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December 21, 2011

BY ELECTRONIC FILING

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

Re: Notice of Ex Parte Presentations;
MB Docket Nos. 10-71 and 09-182

Dear Ms. Dortch:

On December 19, 2011, representatives of the Coalition of Smaller Market Television Stations met with Commissioner Clyburn and her Chief of Staff and Media Legal Advisor, David Grimaldi; with Erin McGrath, Commissioner McDowell's Acting Legal Advisor for Media; and with William Lake, Nancy Murphy, Diana Sokolow, and Steven Broeckaert, of the Media Bureau. The Coalition of Smaller Market Television Stations was represented in these meetings by Marci Burdick of Schurz Communications, Inc. ("Schurz"); K. James Yager of Barrington Broadcasting Company, LLC ("Barrington"); Ralph Oakley of Quincy Newspapers, Inc. ("Quincy"); and the undersigned counsel.[1]

The purpose of the meetings was to provide real-world examples in which shared service and similar arrangements ("SSAs") have been employed in order to preserve and enhance local programming; to provide a broader context of the economic pressures increasingly experienced by local television stations (particularly those in smaller markets); and to describe those Coalition members' experiences with respect to retransmission consent negotiations.

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[1] The Coalition of Smaller Market Television Stations is comprised of nine broadcast groups that collectively own approximately 120 full-power television stations, many in smaller markets. Its members are: Barrington Broadcasting Company, LLC; Cordillera Communications, Inc.; Fisher Communications, Inc.; Drewry Communications Group; LIN TV Corp.; Morgan Murphy Media; Quincy Newspapers, Inc.; Raycom Media, Inc.; and Schurz Communications, Inc.

The Coalition's representatives began the meetings by describing examples in their markets where SSAs have benefited the public by enabling a struggling station to preserve, and often enhance, its operations, particularly local news, thereby promoting the goal of localism and diversity of programming. For example:

- In Wichita, Kansas, Schurz's entry into an SSA with Entravision enabled the Entravision station to launch its operations, including digital operations, six months earlier than scheduled and enabled it to commence providing local news years earlier than Entravision had planned for the station. The arrangement makes possible the only Spanish-language local television news operation in the entire state of Kansas.

- In Springfield, Missouri, Schurz entered into an SSA with a station that was failing by any measure,[2] was providing limited local news services, was not equipped to provide high definition ("HD") digital television, and was not engaged in any community service activities. With the SSA in place, the station has added a state-of-the-art HD newsroom, expanded local news (with a separate, competitive news staff), rolled out community service initiatives, and has seen a strongly positive viewer response, with increased ratings and revenue that are being used to support further investments in operations. As a result of the expanded news operations, more news people are employed than were working there pre-SSA.

- In Augusta, Georgia, Schurz purchased a station over 30 years ago that was dark at the time (its owner was in bankruptcy). Schurz made very substantial investments in the station over the years and added a full complement of local newscasts in 1997. From that point on, the station was not profitable. After losing money with the station for 12 years, and facing the possibility of eliminating its news department entirely in order to cut costs, Schurz entered into an SSA in 2009 whereby the other party is providing supportive services without impinging on Schurz's control of the station. It has enabled the station to expand its independent news operation, where before a complete elimination of the local news service was a real possibility.[3] The station just

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[2] As discussed in the meetings, the Coalition believes that the "failing station" standard set forth in the current rules is too stringent and excludes many stations that are in fact failing. It also does not deal with situations where stations cut valuable services in order to survive.

[3] Given its financial condition, selling the station to an out-of-market third party was not possible. Nor was a "failing station" waiver available for an in-market buyer, given the ratings for the station's network programming.

cut the ribbon on a brand-new HD television station, a public service (and major investment) that would not have been possible without the SSA.

- In Syracuse, New York, Barrington has entered into an SSA and is providing services to a station which had been on the verge of eliminating its local news operation. Under the SSA, however, both the Barrington station and the other station have preserved and enhanced two separate local news operations, with improved quality and new equipment for both news operations.

- In Peoria, Illinois, Barrington's station was struggling due to a serious diminishment in local advertising related to the economic struggles of Caterpillar Inc., the market's major employer and a pillar of the local advertising market. Once the station began receiving assistance under an SSA, it was able to enhance its local news operations (including by adding an evening local interview/public affairs program). Each station maintains separate, independent news operations.[4]

- In Wausau, Wisconsin, Quincy's entry into an SSA helped to launch a local news operation that had not existed previously and likely never would have existed in the absence of the efficiency-generating SSA. The station involved simply could not afford the expenses of providing local news until the SSA was implemented. In Rochester, Minnesota, Quincy entered into an SSA with a station that had been losing money for years on its news operation; after the SSA was implemented, its newscasts finally stopped losing money and began to turn a profit. In each case, the stations' news operations are run by separate news producers who exercise their own independent judgment as to which stories to cover and how to cover them. The stations also have bolstered their public service activities, such as through promoting and assisting charitable groups.

