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February 18, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation – ET Docket Nos. 10-235, 04-186, and 02-380 and MB Docket No. 09-182

Dear Ms. Dortch:

On February 17, Mr. Brad Gillen and Ms. Jennifer Tatel, Legal Advisors to Commissioner Baker, attended an informal luncheon hosted by the Association for Maximum Service Television, Inc. (“MSTV”). Also present at the luncheon were Messrs. David Donovan, Victor Tawil, and Bruce Franca (for MSTV); Ms. Jennifer Johnson and Mr. Matthew DelNero of Covington & Burling LLP, counsel for MSTV, the CBS Television Network Affiliates Association, and the NBC Television Affiliates; Ms. Ann Bobeck of the National Association of Broadcasters; Mr. David O’Connor of Wilkinson Barker Knauer, LLP, counsel for Capitol Broadcasting Company, Inc.; Ms. Anne Lucey of CBS Corporation; Mr. David Leach of David Leach LLC, representing the Tribune Broadcasting Company, News Corp., and NAB; Ms. Lonna Thompson of the Association of Public Television Stations; Mr. John Burgett of Wiley Rein LLP, counsel for Belo Corp.; Mr. Jack Goodman of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Schurz Communications, Inc.; Mr. Scott Patrick of Dow Lohnes PLLC, counsel for Meredith Corp.; Mr. Benjamin Bartlett of ION Media Networks; Mr. William LeBeau of Holland & Knight, counsel for Hubbard Broadcasting, Inc.; Mr. David Pawlik of Skadden, Arps, Slate, Meagher, and Flom LLP, counsel for News Corp.; Mr. Tom Davidson of Akin Gump Strauss Hauer & Feld LLP, counsel for Walt Disney Company; and Ms. Kathy Ramsey of News Corp.

The meeting was an informal gathering with the purpose of discussing a range of issues of interest to broadcasting and media policy, and no written materials were distributed. At the meeting, the participants made the following points to Mr. Gillen and Ms. Tatel:

- Given the continued evolution of cognitive radio technologies and other spectrum management techniques, the Commission should carefully scrutinize reallocation proposals that are premised upon the assumption that broadband spectrum needs can be met only by a nationwide, contiguous swath of spectrum. Wireless providers today use different spectrum allocations in different markets and there may be opportunities to meet future spectrum demands in a similar manner. The potential for non-contiguous spectrum blocks to meet demand should also be explored.
- The Commission should take a holistic approach to its spectrum reallocation activities, rather than a piecemeal approach to implementing specific reallocation proposals put forth in the National Broadband Plan. As part of a holistic and transparent approach to spectrum management, the Commission should conduct a spectrum inventory before any spectrum reallocation commences. Relatedly, while it explores reallocation proposals, the Commission should not overlook technical solutions or other methods for making optimal use of spectrum already assigned for flexible use.
- Broadcasters' recent transition to digital television, which followed major and sustained efforts by the industry, the Commission, and Congress, has resulted in broadcasters making more efficient use of their spectrum. Broadcasters are providing and continuing to roll out innovative services, including high-definition television, multicast services, and mobile DTV. The Commission should preserve broadcasters' ability to provide these services and encourage future innovations in broadcasting.
- Broadcasters do not object to truly voluntary incentive auctions, provided that appropriate protections are assured. However, the FCC must hold harmless broadcasters who wish to continue to be engaged in local broadcasting and seek to fully exploit their digital spectrum assignments for that purpose — not just those who might wish to surrender capacity under appropriate safeguards. This protection includes preserving broadcasters' current service areas, power levels, protection from interference, and their ability to innovate new digital offerings for local viewers. Additionally, the Commission should consider the impact of a repacking on the viability of unlicensed television "white space" device operation, the rules for which the Commission recently adopted.
- At the meeting, the broadcaster representatives noted the tension between, on the one hand, near-term budgetary goals and projections (*i.e.*, raising funds through spectrum auctions), and on the other hand, the public's longer-term interest in continued access to the programming and services provided by local broadcasters.
- With respect to use of the unlicensed "white spaces," the broadcast representatives emphasized their overarching goal of making the rules adopted

last year work in practice. The broadcast representatives noted that the recent selection of the white space database administrators and their ongoing oversight are very important functions, yet there are still a number of “unknowns,” including with respect to the criteria that the Office of Engineering and Technology (“OET”) will use to make permanent database administrator appointments. The broadcast representatives observed the importance of making sure that the process of selecting the administrators as well as future database operations and oversight are appropriately implemented.

- In the context of current and prior media ownership proceedings, the Commission has placed a strong emphasis on the number of independent broadcast television voices in a market. Yet, one of the key proposals in the National Broadband Plan is to substantially reduce the number of independent broadcast television voices by reclaiming up to 120 MHz of broadcast spectrum. The Commission should reconcile these contradictory valuations of the importance to the American public of independent broadcast voices. Further, as part of a holistic approach to both spectrum and media ownership policies, the Commission should study what effect a reduction of the number of voices in various markets would have on multiple ownership rules. The participants expressed concern that if, *e.g.*, certain stations participate in a voluntary spectrum auction, the current duopoly rule effectively will become much stricter. Many existing duopolies could become non-compliant with the ownership rules if the number of independent voices in the market were to be reduced. In aligning its spectrum policies with its ownership policies, the Commission also should consider the distinctions between stations in larger markets and stations in smaller markets, recognizing, *e.g.*, that stations affiliated with the “Big Four” networks in smaller markets have different capabilities than the Big Four affiliates in the larger markets.

Any questions should be directed to the undersigned.

Respectfully submitted,

Jennifer A. Johnson

cc: Brad Gillen
Jennifer Tatel