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Via Electronic Filing

June 18, 2018

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

Re: **Notice of *Ex Parte* Communication, MB Docket Nos. 17-317, 17-318, 17-105**

Dear Ms. Dortch:

This letter reports on several meetings on June 13, 2018, during which Brandon Burgess, Chairman and Chief Executive Officer of ION Media Networks ("ION"); his colleague Terri Santisi representing ION TV Stations; and John Feore, Jason Rademacher, and the undersigned of Cooley LLP met with the following members of the Commission, the Media Bureau, and the Incentive Auction Task Force:

- Chairman Ajit Pai; Matthew Berry, Chief of Staff; and Alison Nemeth, Media Advisor
- Commissioner Michael O'Reilly and Brooke Ericson, Chief of Staff and Legal Advisor, Media,
- Commissioner Brendan Carr and Evan Swarztrauber, Policy Advisor,
- Kate Black, Policy Advisor, Media for Commissioner Jessica Rosenworcel,
- Michelle Carey, Chief, Media Bureau; Barbara Kreisman, Chief, Video Division; Pamela Gallant, Associate Division Chief, Video Division; Jean Kiddoo, Chair, Incentive Auction Task Force; Hillary DeNigro, Deputy Chair, Incentive Auction Task Force.

The participants in the meetings discussed ION's general experience with the post-auction repack and the company's monumental efforts in tackling the repack of 49 television stations. ION's repack affects 80% of its footprint, over 60% of U.S. TV households and requires investment representing over 10 years' worth of ION's normal annual capital expenditures. In addition, the participants discussed the following policy issues pending before the Commission.

National Multiple Ownership Rule. ION reviewed with the meeting participants the positions explained in the March 19, 2018 Joint Comments and the June 7, 2018 ex parte letter field by ION, Univision Communications Inc. ("Univision"), and Trinity Christian Center of Santa Ana Inc. ("Trinity") in the Commission's proceeding examining the

national television ownership limit and the UHF Discount. ION explained that it believes the national cap on television ownership is outmoded in today's highly competitive media environment and that the rule does nothing more than hamper broadcasters' ability to compete with new, dynamic, unregulated market entrants. ION indicated that if the Commission nevertheless decides to retain a national audience reach cap, the limit should be increased so that it is realistic, policy-based, and reflects the changes in the television industry and the general media ecosystem that have taken place over the past thirty years, particularly the decline in television's share of the marketplace. ION emphasized that the starting point is Congressional intent when legislators codified a UHF station cap of 78% of US TV HH in 2004. Given that UHF represents over 70% of all commercial TV stations, it is apparent that Congress sees the 78% cap as the norm for US broadcasting. Indeed, VHF stations, few and far between today, are 'technological antiques' and the FCC should use its discretion to support those legacy stations by granting them cap waivers.

In increasing the ownership cap from 70% to 78% in 2004, Congress obviously factored in UHF treatment as a way to evolve the obsolete concept of caps from "<u>theoretical technical reach</u>" (which was relevant when three networks dominated all TV sets 50 years ago) to "<u>actual audience reach</u>" (which is relevant today, where many cable networks routinely achieve higher ratings than broadcast networks). A reversal of this legislative direction would re-regulate the broadcast industry and disregard both Congressional intent and 21st century TV audience behavior.

Ponder this question: Why would an internet or cable household -- that is not technically equipped to receive a broadcast signal -- count towards a "broadcast cap"? If at all, the 78% broadcast cap should be applied to viewing-based audience ratings to begin to mitigate the misalignment between old law and today's TV reality. The cap should use actual Nielsen seasonal viewership ratings, not unlike the way the commission already uses audience measurement to assess local market concentration under its duopoly rules. ION notes that it does not have a single station anywhere in the country that is in a "top 4" position using the FCC's local measurement approach. So why then is ION part of a national cap measurement at all? ION cited a recent proposal to replace this outdated system with a ratings-based approach that would accurately capture a station's actual audience reach. Under this system, a station would be deemed to reach only the households that actually watch the station, based on actual audience viewing measurement, and be allowed to own stations representing up to 39% of local ratings and 39% of total national ratings, using Nielsen Total Audience Measurement of total Broadcast, MPVD and Virtual MVPD television viewing.

Finally, unless it eliminates all caps entirely, the Commission must adopt real grandfathering to ensure that viewers continue to be served by companies like ION that have built new competitive networks based on the traditional discount to the national

audience reach of UHF stations. ION expressed that its ability to continue providing viewers with multiple streams of free, over-the-air programming depends on the Commission's handling of the national cap and the UHF Discount. Without grandfathering of ION's current station group, viewers likely will lose the substantial benefits they have gained from the enhanced over-the-air television service that ION and others like Univision, and Trinity have come to provide in reliance on the UHF Discount. As indicated in the Joint Comments and the June 7 Letter, ION advocates full and permanent grandfathering. Grandfathered stations should continue to obtain the benefits of the UHF Discount for as long as those stations are held the current owner, and the benefits of grandfathering should continue for future owners if the current owner elects to sell all or substantially all of its grandfathered stations. This approach is necessary to ensure that companies like ION that built new over-the-air networks can continue to operate and grow their businesses and continue providing the valuable service to the public that viewers have come to rely on. This grandfathering proposal, which was laid out in detail in the June 7 Letter is realistic, equitable, and would serve the public interest.

Cable Carriage Elections. ION also reviewed with the meeting participants the positions outlined in ION's March 5, 2018 reply comments in the Commission's proceeding reviewing the must-carry/retransmission consent election process. ION expressed its support for changes that would bring the election process into the twenty-first century. ION supports a simple solution of posting electronic notices to stations' online public inspection files. This solution would make review of these documents easier and more efficient for MVPDs and stations alike. The election proceeding began with a focus on streamlining the election process and the Commission should maintain its focus on accomplishing that goal, before taking up expanding the considerations to other complicating extraneous changes outside the scope of the pending rulemaking.

Sincerely,

/s/

Robert M. McDowell
Counsel to ION Media Networks

cc: Brandon Burgess
Meeting participants