

# COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2401  
TEL 202.662.6000  
FAX 202.662.6291  
WWW.COV.COM

BEIJING  
BRUSSELS  
LONDON  
NEW YORK  
SAN DIEGO  
SAN FRANCISCO  
SILICON VALLEY  
WASHINGTON

May 26, 2010

## **VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Notice of *Ex Parte* Communication,  
MB Docket No. 10-71 and GN Docket No. 09-51**

Dear Ms. Dortch:

On May 25, 2010, representatives of the CBS Television Network Affiliates Association (“CBS Affiliates”) Wayne Daugherty, Executive Vice President and COO of Raycom Media and Chair of the CBS Affiliates; Tim Busch, Executive Vice President and COO of Nexstar Broadcasting Group and immediate Past Chair of the CBS Affiliates; Todd Schurz, President of Schurz Communications and Director on the CBS Affiliates Board; John Cottingham, President, Market Leader for Mid-South of Media General and Director on the CBS Affiliates Board; Chris Cornelius, President and COO of Barrington Broadcasting and Director on the CBS Affiliates Board; and Kirk Black, Senior VP and General Manager of Meredith Broadcasting and Vice Chair of the CBS Affiliates, along with counsel Jonathan Blake and Jennifer Johnson, met with the following individuals from the Media Bureau: Bill Lake, Rebecca Hanson, Eloise Gore, Steven Broeckaert, David Konczal, Kris Monteith, Diana Sokolow, Christopher Hickman, Mary Beth Murphy, and Nancy Murphy.

The parties discussed two topics that affect the long-term viability of the public’s local television service: retransmission consent and the broadcast spectrum proposals contained in the National Broadband Plan.

With respect to the principle of retransmission consent, the CBS Affiliates discussed the points raised in their May 18, 2010 Opposition, filed jointly with the National Association of Broadcasters and the ABC, NBC, and Fox Affiliates Associations, on the March 19, 2010 Petition for Rulemaking seeking changes to the Commission’s retransmission consent rules. Specifically, we explained that the Commission lacks statutory authority to adopt the

Petitioners' proposals and urged the Commission to reject the Petition. Retransmission consent is working as Congress intended it, and the proposals advanced by cable and DBS interests are simply intended to thwart a fair negotiation with broadcasters. We explained that negotiations for retransmission consent, like all other programming negotiations, are based on free market principles, and that the retransmission consent rules benefit consumers by supporting local services, such as local news, weather, emergency, sports, and public affairs programming. Without such support, broadcasters' ability to produce local programming and to provide the public with other high-quality programming, including national sports programming, would be jeopardized.

The parties also discussed the significant leverage that the carriers have over local stations in retransmission consent negotiations and noted that carriers may have an incentive as a result of the pending Petition for Rulemaking to cause an impasse with broadcasters in order to advance their call for retransmission consent reform. While cable operators are no longer a pure monopoly in many markets, increased competition in the video programming market has reduced broadcasters' leverage as well. Indeed, as a result of changes in the marketplace, broadcasters often must negotiate with cable operators that have an interest in competing cable channels and that compete for the same advertising and programming, including major sports programming, as television broadcasters. We noted that the amount that carriers pay for less popular cable networks is significantly higher than the retransmission consent fees sought for broadcast signals. Despite the disadvantages that broadcasters face today, loss of service due to a retransmission consent impasse has affected only one-one hundredth of one percent (0.01%) of annual television viewing hours since 2006. Notification with respect to the expiration of retransmission consent agreements is an appropriate way to protect viewers.

With respect to the broadcast spectrum proposals included in the National Broadband Plan, the parties discussed how spectrum is an essential ingredient for stations' local services, including high definition programming, multicast channels, and Mobile DTV service. Unlike commercial wireless providers, broadcasters are charged with serving the public interest and provide unique local services that are unavailable from any other source. And all viewers — regardless of whether they receive their local programming for free over-the-air or through pay-TV services — depend on local television stations for local service that is responsive to their needs, interests, and concerns. As detailed in the attached chart, we described our concern that many of the Plan's proposals, such as reduced interference protections, are involuntary and would harm the service local television stations are able to provide. We urged staff to consider how developments in technology will free up additional spectrum for mobile broadband, to focus on truly voluntary proposals, and to complete a spectrum inventory before taking any further action on items related to the public's broadcast spectrum.

Please address any questions to the undersigned.

Respectfully submitted,



Jennifer Johnson  
Lindsey Tonsager  
*Counsel to the CBS Television  
Network Affiliates Association*

cc: Bill Lake  
Rebecca Hanson  
Eloise Gore  
Steven Broeckaert  
David Konczal  
Kris Monteith  
Diana Sokolow  
Christopher Hickman  
Mary Beth Murphy  
Nancy Murphy

bcc: Wayne Daugherty  
Tim Busch  
Todd Schurz  
John Cottingham  
Chris Cornelius  
Kirk Black