

December 17, 2012

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

Re: **Written Ex Parte Communication in MB Docket No. 09-182**

Dear Ms. Dortch:

This is written on behalf of Entravision Communications Corporation ("Entravision") and in connection with the above-referenced proceeding in which the Federal Communications Commission ("FCC" or "Commission") is considering the adoption of amendments to its rules in response to the 2010 Quadrennial Review of the Commission's media ownership rules.¹

Based on reports contained in the media trade press, the Commission has before it a draft decision that includes a provision that will modify the existing attribution rules to make Joint Sales Agreements ("JSAs") between television stations in the same television market attributable, in the same manner as radio JSAs. Entravision believes that such a result would be harmful to best interests of television broadcasters, the viewing community, and minority and foreign-language speaking groups that depend on a robust and diverse television medium for their specialized news and entertainment.

The proceeding to determine whether a television JSA should be attributable dates back nearly nine years to 2004.² In that proceeding, Entravision, along with other television broadcasters, provided both Comments and Reply Comments and, in doing so, evidenced, in near unanimity, to the Commission the many benefits provided by JSAs for both ownership and programming diversity. Consequently, Entravision urged the FCC to refrain from adopting any attribution requirement applicable to JSAs. There is every reason, based on the record the Commission developed and the current state of the television broadcast industry, for the Commission to agree to just such a result.

Now, more than eight years after the record has been closed on the 2004 proceeding, the Commission, without any formal disclosure to the public, appears to be intent on adopting rules

¹ See *2010 Quadrennial Regulatory 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. 09-182, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011).

² *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, 19 FCC Rcd 15238 (2004).

based on a stale record that fails to reflect the current state of the broadcast television industry. At a minimum, before any regulation is adopted, the Commission should follow the procedure it has utilized in numerous other instances of stale records: opening up the proceeding for parties to refresh the record based on new or changed circumstances.³

Such a refreshed record is absolutely necessary since the 2004 pleadings, by their very nature, fail to reflect how dramatically the broadcast television marketplace has changed over that long time period. This change is a combination of the development of new programming delivery vehicles, nearly all of which are Internet-based, and an advertising market, detrimentally affected by the recent economic downturn, that no longer views television broadcasting as the sole vehicle for delivering advertising messages to consumers. Instead, the advertising industry has promoted the diversification of advertising to other news and entertainment platforms, including cable television, direct broadcast satellites, and the Internet,⁴ all of which have impacted on viewers, advertisers, and revenue that flow to traditional over-the-air television broadcast industry.

That the broadcast industry has had to deal with these changed circumstances is well known and given significant consideration within the broadcaster community. The Commission itself is aware of how television broadcasters have fared and one of its members, Commissioner Robert J. McDowell, in recent days summarized well the economic problems that have changed broadcasting so dramatically: "Over the past decade, broadcast stations and daily newspapers have grappled with falling audience and circulation numbers, diminishing advertising revenues and resulting staff reductions, as online sources gain in popularity (footnote omitted)."⁵ In light of this, the Commission must give consideration as to whether a rule contemplated in 2004 continues to be valid today given the changes in the television broadcasting marketplace.

In the face of these marketplace changes on broadcasters and especially on those broadcasters that do not rely on affiliations with the top-four networks and the retransmission consent revenues that are driven by such affiliations,⁶ JSAs have proven to be a critical vehicle for preserving these stations' role in broadcast television industry along with a range of diversity

³ See, e.g., *Public Notice*, DA 12-1570, released October 5, 2012.

⁴ In its Notice of Ex Parte Communication, dated December 2, 2012, the National Association of Broadcasters does an excellent job of providing evidence as to the impact of changes in the competitive media environment since 2004 have changed, for the worse, the economics of television broadcasting. This showing alone proves that a record developed in 2004 cannot be applied to the media environment of 2013 and must, therefore, be refreshed.

⁵ Statement of Commissioner Robert M. McDowell, Before the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications and Technology p. 13-14 (December 12, 2012).

⁶ The fact that retransmission consent revenues do not reach 40 percent of television stations, often the same stations that are the brokered stations in JSAs, was noted by Chairman Julius Genachowski in his April 16, 2012 remarks at the NAB Show 2012. *Prepared Remarks of FCC Chairman Julius Genachowski*, p. 3.

in programming and media ownership, including the availability of local news and information, divergent entertainment formats, and opportunities for advertising by small businesses these stations provide. Considering the diversification that has accompanied the growth of JSAs, Entravision submits that JSAs should generally be preserved and not restricted.

The reality is that broadcasters do not enter into JSAs unless their economic circumstances justify doing so. Broadcasters that have the revenue base to handle all of their operating functions are not those that need joint selling arrangements. However, stations with inadequate revenues must seek out cost-saving measures, where JSAs operate to assist the brokered station.

Cost-savings arrangements are common strategies in nearly all elements of business, not just broadcasting. Whether it is the manufacturer which acquires parts from third-party contractors or the financial institution that outsources its printing or information processing operations to an outsourcing specialist, such mechanisms are important for the controlling the cost structure of the business enterprise and maintaining its economic viability. In the case of broadcasters, the JSA and its related vehicle, the Shared Services Agreement, allow the brokered station to combine certain operations into a single entity, benefiting from a combined physical location and specialized skilled personnel that reduce the cost of performing the shared functions. For the brokered station it means lower operating expenses, allowing more funds to be available for the critical programming operations, and for the brokering station, an opportunity to increase its revenues, also allowing the licensee to direct more funds at programming.

