

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications for Assignment of License for	)	MB Docket No. 21-234
KVVU-TV, Henderson, NV	)	LMS File No. 0000145518
From KVVU Broadcasting Corporation to Gray	)	
Television Licensee, LLC	)	

**RESPONSE TO INFORMAL OBJECTION**

Gray Television, Inc. (“Gray”), by its attorneys, hereby responds to the filing entitled “Informal Objection and Request for Conditions” (the “Informal Objection”) filed by Mr. Antenna Las Vegas LLC (“Mr. Antenna”) in the above-referenced proceeding. The Informal Objection asks the Commission to impose a condition on its consent to Gray’s pending acquisition of the FCC licenses and related assets of Meredith Corporation (“Meredith”) either: (1) requiring Gray to sell advertising time to vendors of television antennas; or (2) requiring Gray to upload to its online public file a statement when it denies a request to purchase advertising time from a vendor of television antennas. Mr. Antenna’s request lacks even a scintilla of factual or legal support and should be denied forthwith.

The sole factual underpinning for Mr. Antenna’s request is what appears to have been a mistaken statement by employees of Meredith’s KVVU-TV that they could no longer accept advertisements from Mr. Antenna due to what they referred to as a Meredith corporate policy against taking ads for companies that promote “cord cutting.”<sup>1</sup> From there, despite admitting that it has “no direct knowledge of Gray’s position with respect to” a policy regarding advertisements

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<sup>1</sup> Informal Objection at 2.

for products promoting over-the-air viewing, Mr. Antenna engages in wild speculation that Gray urged Meredith to adopt this purported policy and “already has implemented or plans to implement” a similar policy of its own.<sup>2</sup>

Mr. Antenna’s factual allegations are flawed at best and misleading at worst. Although Gray cannot speak to Meredith’s business or advertising practices, Meredith has submitted declarations made under penalty of perjury stating that: (1) the reference by KVVU-TV employees to a corporate policy against advertisements for television antennas was mistaken, and such a policy does not now and never has existed; and (2) Meredith’s KPHO-TV actively sought to sell Mr. Antenna airtime before Mr. Antenna brought the matter to Meredith’s attention, providing contemporaneous proof that Meredith had no such policy.<sup>3</sup> With respect to Gray’s advertising policies, while the Commission need not entertain Mr. Antenna’s wild speculation and conjecture, Gray wants the record to be clear: Gray does not have and has not had any policy that restricts the ability of its stations to accept advertisements that encourage or facilitate over-the-air reception.<sup>4</sup> Additionally, Gray has not sought to influence in any way the local commercial advertising aired on Meredith’s local television stations and has never encouraged Meredith to adopt any policy relating to the sale or installation of over-the-air antennas.<sup>5</sup>

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<sup>2</sup> *Id.* at 7. Mr. Antenna’s subsequent gratuitous discussion of preliminary allegations against Gray in a Notice of Apparent Liability for Forfeiture in an unrelated transaction relating to a rule that is not implicated by the instant transaction is misplaced and demonstrative of the utter baselessness of Mr. Antenna’s claims.

<sup>3</sup> *See* Meredith Corp., Response to Informal Objection, MB Docket No. 21-234, at 6-8 (Sept. 3, 2021) (“Meredith Response”).

<sup>4</sup> Declaration of Robert Folliard ¶ 4 (Sept. 7, 2021), attached hereto as Exhibit A.

<sup>5</sup> *Id.* ¶ 5.

In addition to the Informal Objection’s factual flaws, Mr. Antenna also does not provide (nor does one exist) any legal basis for the Commission to impose the conditions Mr. Antenna is requesting. The FCC routinely has rejected efforts, such as those by Mr. Antenna, to bootstrap general policy-related concerns in an assignment or transfer proceeding.<sup>6</sup> Even if Meredith had adopted the policy about which Mr. Antenna complains, it would have been completely unrelated to the proposed transaction. Asking the Commission to apply a proposed remedy only to a party engaged in a transaction does not render the underlying concern transaction specific.

