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January 28, 2013

BY ECFS

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

Re: Notice of *Ex Parte* Communication,
GN Docket No. 12-268; MB Docket Nos. 10-71, 09-182, 07-294

Dear Ms. Dortch:

On Thursday, January 24, 2013 and Friday, January 25, 2013, the following representatives of the NBC Television Affiliates (the "Affiliates") participated in meetings with FCC Commissioners and staff, as described below: Jordan Wertlieb (President of Hearst Television, Inc. and President-Chairman of the Affiliates), David Lougee (President, Broadcast Division, Gannett Co., Inc. and Vice Chairman of the Affiliates), Ralph Oakley, (President & CEO of Quincy Newspapers, Inc. and Vice Chairman-Government Affairs of the Affiliates), Brian Lawlor (Senior VP-Television of The E.W. Scripps Co. and Past President-Chairman of the Affiliates), Vincent Sadusky (President & CEO of LIN Media and Treasurer of the Affiliates), and Jennifer Johnson and Gerard Waldron of Covington & Burling LLP (counsel to the Affiliates). The NBC Television Affiliates is comprised of television stations across the country that are affiliated with, but not owned by, the NBC Television Network.

On January 24, 2013, these Affiliates' representatives met with David Grimaldi, Chief of Staff and Media Legal Advisor for Commissioner Clyburn, and Commissioner Clyburn's law clerk Brian Indovina.[1] On January 25, the Affiliates' representatives participated in separate meetings with Elizabeth Andrion, Senior Legal Advisor and Acting Chief Counsel for Chairman Genachowski; Commissioner Rosenworcel and her Policy Director, Alex Hoehn-Saric; Commissioner McDowell and his Legal Advisor for Media, Erin McGrath; and Matthew Berry, Chief of Staff for Commissioner Pai.[2] In each of these meetings, the Affiliates'

[1] Mr. Lougee did not participate in the meeting with Mr. Grimaldi and Mr. Indovina.

[2] Mr. Sadusky did not participate in the meeting with Mr. Berry.

representatives addressed (1) broadcast spectrum issues, (2) media ownership issues and (3) retransmission consent and exclusivity issues, as described below.

In addition, on January 24, 2013, the Affiliates' representatives met with the following members of the Media Bureau to discuss media ownership and retransmission consent/exclusivity issues: William Lake, Hillary DeNigro, Brendan Holland, Barbara Kreisman, Sarah Whitesell and Joyce Bernstein.[3] On January 25, the Affiliates' representatives met with the following members of the Incentive Auction Task Force to discuss broadcast spectrum issues: Gary Epstein, William Lake, Rebecca Hanson, Margaret Wiener, Jeffrey Tignor, Chris Helzer, Edward Smith, Brett Tarnutzer, Sasha Javid, Patricia Robbins and Robert Weller.[4]

Spectrum.[5] With respect to broadcast spectrum, the Affiliates noted that a central goal of the Spectrum Act was to protect the public's free and local broadcast television service, and that the Commission must take care as it implements the Act to adhere to this core principle. For those broadcasters that choose not to participate in the auction, the repacking must ensure that service areas are protected so that local television stations are not impaired in their ability to serve their communities and viewers do not lose television service because of reduced service areas or new interference. It is essential that there be a transparent process for accomplishing a spectrum auction and repacking, including engagement with broadcast engineers to ensure that the public's television service is preserved. The FCC's repacking software needs to be tested and put out for comment. As the DTV transition showed, predictive models are not always accurate and if errors result in service losses, the public will be harmed. Because of the flash-cut inherent in a repacking scenario, which differs from the DTV transition, the need to test the predictive models and fine tune them is all the greater. Moreover, the statutory obligations to preserve coverage area and population must be met in fact and not just in theory. The Affiliates' representatives also noted that international coordination issues need to be addressed early in the process.

The Affiliates' representatives discussed the importance of a fair and technically sound incentive auction and repacking plan to broadcasters' continued ability to innovate. They explained that the availability and importance of mobile DTV will continue to grow. In addition to expanding the public's access to news and entertainment programming generally, mobile DTV service, with its spectrally efficient one-to-many distribution system, can provide live programming to the public on their mobile devices in times of extraordinary demand or

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[3] Mr. Lougee did not participate in the January 24 Media Bureau meeting.

