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May 22, 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 record of 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 (the "Joint Commenters"), please find a copy of a document entitled "The Localism Red Herring."

This document is being submitted to emphasize to the Commission that none of justifications put forward by NASA/NAB warrant retention of the national television ownership cap (the "Cap"). In particular:

- The Localism Red Herring: NASA/NAB assert that owners and executives of affiliates are better judges of the entertainment programming that local viewers should be allowed to watch than are the viewers themselves.

  The Reality: While the concept of the paternalistic affiliate may have had some (questionable) validity 40 or 50 years ago, when viewers had only two or three video choices, there is no basis whatsoever for this usurpation of individual choice today, when

consumers have nearly limitless video and other entertainment options.

More fundamentally, NASA/NAB's localism argument would convert the current content-neutral ownership cap into a restriction uniquely applicable to O&Os. Since the evidence in the record of this proceeding no longer justifies an ownership cap on the basis of a group's size, NASA/NAB essentially urge the Commission to transform the Cap into a regulation that evaluates owners based on their identity. It is wholly inappropriate, however, to base a structural ownership regulation on the identity of a particular owner.

- A rule that uniquely restrains only one type of private owner, while promoting the economic interests of others, is highly suspect. Given that the evidence demonstrates conclusively that O&Os are superior to affiliates in the most important measure of localism – output of local news and public affairs programming – maintenance of the Cap would be arbitrary and capricious.

- Furthermore, a rule that evaluates one type of owner based on its allegedly inferior editorial judgment – the only remaining basis upon which NASA/NAB attempt to justify the Cap – raises a host of First Amendment implications. A rule focusing on a particular speaker would not be content-neutral and would not be entitled to the more lenient standard of review applicable to content-neutral regulations.

In short, there is no reason for the Commission to allow a structural ownership regulation to continue to hamstring one group of owners – networks – based on another group of owners' private belief that they know what is best for every consumer.

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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