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May 28, 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:

Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Communications Group, Inc., and Viacom (the "Joint Commenters") submit this letter to demonstrate that the findings of the Children Now report on children's television programming are unreliable and cannot form the basis for structural ownership regulations, including the national television ownership cap (the "Cap").[1] The Joint Commenters, through a series of *ex parte* filings, already have shown that there is no empirical evidence and no policy basis that justifies the Cap.[2] Nothing contained in the *Children's TV Report* alters this fundamental conclusion.

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[1] *See Big Media, Little Kids: Media Consolidation & Children's Television Programming*, A Report By Children Now, May 21, 2003 ("*Children's TV Report*").

[2] Proponents of the Cap have failed to provide any rational basis to sustain the rule. In particular, no commenter has ever seriously argued that the Cap corresponds in any way to market power. Because the Cap is a function of theoretical audience reach, it bears no relationship to actual viewership and market power. *See* Reply Comments of the Joint Commenters, submitted

The *Children's TV Report* alleges that media consolidation has led to a decrease in children's programming in the Los Angeles television market. The report, however, is entirely anecdotal and fails to present any evidence establishing an empirical link between consolidation and the amount of children's programming available on television. Equally important, the report focuses entirely on broadcast television and thus ignores the abundance of children's programming available via cable- and satellite-delivered television networks.

In particular, the *Children's TV Report* asserts that the number of children's programming series, and the total number of children's programming hours, have decreased across seven selected Los Angeles broadcast television stations.[3] The report attempts to link deregulation – especially the formation of duopolies – to the alleged decrease in children's programming.[4]

- The *Children's TV Report* attempts to compare programming data from 1998 to data from 2001, suggesting that fluctuations in output are the result of the formation of duopolies during the

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February 3, 2003, at 35-36. In addition, while several parties have continued to support the Cap, none has offered any sustainable rationale for an appropriate level. Thus, any decision to retain the cap would leave in place a structural ownership rule set at a purely arbitrary level. Belo Corp.'s suggestion that a 45% percent level would be a politically palatable compromise clearly falls short of the requirements of Section 202(h) of the Telecommunications Act of 1996. *See ex parte* letter to the Commission of Robert Decherd, Belo Corp., April 16, 2003, at 2. Indeed, networks must reach virtually 100% of the national audience to retain their premium status among viewers and advertisers. "Therefore, stations that collectively can impose even modest reach reductions on a network can succeed in blocking transmission of an offensive network program to all affiliated stations." *See Affiliate Clearances, Retransmission Agreements, Bargaining Power and the Media Ownership Rules*, Economists Incorporated, submitted with the Joint Commenters' *ex parte* letter to the Commission, April 21, 2003, at 11. In short, the Cap cannot possibly be justified at a 95% level, much less 45% or 35%.

3 Inexplicably, the report analyzes the children's programming on only 7 of the 25 television stations in the Los Angeles designated market area ("DMA"). *See Children's TV Report*, at 3, n.4. There are 15 separate owners of Los Angeles' 20 commercial television stations; an additional four owners operate the DMA's five non-commercial stations. *See* 2002 Cable and Television Factbook, Warren's Communications News. Thus, the report omits a wide range of relevant data.

4 *See Children's TV Report*, at 4.

interval between the data points. An appropriate evaluation, however, would compare programming output at the time directly before the formation of a duopoly (rather than a random date in 1998) to current levels. The *Children's TV Report* thus fails to account for the possibility that decreases in programming output occurred for reasons entirely distinct from the formation of duopolies.

  - For example, the report implies that KCAL's decreased children's programming output resulted from Viacom's formation of a duopoly between KCAL and KCBS.[5] In fact, though, KCAL's programming output decreased after a previous owner bought the station from Disney in 1996 – years before Viacom even created its duopoly in 2002.

  - The report makes a similar claim regarding Fox's KTTV-KCOP duopoly.[6] Yet the decrease in KTTV's children's programming was wholly unrelated to Fox's formation of the duopoly in 2001. Until September 2001, the FOX Network provided its affiliates (including KTTV) with a weekday afternoon children's programming block. The FOX Network eliminated this block at its affiliates' request, and only after the affiliates reported that they could not compete with cable channels (*e.g.*, Nickelodeon and Cartoon Network) which offer children's programming all day long.[7]

- Even if the report had compared data for dates that were related to the formation of duopolies, the conclusions would still be unreliable because the report fails to account for other relevant factors affecting children's programming output (*e.g.*, audience ratings and output from other broadcast and non-broadcast sources). Indeed, the report does not even attempt to conduct an analysis of the data holding other factors constant. The absence of a multivariate approach, such as multiple regression analysis, means the report's findings may be meaningless.

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5 *See id.* at 5-6.

6 *See id.*

7 KTTV continues to air a Saturday morning children's programming block; the amount of children's programming on KCOP has remained unchanged since the formation of the duopoly.

Ultimately, the fact that there is less children's programming on broadcast television should come as no surprise, nor should it be a cause for any concern. Notwithstanding the modest decrease in children's programming output on broadcast television, there remains a plethora of children's programming available in Los Angeles and in markets nationwide. First, all television broadcast stations (including those owned by the Joint Commenters) are subject to the FCC's renewal application processing guidelines which call for at least three hours of children's programming per week. More fundamentally, a significant amount of the children's audience has migrated to cable and satellite television networks that offer children's programming throughout the day. For instance, Nickelodeon's February 1998 rating in Los Angeles was 0.9; by July 2001 the rating had climbed to 2.2 (up 144%). Cartoon Network had a 0.4 rating in Los Angeles in February 1998; its July 2001 rating increased to 0.8 (up 100%). Thus, there is no shortage of children's programming, and younger viewers and parents are having no difficulty accessing the many available options.

Quite clearly, the Commission should not draw conclusions from a study that suffers from serious methodological flaws. Nor should it evaluate ownership rules with national implications based upon unreliable data from a single, randomly chosen market. Equally significant, as the Joint Commenters have repeatedly emphasized, the Commission should be especially wary of maintaining structural ownership regulations based on an evaluation of a particular owner's editorial decisions.

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

Respectfully submitted,

/s/ John C. Quale

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