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October 23, 2012

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

Via Electronic Filing

Re: MB Docket No. 09-182, 2010 Quadrennial Review –Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; MB Docket No. 07-294, Promoting Diversification of Ownership in the Broadcasting Services; MB Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission’s rules, Free Press submits this notice regarding an *ex parte* communication in the above referenced proceeding.

On October 19, 2012, Matt Wood, Andrew Jay Schwartzman, and Lauren Wilson of Free Press; Angela Campbell and Laura Moy of the Institute for Public Representation (“IPR”); Michael Scurato of the National Hispanic Media Coalition; Cheryl Leanza of the United Church of Christ, Office of Communication Inc.; Corrine Yu of The Leadership Conference on Civil and Human Rights; and Todd O’Boyle of Common Cause met with Elizabeth Andrion and Lyle Elder of Chairman Genachowski’s office. The subject of the meeting was the Commission’s Quadrennial Media Ownership Review, and specifically the continuing need to assess broadcast ownership levels among women and people of color carefully and thoughtfully before releasing a final order.

We began by stressing that the Commission must act on the basis of a record containing comprehensive data about broadcast ownership. One of the bases that the Third Circuit Court of Appeals cited for reversing the Commission’s last quadrennial review order was the agency’s failure to consider the impact of that action on ownership by women and people of color. The second basis for reversal was that the Commission did not afford the public a meaningful opportunity to comment on material that was placed in the record at the last minute.¹ Thus, we urged the Commission not to act until it could issue reliable data and obtain public comment thereon.

¹ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011) (“As ownership diversity is an important

We next highlighted three specific circumstances, rule changes, or policy changes that would further diminish opportunities for ownership diversity – not to mention diversity of viewpoint and the production of journalism in local media markets. Because of their potential impact on ownership diversity, the Commission must assess the effects of these policies to satisfy the Third Circuit’s mandate in this quadrennial review.

First, on the topic of shared services agreements, we briefly discussed positions articulated in the comments IPR filed on behalf of its clients in certain of the above-listed proceedings.² Increasingly, television stations that cannot lawfully merge under the FCC’s local television rules are using such arrangements to circumvent local media ownership protections by consolidating their core operations. These practices subvert the purpose of the Commission’s media ownership limits by diminishing competition, localism, and journalistic independence, while raising consumer costs in local communities. Typically, these arrangements result in layoffs of station staff and diminished competition for audiences, advertisers, and retransmission consent. These arrangements also frequently result in the joint production and airing of identical local news content across purportedly “competing” broadcast outlets.

Turning to the incentive auction, we urged the Commission to consider the impact of such an auction on ownership levels among women and people of color. Specifically, we pointed to two concerns. First, stations owned by women and people of color could be among the most likely to exit in the reverse auction, thereby reducing the number of diverse voices in the marketplace. Second, the auction process could serve to remove a key entry point to the industry — non-network affiliate stations. It follows that the pool of opportunities for would-be owners might shrink. Thus, we explained, the Commission must take the likely outcome of the incentive auction into account when assessing and designing its broadcast ownership rules.

Finally, we reiterated our opposition to the Commission’s proposal to relax its longstanding newspaper-broadcast cross ownership rule (NBCO). We explained that while proposed changes purport to keep the rule in place, the subjective four factor test the Commission has proposed would effectively void its usefulness. The NBCO rule remains necessary to promote access to independent and diverse local news sources. Cross-ownership of local daily newspaper and television stations leads to a curtailment of local news at the market level and does not increase news production at the station level.³ Moreover, over-leveraged debt resulting from consolidation has put otherwise profitable newspapers in a precarious financial situation. To service their debt, these companies have cut jobs and reporting. Still, the short term cost savings generated by these alleged “efficiencies” have only been used to temporarily enhance profits, not to generate more or better local news coverage.⁴

In accordance with the Commission’s rules, this *ex parte* notice is being filed electronically in the above referenced docket. If you have any questions regarding this filing, please do not hesitate to contact me.

² See Comments of Office of Communication of the United Church of Christ, Inc., Media Alliance, National Organization for Women Foundation, Communications Workers of America, Common Cause, Benton Foundation, and Media Council Hawai’i, MB Docket Nos. 09-182, 07-294, at Section I (filed Mar. 5, 2012).

³ See Comments of Free Press, MB Docket Nos. 09-182, 07-294, at Section II(A) (filed Mar. 5, 2012).

⁴ *Id.*

Respectfully submitted,

_____/s/_____

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cc: Elizabeth Andrion
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