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July 20, 2017

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communications  
Review of Local Radio Ownership Rules—Embedded Radio Markets  
MB Docket Nos. 09-182 and 14-50**

Dear Ms. Dortch:

This ex parte follows up on the July 11, 2017 meeting with Michelle Carey and Benjamin Arden of the Media Bureau to discuss the FCC's application of its multiple ownership rules to radio stations that are home to embedded markets in major metropolitan areas. In that meeting, we explained that embedded markets are the only Nielsen markets where owners, in the context of any acquisition of new stations, have to meet the multiple ownership requirements in two markets – the embedded market itself, and the greater “parent” market. This imposes a hardship and competitively disadvantages licensees of stations in the embedded markets who want to acquire stations in other embedded markets. This issue arises in only two metropolitan areas with multiple embedded markets – New York and Washington, DC.

In this docket, we urged the FCC to adopt a policy that, if all interests in the Metro of the proposed attributable owner are in stations that are considered by BIA to be “home” solely to embedded markets, the application would be evaluated solely by review of the ownership limits applicable to the embedded markets. A presumptive waiver of the current processing policy for any licensee whose stations are home solely to an embedded market would have no anticompetitive impact on the parent market and should be adopted.

The FCC has used a presumptive waiver standard in other many other proceedings, including in connection with many proceedings involving the interpretation of the multiple ownership rules. For example in the 1999 *Local Television Ownership Order*,<sup>1</sup> the FCC established the criteria for a presumptive waiver of the local television ownership rule for a “failing” station, as one that has been struggling for an extended period of time both in terms of its audience share and financial performance. If the applicant satisfied each of the four criteria, a waiver of the duopoly rule would be presumed to be in the public interest.<sup>2</sup> Many cases relying on this policy described it as a “presumptive waiver.”<sup>3</sup>

Similarly, the 1989 *Attribution Order* established a presumptive waiver allowing certain combinations of radio and television stations in the same market.<sup>4</sup> While the words “presumptive waiver” were not used in the 1989 Order, the 1999 *Local Television Ownership Order*, where the 1989 criteria were modified and incorporated into a rule, characterized the criteria set forth in the 1989 decision as a “presumptive waiver” multiple times.<sup>5</sup> The criteria were also characterized as a “presumptive waiver” in the 2003 *Biennial Review*.<sup>6</sup>

In this very proceeding, in both the Notice of Proposed Rulemaking and in the Order now being considered on reconsideration, the Commission considered a presumptive waiver for newspaper and broadcast combinations, recognizing that this is a concept routinely used in

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<sup>1</sup> *Review of the Commission’s Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, Report and Order, 14 FCC Rcd 12903, 12939-12940, ¶ 81 (1999) (“1999 *Local Television Ownership Order*”) (the Commission stated that it “would presume such a waiver is in the public interest” if certain criteria were met).

<sup>2</sup> These criteria are: (1) one of the merger stations has had a low all-day audience share; (2) the financial condition of one of the merging stations is poor; (3) the merger will produce public interest benefits; and (4) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station and selling the station to an out-of-market buyer would result in an artificially depressed price.

<sup>3</sup> E.g., *Montclair Communications, Inc. and Waterman Broadcasting Corp. of Florida (For Consent to Transfer Control)*, Memorandum Opinion and Order, 22 FCC Rcd 7271 (MB 2007); *Counterpoint Communications, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 3243 (2002).

<sup>4</sup> *Amendment of Section 73.3555 of the Commission’s Rules*, Second Report and Order, 4 FCC Rcd 1741 (1989) (“1989 *Attribution Order*”).

<sup>5</sup> 1999 *Local Television Ownership Order*, 14 FCC Rcd at 12949-53, ¶¶ 107-113.

<sup>6</sup> *Broadcast Ownership Rules - 2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, ¶ 372 (2003).

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broadcast ownership matters.<sup>7</sup> A presumptive waiver for newspaper-television combinations in large markets was also adopted in the 2006 Quadrennial Review of the ownership rules, though it never went into effect after a successful appeal of the broader ownership rules.<sup>8</sup>

Given this history of the use of a presumptive waiver, there is no reason that such a waiver cannot be adopted here, presumptively waiving the current policy of requiring a dual multiple ownership analysis of stations home exclusively to embedded markets. As we noted in our July 11, 2017 meeting, no one in the docket has opposed this proposal, and several broadcasters, as well as the National Association of Broadcasters, have voiced their support.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,

/Melissa Newman/

Melissa Newman

cc: Michelle Carey, Office of the Bureau Chief, Media Bureau  
Benjamin Arden, Industry Analysis Division, Media Bureau

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<sup>7</sup> See, e.g., *2014 Quadrennial Regulatory Review, Review of the Commission's Broadcast Ownership Rules*, Second Report and Order, 31 FCC Rcd 9864, 2016 FCC LEXIS 2887, ¶¶ 133, 177, 179-181 (2016); *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*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, ¶¶ 168, 175, 178-179, 185-188 (2014).

<sup>8</sup> *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008).