December 21, 2012

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

Re: Notice of Ex Parte Communication in MB Docket Nos. 09-182, 10-71, 07-294

Dear Ms. Dortch:

On December 20, Jane E. Mago, Jerianne Timmerman and the undersigned of the National Association of Broadcasters (NAB), met with Commissioner Clyburn and her Chief of Staff, Dave Grimaldi, to discuss issues in the above-referenced proceeding.

We reiterated NAB's support for modification of the broadcast ownership rules to reflect dramatic changes to the marketplace in which broadcasters compete for audiences and advertisers. Specifically, the record provides strong support for elimination of both the newspaper-broadcast and radio-television cross-ownership rules; for relaxation of the local television and local radio rules; and for the adoption of various proposals to promote diversity in broadcasting.

Attribution Issues

We expressed concerns that attribution of joint sales agreements (JSAs) among television stations in the same market is not supported by the record, will be harmful to television stations and their viewers, and will undermine the Commission's longstanding goals of competition, diversity and localism. We discussed examples of the public interest benefits of JSAs, as outlined in our previous filings.[1]

We emphasized the importance of fully analyzing marketplace changes in connection with potential JSA attribution. Competitive developments in local television markets

[1] *See, e.g.,* Letter from Erin L. Dozier, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC (filed December 4, 2012) at 1-6.

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demonstrate that attribution of TV JSAs is not needed to safeguard competition. For example:

- As shown in NAB's comments in this proceeding, television stations fiercely compete with other video providers for audience share and advertising dollars, both local and national. While this was true when the FCC sought comment on attribution of JSAs in 2004, competition from pay TV has only increased during the past eight years.

- By 2009, cable and Internet advertising accounted for approximately one-third of the local advertising dollars on which broadcasters traditionally have depended, and these shares are expected to grow.[2]

- Between 2000 and 2010, cable made significant gains in its share of local TV market advertising. In the Top 10 Nielsen markets, cable's share of local television advertising more than doubled during this period (from approximately 11.3 percent of TV market ad revenues in 2000 to 24.5 percent in 2010).[3] Stations in smaller markets face similar competition from cable advertising.[4]

- Other media also are impacting broadcasters' revenues as advertisers allocate more of their budgets to locally targeted digital, mobile, and social media advertisements.[5]

We additionally discussed the relevance of increasing cable clustering to the Commission's analysis of both JSA attribution and the pay TV industry's calls for

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[2] *See* NAB Comments in MB Docket No. 09-182 at 14 (filed Mar. 5, 2012) (citing Jeffrey A. Eisenach & Kevin W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting (2011) ("Economies of Scale Report"), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) ("Eisenach 2011 Reply Declaration") in NAB Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011), at 22 fig. 7).

[3] *See* NAB Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at Attachment C.

[4] *Id.* In markets ranked 11 through 25, cable's average share of the local television ad pie rose from 11.4 percent in 2000 to 22.7 percent in 2010. Cable's average market share also nearly doubled in markets 26 through 50, and cable's market share doubled in both markets 51 through 100 and markets 101 through 150.

[5] For example, it has been estimated that (i) by 2015, locally targeted mobile advertisements will account for nearly 70 percent of overall mobile advertising budgets; (ii) by 2015, small business will allocate only 30 percent of their advertising budgets to traditional media, such as broadcast television, focusing instead on new media alternatives; and (iii) over the next five years, local social media advertising revenues will grow at an annual compound rate of 33 percent. *See* NAB Comments in MB Docket No. 09-182 at 14-15 (filed Mar. 5, 2012) (citing BIA/Kelsey releases).

changes to the attribution rules based on joint negotiations for retransmission consent. We explained that in many markets, broadcasters are competing for advertising dollars with highly concentrated MVPDs. These unfettered levels of concentration also are a factor in MVPDs' ability to secure favorable terms in retransmission consent negotiations. We stated that in over 100 DMAs, there is a single cable operator serving 40 percent or more of all MVPD subscribers. In approximately one-third of all DMAs, one operator controls access to 50 percent or more of all MVPD subscribers.[6] There is even a market where a single cable operator dominates with a 91 percent share.[7] Such unconstrained market power by MVPDs makes it even more important for broadcasters to be able to achieve greater efficiencies through arrangements like JSAs.

If the TV JSA restriction is adopted, a joint venture among MVPDs (or a single MVPD) could control a share of a local advertising market that far surpasses that of one or more television broadcast stations, but joint sales by two television stations would be impermissible. Similarly, pay TV providers urge the Commission to impose limits on the ability of broadcasters to engage in retransmission consent negotiations involving more than one station, while MVPDs would face no such limits. Although these would not be rational results, there are no restrictions on the ability of pay TV providers to achieve dominance through a strategy of regional clustering or through their own joint arrangements.