[4] Mr. Weller participated by telephone.

[5] The spectrum issue was addressed in all meetings except for the January 24 Media Bureau meeting.

emergency where power or broadband services are interrupted or overtaxed. Mobile DTV service will continue to be available to the public when other services are not -- whether because of equipment failure or power loss or because a one-to-one broadband distribution system is incapable of handling the demand. In the January 25 meeting with the Incentive Auction Task Force, the Affiliates' representatives also noted that a number of issues are addressed in more detail in the comments filed jointly by the Affiliates and the ABC, CBS and Fox affiliates associations in the broadcast spectrum proceeding the same day.

Media Ownership.[6] On media ownership, the Affiliates' representatives stated that relaxation of the local television ownership rule is needed to meet current challenges and to reflect the heightened competition in today's marketplace. The greater efficiencies made possible by combining operations and resources are needed in order to ensure that television broadcasting can continue as a strong and valued source of local journalism. In the absence of duopoly relief, local television stations have used shared services agreements (SSAs), joint sales agreements (JSAs) and other sharing arrangements to capture such efficiencies in compliance with the Commission's rules and applicable law. These arrangements strengthen both stations, sustain local employment and make available more and higher quality news and entertainment services to local communities. Restricting such arrangements would not increase diversity or localism, but would have the opposite effect by eliminating efficiencies that promote stronger public service. For example, without the support of sharing agreements, numerous stations that provide many hours of local news each week would have no news service at all. This is particularly so for smaller markets, where the need for relief is particularly acute, although the benefits of JSA/SSA arrangements can be seen in markets of all sizes.

The Affiliates' representatives gave specific examples of the benefits resulting from JSA/SSA arrangements. Mr. Oakley described the public benefits flowing from a JSA/SSA arrangement involving Quincy's station KTTC-TV, as described in the attached summary.[7] Mr. Lawlor described the benefits of an SSA arrangement where the NBC affiliated television station owned by his company (Scripps) in West Palm Beach provides services to the separately owned Fox affiliate in that market. Among other things, this arrangement has allowed the Fox affiliate, which does not have its own news operation, to provide expanded local news to the community. Upon entering into the relationship, the Scripps station added 15 employees to its news operations, providing more journalists to cover more stories, to go deeper into the community, and to expand investigative journalism. As a result of this SSA, the Fox affiliated station now airs 3-1/2 hours of local news per day all of which is aired in time periods where no other station in the market is providing local news. These newscasts are not replays of

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[6] These media ownership issues were addressed in all meetings except for the Incentive Auction Task Force meeting.

[7] Copies of this summary were provided to Mr. Grimaldi, Ms. Andrion, Mr. Hoehn-Saric, Ms. McGrath and Mr. Berry.

the newscasts on the Scripps station, but include unique content geared towards the other station's audience (which has demographic differences from the Scripps station).

The Affiliates' representatives noted that attributing JSAs that involve the sale of more than 15% of the advertising time on a station would harm local television service, even if SSAs remain in effect. Managing sales personnel and operations is an expensive endeavor, and limiting joint sales operations to 15% of advertising time would be the same as prohibiting joint sales agreements, since it would eliminate the efficiencies of these arrangements. In smaller markets, television sales representatives are required to go out in to the field and "knock on doors" to make sales, which requires substantial training, experience and resources. Requiring separate sales operations also would increase costs associated with billing and trafficking.

In certain meetings, the Affiliates' representatives were asked whether SSAs typically involve the negotiation of retransmission consent agreements for the station receiving services. The Affiliates' representatives noted that this is often a feature of such arrangements, but that it has almost never been raised by MVPDs in their experience of hundreds of actual retransmission consent negotiations (and on the one or two occasions where the issue has come up, the broadcasters and MVPDs have quickly resolved how to proceed). The Affiliates' representatives noted that there is nothing improper about these arrangements and that the good faith negotiation rules already apply to ensure that negotiations are conducted in accordance with legal requirements. A rule prohibiting this would not only be unwarranted on the merits, it would be harmful because it would preclude efficiencies that enhance the local service television stations in SSAs can provide. Retransmission consent negotiations are increasingly complex, particularly as rights issues and alternative distribution platforms evolve. While MVPDs often have sophisticated in house lawyers to negotiate these arrangements, local television stations typically must hire outside legal counsel, which can be a significant expense.