The above examples are illustrative of the many instances in which Coalition members have seen SSAs breathe new life into struggling stations, at minimum by enabling the stations to preserve existing but expensive news operations, and in many cases by allowing such stations to expand the quality and the quantity of the news they provide. The public interest

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[4] Because each station naturally reports on important local news events, a certain amount of overlapping content is to be expected when SSAs provide for separate news operations.

benefits of SSAs are achieved by cost efficiencies/economies of scale (including the sharing of back office expenses and facilities).[5]

The Coalition's representatives pointed out that the efficiencies of SSAs are particularly relevant and necessary—and will become more so—in the face of deteriorating economic conditions. One important change is the prolonged and deep fall in advertising revenue, which has hit smaller market stations particularly hard.[6] Another significant change is the trend in the network/affiliate relationships whereby networks increasingly seek a share of affiliates' retransmission consent revenues and seek substantial financial contributions from the affiliates in order to obtain the television rights to NFL games, the Olympics, and other popular programming.[7] The Coalition's representatives cited the public interest in keeping such programming available on free, over-the-air television, and pointed out that undermining the retransmission consent regime will result in such programming migrating behind the "pay wall" of subscription television services.

Also discussed was the comparative economic clout of multichannel video programming providers ("MVPDs") versus broadcasters. The major MVPDs are enormous business entities whose financial resources and negotiating sophistication dwarf those of the television stations and groups with whom they negotiate. For example, DirecTV's 2010 annual revenue was $24.1 billion; Time Warner Cable's was $18.9 billion, and DISH Network's was $12.64 billion. Even the American Cable Association's membership includes large MVPDs, such as Mediacom (2010 revenue: $1.46 billion). These entities do not need any special protection against broadcasters, even the largest of whom are far smaller than these MVPDs.[8] The Coalition members also cited the trend towards market concentration, and thus increased leverage, by MVPDs: by late 2010, the top four MVPDs controlled 68.5% of the market and the

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[5] The Coalition representatives noted that the costs of *e.g.*, acquiring and operating digital facilities generally are the same for smaller market stations as they are for major market stations, but given the more limited revenue sources in smaller markets, these costs eat into smaller market stations' revenue disproportionately. This reduces the revenue available to underwrite investments in news and other programming.

[6] See the attached financial data on the challenging economic conditions in small markets; copies were distributed at the meetings.

[7] Because network compensation used to represent a much bigger percentage of revenues for smaller market stations than for larger market stations, the trend towards "reverse compensation" is disproportionately affecting smaller market stations and underscoring the need to cut costs in order to remain viable and serve the public.

[8] Examples of 2010 annual revenue for major non-owned and operated broadcast groups: LIN ($420 million); Trinity Broadcasting ($235 million); Belo Corporation ($206.2 million); Barrington ($122 million); Meredith ($104 million).

top ten MVPDs had a market share of 89.9%.[9] Finally, the Coalition members pointed out the irony that MVPDs with vast financial resources, and substantial shares of local advertising dollars, fail to provide local news services in virtually all small markets, yet they question the manner in which local broadcasters—who are committed to local public service—provide local news.

With respect to retransmission consent discussions in SSA situations, the Coalition representatives at the meetings pointed out that they had been asked in only two instances not to undertake joint negotiations for SSA stations, requests which were honored without any objections, and which in the next cycle of retransmission consent negotiations were not repeated by the MVPDs. (The also noted that several of the SSA examples described above do not entail any joint negotiation of retransmission consent agreements.) They questioned the claim that joint negotiations result in increased retransmission consent fees, noting that broadcasters seek fair value for each station, based on marketplace considerations, regardless of whether the negotiation process is conducted jointly or separately. Therefore, they have not encountered any situations that would support the assertion by some MVPDs that joint broadcaster negotiations in SSA situations have pushed up retransmission consent fees or resulted in higher consumer costs.[10] Finally, they pointed out the fact that MVPDs undercompensate broadcast stations relative to how popular broadcast programming is with viewers, while far less popular cable channels receive much greater per-subscriber fees. Ultimately, the group argued that the retransmission consent process is working, and they expressed optimism at concluding retransmission consent agreements with pertinent MVPDs before the end of the year.[11]

To sum up, the Coalition cited real-world examples where SSAs have saved and expanded local public service and diversity in news operations. They described the economic

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[9] NAB Comments, MB Docket No. 10-71, at n.76 (May 27, 2011). Further, "More than half (51.2 percent) of cable subscribers in Designated Market Areas 101+ are served by one of three large cable MVPDs (Comcast, Time Warner or Charter), while only 6.5 percent of the television stations in these markets are owned by one of the top ten (by revenue) television station groups. Thus, in many instances, small broadcasters outside of the top 100 markets must deal with large nationally and regionally consolidated MVPDs in retransmission consent negotiations." *Id.* at 31-32.

[10] They also noted that separate cable systems often jointly negotiate retransmission consent agreements with broadcasters.

[11] Ms. Burdick noted that Schurz owns several cable systems and thus is able to offer a unique perspective as both a cable operator and a broadcaster; in Schurz's experience and in the view of the other Coalition members, the retransmission consent process is working.

considerations that are likely to make such ventures increasingly necessary in order to preserve the vital services offered by small market stations.

We appreciate the opportunity that these meetings provided the Coalition to discuss these often-overlooked, on-the-ground realities, and we urge the Commission to take these realities into account in connection with the ownership and retransmission consent rulemaking proceedings.

Respectfully submitted,

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Eve R. Pogoriler
Counsel for the Coalition of Smaller Market Television Stations

Attachment

cc: Commissioner Clyburn and David Grimaldi
Erin McGrath
William Lake, Nancy Murphy, Diana Sokolow, and Steven Broeckaert