The end result of the cost-savings arising from a JSA is that the diversity of broadcast ownership and offerings is increased. As Entravision can attest from its own operations, a JSA can permit a broadcaster to deliver a range of programming that it might otherwise be able to provide. In 2006, Entravision was the successful bidder in an FCC-conducted auction for a construction permit for a new broadcast television station at Derby, Kansas, in the Wichita, Kansas DMA. Entravision is the operator of Spanish-language television stations, generally in markets with significant Latino populations in the Southwest and West and Wichita represented a diversification beyond its roots.

Wichita also presented a potential problem, as the Latino population in the state of Kansas is only 10.8%, compared to a national percentage of 16.7%⁷ and a substantially greater one in other of Entravision's markets. Given the limited Latino population and the revenue that such a population would customarily produce, Entravision would not have been able to provide Wichita with as robust a Spanish-language programming service as is offered in Entravision's traditional markets. In order to deal with this concern, Entravision entered into a JSA with Schurz Communications, Inc., the operator of another television station in the Wichita market. The economies provided by the Wichita JSA has enabled Station KDCU-DT to operate a television service for the Latino population of Kansas, including local news, information, and

⁷ United States Bureau of Census, State and County QuickFacts.
<http://quickfacts.census.gov/qfd/states/20000.html>

diversified entertainment, in a manner that might not have otherwise been possible. Entravision is aware of other instances where JSAs have likewise enabled the provision of additional television service or expansions of existing services, owing to the financial benefits derived from the utilizations of JSAs.

This benefit of JSAs extends far beyond Entravision's own experience. Entravision's knowledge, gleaned from its television station operations, informs it that there exists an economic gulf between major network affiliates and major market stations, on the one hand, and non-major network affiliates and smaller market stations, on the other. The latter group are the ones that have the need for and enter into JSAs in order to secure the operating efficiencies and cost-saving benefits.

Likewise, the limited number of minority group owners are also concentrated in the ownership of specialty and small-market stations, as they lack the huge economic resources necessary to own and operate a major network affiliate in a major market, which is the province of publicly-held broadcasters. They, too, are the ones who benefit from the economic assistance provided by JSAs.

It is obvious that an action the Commission appears to view as pro-competitive will, in fact, have the unintended consequence of being just the opposite. By further weakening the operations of broadcasters without major network affiliations or a major market presence, the Commission will be weakening the diversification of the media and driving out of the television business those who are attempting to enter or maintain their operations, including minority-owned broadcasters.

Commissioner McDowell, in his recent testimony, has recognized just how harmful the imposition of attribution barrier for JSAs could be and Entravision believes that his concerns need to be given full consideration.⁸

Second, the Commission must resist calls for limiting the use of joint sales, shared service, and local news service agreements. These agreements provide efficiencies lowering the operation and production costs for broadcasters enabling them to deploy economized resources to the benefit of consumers. By creating new overly-regulatory attribution rules targeting these agreements, the FCC may cause the unintended consequences of raising expenses and reducing the amount of local programming provided by a broadcaster. Further, the Commission should not regulate without a full understanding of how these agreements are used in the marketplace and whether there are systemic abuses that have limited competition and viewpoint diversity in broadcast markets. In the face of an intensely competitive new media marketplace, placing new rules on these agreements could violate the spirit and letter of Section 202(h).

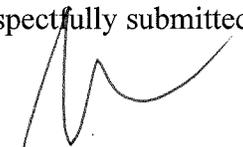
⁸ McDowell Statement, *supra* at p. 15-16.

Entravision submits that instead of being an impediment to broadcast diversity, JSAs serve to maintain, preserve, and often expand the level of diversity, in ownership and programming, including local news, information and entertainment programming, that would not exist were attribution to be applied. Instead of enabling broadcasters to provide programming from the lesser viewed networks or in foreign languages, these broadcasters will simply have to downsize their operations, by eliminating local news service or purchasing less expensive or viable programming, thereby diminishing their own viewability and, in turn, concentrating revenue and viewing in the hands of the stronger network affiliates. In that the smaller markets will not be subject to the incentive auction process, these stations' bandwidth do not have value to them and the only solution may be to discontinue or radically diminish their operations, leaving the public with a less diverse broadcast community owned and operated by broadcasters with little or no connection, on a local or minority basis, to the increasingly diverse populations of our communities.

Rather than sacrifice diversity, in news, information, and entertainment, along with diversity in media ownership, at the altar of theoretical competition, Entravision urges the Commission to rethink its intention to adopt a policy of JSA attribution for television stations or, at most, to craft a rule that applies such attribution only in the top 25 television markets *and*, in those markets, where the brokering station is an affiliate of the top-four television networks.

Should there be any questions, please communicate with the undersigned.

Respectfully submitted,



Barry A. Friedman

cc: Chairman Julius Genachowski
Commissioner Robert J. McDowell
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai