

May 9, 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, Greg Schmidt of LIN TV Corporation and Jack Goodman and the undersigned of NAB met with Paul Gallant to discuss the television duopoly rule. We made the following points:

- A broadcast-only voice test is an insufficient basis for a reformed duopoly rule. Such a test ignores substantial evidence in the record in this proceeding about competition in the video marketplace and the extent to which cable/satellite has reduced broadcast audience shares and revenues. A broadcast-only voice test will also fail to provide relief to the small market TV broadcasters who most urgently need it. Studies previously submitted in this proceeding specifically demonstrated the recent declines in the viewing of over-the-air broadcast stations, the declining financial position of television stations (especially lower-rated ones) in medium and small markets, and the rising costs of maintaining local news operations in these markets.
- Given the evidence in the record in this proceeding, a duopoly rule based on a broadcast-only voice test would be vulnerable to judicial challenge under the D.C. Circuit's decision in *Sinclair v. FCC*, 284 F.3d 148, 165 (D.C. Cir. 2002), where the court remanded the current duopoly rule due to its "exclusion of non-broadcast media" from the eight-voice test. In contrast, the NAB's "10/10"

duopoly proposal appropriately focuses on the percent of total viewing received by broadcast stations in local markets, taking into account both broadcast and non-broadcast viewing. NAB's 10/10 standard also takes into account the FCC's historic interest in local diversity by focusing on the viewing shares of the local broadcast stations proposed to be commonly owned and by encouraging combinations between stronger and weaker local stations.

At this meeting, NAB also reiterated its strong support for retaining the 35 percent national television ownership cap. Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeannine Zimmerman". The signature is written in a cursive, flowing style.

cc: Paul Gallant