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April 21, 2003

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

RE: Ex Parte Filing
MB Docket No. 02-277

Dear Ms. Dortch:

Enclosed for inclusion in the above-captioned proceeding, and on behalf of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Communications Group, Inc., and Viacom, please find a copy of a document entitled "'Red Herring' Arguments – the Unsupported, Ill-Considered and Irrelevant Arguments for Retention of the National TV Ownership Cap After *Fox Television Stations, Inc.*," together with a supporting analysis prepared by Economists Incorporated entitled "Affiliate Clearances, Retransmission Agreements, Bargaining Power and the Media Ownership Rules."

These two documents are submitted to demonstrate that three of the rationales frequently advanced in support of retaining the national TV ownership cap simply cannot withstand scrutiny. In particular:

- Red Herring # 1: NAB/NASA allege that network affiliated stations – through discussions between their representative organizations and network executives – have a special ability to make the network sensitive to the tastes, needs and interests of consumers in local communities.

The reality: Networks must and do listen to viewers, advertisers and the management of both affiliate and owned and operated stations (O&Os). *In fact, as between affiliates and O&Os, networks prudently give greater credence to O&O management since affiliates have an inherent economic conflict with the network over the distribution of profits. If anything, the issue raised by NAB/NASA provides support for repeal of the Cap since O&Os, whose allegiance is unambiguous, can be counted upon to provide the networks with more accurate and unbiased information on local viewer opinion than affiliates.*

- Red Herring # 2: NAB/NASA further claim that network affiliates preempt substantially more programming than O&Os, and thus deserve special accolades for being "more committed" to localism.

The reality: *The data clearly shows that both affiliates and O&Os preempt only a tiny fraction of network prime time programming, and that any difference in preemption rates is due to affiliate preemptions for paid programming.*

- Red Herring # 3: Other deregulation foes, including the American Cable Association and Cox Enterprises, contend that networks gain some kind of unfair bargaining advantage through the use of their retransmission consent rights.

The reality: *Multiple station ownership has no impact on station bargaining power. Whether the cable operator is an MSO or the broadcaster is a group owner, there is no change in relative bargaining power compared to multiple separate negotiations. The outcome of retransmission consent negotiations is determined by each party's market-by-market evaluation of the benefits of entering an agreement. The retransmission practices of the networks are no different than those of Cox, which is also a broadcaster, and other group owners, all of which must adhere to the Commission's retransmission consent rules.*

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If you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,

/s/ John C. Quale

John C. Quale

Enclosures

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