Ms. Dortch:

On March 25, 2018, I met with Matthew Berry, Chief of Staff to Chairman Ajit Pai, regarding the referenced proceeding. Justin McCuen and Kevin Costello, summer interns in the office of the Chairman, also attended the meeting.

Our discussion focused on the methodology used for calculating national reach under the National Television Multiple Ownership Rule, 47 C.F.R. § 73.3555(e) (the "Rule"). We discussed market changes justifying a change in methodology, including the proliferation of national cable- and satellite-delivered programming networks, the emergence and continuing growth of national over-the-top content platforms, and historical declines in measured viewership of over-the-air television stations since the Rule's computational methodology was adopted. We then discussed the logical inconsistency, and inherent inaccuracy, of a methodology that is based solely on theoretical *reach*, as measured by the number of total Television Households ("TVHH") within a station's designated market area, rather than *penetration*, *i.e.*, the number of TVHHs in that market that actually tune in to that station. I noted that the National Association of Broadcasters had touched on this point in its comments in this proceeding, and that the Commission itself had recognized a similar distinction when it based its former cable horizontal ownership cap on actual penetration, *i.e.*, subscribers, rather than homes passed.

I suggested that the Commission modify its methodology under the Rule to address the skewing effect of the reach/penetration disparity on the calculation of national reach. For example, the Commission could take into account a station's ratings as determined by Nielsen Media Research so that it would be attributed only with the number of households in its market that actually were tuned to the station during a defined measurement period (or periods). I suggested that this would provide the Commission with an objective, empirical basis to calculate a station's actual reach, rather than arbitrarily attributing to the station all the TVHHs in its market. In addition, we discussed a "facts and circumstances" test pursuant to which the

**COVINGTON**

Marlene H. Dortch  
March 30, 2018  
Page 2

Commission would exercise its discretion to evaluate a request to exceed the nominal cap on an *ad hoc* basis designed to balance the Commission's diversity goals with other competing policy objectives, including the demonstrable benefits of group ownership to local service. Such an approach would enable the Commission to evaluate, in addition to ratings data, factors such as the number of stations in the market, advertising and retransmission consent revenue shares, whether a station is a network affiliate or an independent station, and the like.

This letter is being submitted electronically pursuant to Section 1.1206(b) of the Commission's Rules. Please contact the undersigned if you have any questions about this submission.

Respectfully submitted,

\_\_\_\_\_/s/  
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cc: Matthew Berry