Diversity

NAB representatives also discussed our proposals on the record for creating a more competitive and diverse broadcast industry. We reiterated that overly restrictive and asymmetric ownership limits that reduce economic incentives to invest in broadcasting affect the ability of all existing and aspiring broadcasters to raise capital. We further emphasized that the impact is felt even more strongly by new entrants and small businesses, including women and minorities. We stated that revisions to the rules that allow for more efficient and competitively viable broadcast operations will help attract capital to the broadcast industry, to the benefit of both incumbents and newer entrants.

We observed that the Commission should be skeptical of unproven assumptions about the relationship between relaxation of ownership limits and a reduction in the number of minority-owned broadcast stations. NAB has refuted such claims in previous proceedings,[8] and has cited evidence of *increases* in the number of stations owned by

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[6] *2012 SNL Kagan Media Census, Estimates.*

[7] *Id.*

[8] *See, e.g.,* NAB Opposition to Petition for Reconsideration in MB Docket No. 06-121, at 22-23 (filed May 6, 2008) (citing Jim Tozzi/Center for Regulatory Effectiveness Reply Comments to *Further Notice of Proposed Rulemaking* in MB Docket No. 06-121, at 4 (filed Oct. 24, 2007) ("CRE Reply Comments")

minorities and women following earlier reforms of the local broadcast ownership restrictions.[9]

We also discussed in detail NAB's support for several proposals designed to promote new entry into the broadcast industry. Specifically, NAB has urged the FCC to:

- Sponsor primers on investment and financing of broadcast enterprises for smaller and regional lenders so that they may be better informed about the industry and more willing to make loans to new owners.
- Adopt an incubator or waiver program that would give broadcasters incentives to finance qualifying businesses and to ensure that ownership of communications outlets reflects the demographics of the audiences and communities they serve.
- Adopt subchannel licensing programs that would permit the sale of broadcast subchannels to qualifying entities to facilitate better opportunities for prospective subchannel operators by making it easier to obtain financing.
- Modify its rules to allow sellers to hold a reversionary interest in broadcast licenses pursuant to certain guidelines to incentivize sellers to be more willing to finance a station purchased by a new owner by retaining the ability to reacquire the station in the event of a default.
- Reinstate a relaxed attribution standard for qualifying entities to improve their ability to attract financing.
- Reinstate the policy that permitted the transfer of grandfathered radio station combinations to any entity so long as the buyer assigns the excess stations to a qualifying business within one year.
- Urge Congress to provide tax incentives to station owners who sell broadcast properties to qualifying owners.[10]

(discussing errors in Consumers Union *et al.* study) and B.D. McCullough, Peer-Review Report on The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006, by Hammond, *et al*. (deeming "fatally flawed" a study purporting to show reductions in minority and female ownership after duopoly rule changes).

[9] *See id.* (citing NTIA, Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States 38 (2000); Kofi A. Ofori, Radio Local Market Consolidation & Minority Ownership 10-12 (2002) (showing increase in the number of minority owned and controlled radio stations since 1997); CRE Reply Comments, *supra* note 8, at 4 (finding that members of minority groups owned a *greater* number of television stations in 2006 than they did before the FCC modestly relaxed the duopoly rule in 1999)).

[10] *See* NAB Reply Comments in MB Docket No. 09-182 at 32-33 (filed Apr. 13, 2012); NAB Comments in MB Docket No. 09-182 at 53, n. 202 (filed Mar. 5, 2012).

NAB also supports several proposals to modify rules governing radio operations advanced in a petition for rulemaking filed by the Minority Media and Telecommunications Council ("MMTC"). While many of these proposed rule changes are technical in nature and are not specific to ownership, we agree that they would reduce entry barriers and promote efficiencies for existing broadcast stations owned by minorities, women and small entities.[11] During this discussion, we distributed copies of our comments in response to the Commission's *Report on Ownership of Commercial Broadcast Stations*, which were filed just prior to the meeting.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Erin L. Dozier
Senior Vice President and Deputy General Counsel
Legal and Regulatory Affairs

cc: Commissioner Clyburn, Dave Grimaldi

[11] NAB Reply Comments in MB Docket No. 09-182 at 33. *See also* NAB Comments in MB Docket No. 09-52 (filed Oct. 23, 2009) (supporting MMTC proposals to remove the nighttime coverage rules from section 73.24(i); modify the principal community coverage rules for commercial stations; replace the minimum efficiency standard for AM stations with a "minimum radiation" standard; allow FM applicants to specify Class C, C0, C1, C2 and C3 facilities in Zones 1 and 1A; remove non-viable FM allotments; relax the limit of four contingent applications; relax the main studio rule; conduct tutorials on the radio engineering rules; and appoint a public engineer).