Moreover, although Gray does not have any intention to prohibit advertisements for over-the-air antennas, a Commission order *requiring* Gray to accept such advertisements would raise grave constitutional concerns. The First Amendment imposes significant restrictions on regulatory actions that are intended to limit or compel free speech.<sup>7</sup> A broadcaster’s decision whether or not to accept an advertisement reflects a proper exercise of its editorial direction and

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<sup>6</sup> See *Cnty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 511 (1983) (explaining that “rulemaking is generally a ‘better, fairer, and more effective’ method of implementing new industry-wide policy than is the uneven application of conditions in isolated” licensing decisions); *Cal. Ass’n of the Physically Handicapped, Inc. v. FCC*, 840 F.2d 88, 96-97 (D.C. Cir. 1988) (recognizing the impropriety of seeking to apply new requirements within licensing proceedings, highlighting the “arbitrariness of retroactive application and the inherent constraints of the adjudicatory process”); *In the Matter of the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee)*, 34 FCC Rcd. 8436 ¶ 31 (2019) (citing cases).

<sup>7</sup> *United States v. Paramount Pictures*, 334 U.S. 131, 166 (1948); see also *American Broadcasting Co. v. United States*, 347 U.S. 284 (1954)); *John F. Banzhaf III*, Letter Order, 29 FCC Rcd. 15495, at \*3 (Audio Division, MB 2014) (“The First Amendment and Section 326 prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights.”); *In the Matter of Complaints Regarding Various Television Broadcasts Between Feb. 2, 2002 & Mar. 8, 2005*, Order, 21 FCC Rcd. 13299 ¶ 71 (2006) (declining to pursue complaint regarding use of curse word during interview on network news morning show).

its core First Amendment rights.<sup>8</sup> The Commission should not—whether by rulemaking or in the course of a transaction—seek to interfere with those rights.

As demonstrated above, Mr. Antenna has failed to identify any facts that either show that granting the application would be *prima facie* inconsistent with the public interest or raise a substantial and material question of fact as to whether grant of the applications would serve the public interest. Accordingly, the Commission should reject Mr. Antenna’s arguments and promptly grant the applications without conditions.

Respectfully submitted,

GRAY TELEVISION, INC.

By: /s/ Ari Meltzer  
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*Its Attorneys*

September 8, 2021

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<sup>8</sup> See e.g., *Complaint of Syracuse Peace Council*, 2 FCC Rcd. 5043 ¶¶ 52-57 (1987) (recognizing need to preserve broadcasters’ editorial discretion under the First Amendment), *reconsideration denied*, 3 FCC Rcd. 2035, *aff’d Syracuse Peace Council v. FCC*, 867 F.2d 654 (1989).

**Certificate of Service**

I, Joan Stewart, hereby certify that on September 8, 2021, a copy of the foregoing Response to Comments was sent by first class U.S. Mail to the following:

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\_\_\_\_\_/s/\_\_\_\_\_  
Joan Stewart

## DECLARATION OF ROBERT FOLLIARD

1. My name is Robert J. Folliard, III, and I am Senior Vice President, Government Relations & Distribution of Gray Television, Inc. Prior to serving in this role, I was the Vice President & Deputy General Counsel for Gray.
2. I have reviewed the Informal Objection; Request for Condition filed by Mr. Antenna Las Vegas LLC and am familiar with the contents thereof.
3. As part of my duties as Senior Vice President, I am responsible for all matters at Gray relating to retransmission consent revenue and negotiations. I also am overseeing several projects to improve the over-the-air signal coverage for Gray's television stations. If any policy existed at Gray relating to retransmission consent, "cord-cutting," over-the-air signal coverage, or over-the-air antennas, I would be familiar with it and would have been involved in adopting it. Moreover, in my prior role as Vice President & Deputy General Counsel, I was familiar the policies applied by Gray's local television stations regarding what types of local advertising can be accepted and what types must be rejected.
4. To my knowledge, Gray does not now have and has never had, during my tenure with the company, a policy that Gray's local television stations must reject advertisements for companies that sell over-the-air antennas and/or the installation of such antennas or that sell services that promote "cord-cutting" more generally.
5. To my knowledge, Gray has not sought to influence in any way the local commercial advertising aired on Meredith's local television stations and has never encouraged Meredith to adopt any policy relating to the sale or installation of over-the-air antennas.
6. I have reviewed the forgoing Response to Informal Objection (the "Response") and am familiar with the contents thereof. The facts contained in the Response are true and accurate to the best of my knowledge, information and belief formed after reasonable inquiry.
7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 8, 2021



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Robert J. Folliard, III  
Senior Vice President, Government Relations  
& Distribution