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October 29, 2004

Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20445

Re: MB Docket No. 04-232; MB Docket No. 04-160

Dear Ms. Dortch:

Yesterday, Alan Harris of Wagonwheel Communications; Madelyn Bonnot of National Communications; and Marcellus Alexander and the undersigned of NAB met with Commissioner Kathleen Abernathy and Stacy Robinson Fuller and with Commissioner Michael Capps and Jordan Goldstein to discuss the Commission's proposal to require television and radio broadcasters to make and retain recordings of all their programming. We also discussed the NAB's petition concerning the delivery of locally differentiated content by SDARS providers. We made the following points:

- ‡ The proposed recording requirement is vastly overbroad and fundamentally unfair because it would in essence punish thousands of radio and television stations that have never received a complaint -- let alone a forfeiture -- for airing indecent material.
- ‡ The recording proposal would be economically burdensome on broadcasters in small markets and on small broadcasters in larger markets. A recording mandate could also chill speech in all markets by increasing broadcaster concern about government access to and use of the program recordings.
- ‡ The recording proposal is unnecessary because the FCC dismisses a very small number of indecency complaints for failure to provide sufficient information, such as a transcript or excerpt. At the very least, the FCC should refrain from adopting a recording requirement at this time because its recent increased enforcement has likely succeeded in addressing the indecency issue.

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! With regard to SDARS, the FCC authorized a national-only service. Further, the FCC should evaluate the economic impact of that service delivering locally differentiated content; the FCC did not make such an evaluation when it authorized SDARS as a national-only service, and broadcasters should be allowed to “make their case” on this issue.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Marsha J. MacBride".

Marsha J. MacBride

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Stacy Robinson Fuller
Jordan Goldstein