



June 14, 2016

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

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, 13-236

Dear Ms. Dortch:

On June 10, the undersigned and Jerianne Timmerman of the National Association of Broadcasters (NAB) met with Bill Lake, Mary Beth Murphy and Brendan Holland of the Media Bureau to discuss issues related to the pending 2010 and 2014 quadrennial reviews of the broadcast ownership rules. In light of the Third Circuit Court of Appeals' recent decision addressing these incomplete reviews,¹ we reemphasized NAB's positions that the Commission should eliminate the newspaper cross-ownership rule and significantly reform the local TV ownership rule, as neither one is supported by any competition or diversity analysis relevant to today's media marketplace. We also reiterated that eliminating the UHF discount without addressing the national TV ownership rule would be arbitrary and capricious.

NAB specifically discussed the Third Circuit's singling out of the newspaper/broadcast cross-ownership rule, and the court's observation that the 1975 prohibition still remains in effect despite the FCC's determination over a decade ago that the ban no longer serves the public interest.² We urged the FCC to follow the court's direction that the newspaper cross-ownership prohibition is outdated and, as NAB has long argued, to eliminate it, given that the ban's purported rationale has evaporated in the Internet age.³

NAB also emphasized the importance of significantly reforming the local TV ownership rule. The FCC has provided no competitive analysis based on empirical evidence that supports

¹ *Prometheus Radio Project v. FCC*, Nos. 15-3863, 15-3864, 15-3865 & 15-3866, at 35-36; 42 (3d Cir. May 25, 2016) (*Prometheus III*) (faulting the FCC for failing to conclude the mandatory quadrennial reviews and stating that it expects the FCC to finalize and adopt an order completing these reviews by the end of the year).

² *Id.* at 38.

³ See, e.g., Comments of NAB, MB Docket Nos. 14-50, *et al.*, at 9-31; 70-84 (Aug. 6, 2014) (NAB 2014 Comments).

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retention of the current rule. Neither of its components – the eight-voices test or the top-four restriction – reflect competitive realities in today’s multichannel, multiplatform video marketplace. We stressed that both elements of the rule are based on the erroneous proposition that broadcast TV stations are the only relevant competitors in local markets and that competition from all other outlets can rationally be ignored.⁴

More specifically, as NAB previously explained in detail,⁵ the Commission has consistently failed to demonstrate in any way that eight independently owned and operated full power TV stations are necessary to preserve competition in local markets. In particular, we pointed out that the majority of DMAs do not have eight such stations, and no one has ever shown that any lack of competition in those markets harms viewers or advertisers. We also referred to NAB’s multiple empirical analyses showing that the FCC’s justification for its top-four restriction – that a natural break point exists between the four- and fifth-ranked stations in a market and that any combinations among the top-four stations would result in one broadcaster having a significantly larger market share than other broadcasters – is not consistently supported by the facts, and does not reflect competitive conditions in a sufficient number of markets to justify an across-the-board rule.⁶

NAB additionally pointed out that the assertions made in the FCC’s 2014 further rulemaking notice proposing to retain the eight-voices test and the top-four standard are unsupported by empirical evidence, especially evidence relevant to the current marketplace. Merely citing FCC quadrennial review decisions from 2006 and even earlier does not satisfy the “purpose of § 202(h) – to function as an ongoing mechanism to ensure that the Commission’s regulatory framework would keep pace with the competitive changes in the marketplace.”⁷ For all these reasons, we urged the FCC to eliminate the eight-voices test and reform the top-four standard to permit the common ownership of two stations among the top four in a market.

Finally, we referred to NAB’s comments in the pending proceeding on the UHF discount, reiterating our position that eliminating the discount – which exists only as a calculation methodology for the national TV ownership cap – without considering the cap itself would be arbitrary and capricious.⁸ Taking such action also would be contrary to the Third Circuit’s recent *Prometheus III* decision, where the court reversed the FCC for attributing TV joint sales agreements – and thereby making the ownership rules more stringent – without first

⁴ NAB referred to its June 6, 2016 *ex parte*, which explained that cable viewing shares have long surpassed broadcast TV stations’ viewing shares and that online video options are now very significant competitors for both viewers and advertisers in local markets. NAB Written *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, at 5-10 (June 6, 2016). See also NAB 2014 Comments at 33-50.

⁵ See NAB 2014 Comments at 55-59; Reply Comments of NAB, MB Docket No. 09-182, at 14-15 (Apr. 17, 2012); Comments of NAB, MB Docket No. 09-182, at 27-29 (Mar. 5, 2012).

⁶ See NAB 2014 Comments at 50-55 & Attachment B; Reply Comments of NAB, MB Docket No. 09-182, at 11-14 & Attachment A (Apr. 17, 2012); Comments of NAB, MB Docket No. 09-182, at 22-27 (Mar. 5, 2012).

⁷ *Prometheus III*, at 36 (internal quotations and citations omitted).

⁸ See Comments of NAB, MB Docket No. 13-236 (Dec. 16, 2013). Consistent with our previous comments, NAB continues to take no position as to whether the national cap should be retained at its current level, modified or eliminated.

determining whether the existing ownership rules were still sound and served the public interest.⁹ Similarly, the Commission cannot, consistent with the Communications Act, eliminate the UHF discount, and thus alter the national TV ownership rule, without determining whether that rule still serves the public interest and, if so, at what level.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

cc: Bill Lake, Mary Beth Murphy, Brendan Holland

⁹ *Prometheus III*, at 52.