

January 8, 2003

**Notice of Ex Parte Communication**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

*Re: MB Docket No. 02-277*

Dear Ms. Dortch:

Yesterday, Henry Baumann, Jack Goodman, Karen Kirsch and the undersigned met with Kenneth Ferree, Paul Gallant, Royce Sherlock, Mania Baghdadi, and Judith Herman to discuss the television duopoly rule. We made the following points:

- Television broadcasters in medium and small markets are facing unprecedented financial pressures, due to the growth of competition, the decline in network compensation, and the costs of the digital television transition. A new study by NAB examining the profitability of ABC, CBS, Fox & NBC affiliated stations in 1993, 1997, and 2001 in markets 51-75, 76-100, 101-125, 126-150, and 151-175 showed that the average low-rated station from 1993-2001 suffered a percentage decline in pre-tax profitability of 124% or greater in all these market groupings, and suffered actual losses in 2001. Even the average high-rated station in markets 51-75, 76-100, and 126-150 showed declining pre-tax profits from 1993-2001.
- A number of television stations have already been forced to cease local news operations, due to financial considerations. A new study by media consultants Smith Geiger (attached to NAB's comments in this proceeding) demonstrates the increasing costs of both starting up and maintaining local news operations in medium and small markets. Smaller market broadcasters need relief from the duopoly rule to ensure their continued financial viability and their ability to provide local news.

- In comments in this proceeding, NAB proposed that all duopolies meeting a “10/10” standard should be presumptively in the public interest. Under this standard, two stations each with a year-long average 7:00 a.m. to 1:00 a.m. viewing share of less than 10 could be commonly owned; a station with a viewing share of 10 or more could be co-owned with another station with a share of less than 10. Combinations of stations not meeting this standard should still be considered on a case-by-case basis.

At this meeting, NAB distributed the attached handout describing its duopoly proposal. NAB also distributed copies of its study on the declining financial position of television stations in medium and small markets, which was attached to NAB’s comments in this proceeding, filed January 2, 2003. Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,



Attachment

cc:

(w/o attachment)

W. Kenneth Ferree  
Paul Gallant  
Royce Sherlock  
Mania Baghdadi  
Judith Herman

# Duopoly Relief for Small & Medium TV Markets

## The “10/10” Proposal



January 7, 2003

# TV Duopoly Rule

- ◆ TV stations in medium & small markets – particularly non-market leading stations – are facing unprecedented financial pressure
- ◆ NAB study looked at stations in markets 51-175 in 1993, 1997 & 2001
- ◆ The average high-rated station in markets 51-75, 76-100 & 126-50 experienced a decline in pre-tax profits

# Duopoly Studies

- ◆ Pre-tax profits for the average low-rated station in these market groups declined 124%-581%
- ◆ The average low-rated station in all groups lost money in 2001
- ◆ These figures do not reflect impact of DTV costs and only partially reflect decline in network compensation

# Duopoly Rule

- ◆ Local service – particularly local news – will not survive on lower-rated stations without duopoly relief
- ◆ Current duopoly rule, which allows combinations only in largest markets and bars combinations of 4 top-rated stations, is not adequate to address the problem

# The “10/10” Rule

- ◆ NAB proposes a presumptive 10/10 rule for TV duopolies
- ◆ Rule is based on 4-book average of 7 AM-1 AM viewing shares
  - use of viewing share test reflects impact of cable viewing

# The “10/10” Rule

- ◆ 2 stations with shares of less than 10 could be co-owned
- ◆ Station with share of 10 or higher could acquire another station with share of less than 10
- ◆ For transfers qualifying under the 10/10 rule, no other showing would be needed

## Applying the 10/10 Rule: Austin, TX (Market 54)

Station	Network	Average Share
KTBC	FOX	12.3
KXAN	NBC	12
KVUE	ABC	9.5
KEYE	CBS	6.8
KNVA	WB	6.3

## Applying the 10/10 Rule: Savannah, Ga (Market 99)

Station	Network	Average Share
WTOC	CBS	18
WSAV	NBC	9.8
WJCL	ABC	6.5
WTGS	FOX	5.8
WGSA	UPN	2

## Applying the 10/10 Rule: Odessa-Midland (Mkt. 154)

Station	Network	Average Share
KWES	NBC	14.3
KOSA	CBS	11.3
KMID	ABC	9.5
KPEJ	FOX & UPN	5.5
KUPB	Univision	5.3
KMLM	REL	
KPXK	PAX	

# TV Duopoly Rule

- ◆ FCC should allow triopolies or combinations that do not meet the 10/10 test on a case-by-case basis
  - FCC should expand criteria for “failing” station and should not require that station is in danger of going dark to qualify
- ◆ FCC should permit transfers of existing combinations without re-applying duopoly test