In short, any change in Commission rules or policies that would result in attribution of JSAs or SSAs or add new restrictions on their features would cause substantial disruption and harm the public interest. The public benefits flowing from existing sharing arrangements -- such as the increased and enhanced news described above and in the attachment -- would be eliminated to the direct detriment of the communities served by these television stations. The public also would be deprived of the benefits that would flow from future arrangements of this type. The harms that would result from eliminating or restricting JSAs or SSAs are concrete, and no public benefit would flow from restricting these arrangements.

Retransmission Consent/Exclusivity.[8] On retransmission consent and exclusivity, the Affiliates' representatives explained that these rights are vital to local

[8] Retransmission consent and exclusivity issues were addressed in all meetings except for the Incentive Auction Task Force meeting.

broadcasting and the public interest. Retransmission consent negotiations are working as Congress intended, and government intrusion in the marketplace would unfairly benefit pay TV providers at the expense of local broadcast service. Altering the retransmission consent or good faith negotiation rules to advantage pay TV operators would undermine the vitality of the public's local broadcast service and harm consumers who benefit from the unique services that television broadcasters provide. Impasses between broadcasters and MVPDs that result in service interruptions to subscribers are extremely rare, as was shown by the successful negotiations that took place at the end of 2012. The Affiliates' representatives expressed concern that MVPDs are motivated to create impasses when they believe that doing so will support their long term political objectives. The Affiliates' representatives pointed out that in the extremely rare instances when service interruptions do occur, over-the-air broadcast service continues to be available and provides a safety valve for the public. The Affiliates' representatives also explained that exclusivity rules, such as the network non-duplication and syndicated exclusivity rules, are critical to the local/national service that NBC affiliates and other local television stations provide to their communities. These rules allow enforcement of exclusivity rights conferred in programming contracts, restoring on a limited basis exclusivity rights that otherwise are distorted by the distant signal copyright provisions. Congress has endorsed the exclusivity rules (even legislating them into the DBS framework), and they are central to our local/national system of broadcasting.

Please direct any questions about this matter to the undersigned.

Respectfully submitted,

_______/s/_________________

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Sasha Javid
Patricia Robbins
Edward Smith
Brett Tarnutzer,
Jeffrey Tignor
Robert Weller
Margaret Wiener
Brian Indovina

Attachment: Illustrative Example of Public Benefits from JSA/SSA Arrangement

Illustrative Example of Public Benefits from JSA/SSA Arrangement
January 24, 2013

KTTC-TV is the NBC/CW affiliate serving the Rochester/Austin, MN – Mason City, IA television market. It is owned and operated by Quincy (Illinois) Newspapers, Inc., a family owned company that operates in 10 markets. It has owned KTTC since the mid-1970s

KXLT-TV is the FOX/ME-TV serving the market. KTTC has provided services to KXLT for a number of years under a joint sales/shared services agreement.

Viewers, along with many non-profit and social service organizations in the market, are positively served by this relationship through programming, local news and community affairs. Further, given the increased competition and economic challenges of the television industry, this collaboration retains jobs and provides local news that would otherwise be eliminated.

As a stand-alone, KXLT is unable to afford providing local news. Through this collaboration, it programs a late evening newscast six nights per week. The shared services agreement allows the stations to cover one or two more major local stories each day. Sometimes these stories run exclusively on KXLT; other times they run on both stations.

Both stations rely on their respective networks for regional stories from throughout Minnesota, Iowa and Wisconsin. These stories are generally different and run separately on each station.

Because Quincy owns and operates several stations in the region, KXLT is the beneficiary of receiving those stories which are of interest in the Rochester/Austin, Minnesota – Mason City, Iowa market.

The communities in the market are also well served through both collaborative and separate public service campaigns. Each station has its own unique community service campaigns. For example, KTTC has hosted the Eagles Cancer Telethon for 58 years, raising $13,000,000 for Mayo Clinic cancer research. Other specific campaigns are for a Christmas Toy Drive, a Race for Homeless Adults and the Lights at Bluff Valley fundraiser for high school organizations.

KXLT is the sole media campaign leader for the March of Dimes efforts and “The Cruise” which helps fund the local Ronald McDonald House.

Collectively, some of the organizations that derive benefit from the stations working together are the Salvation Army Red Kettle campaign, Boys and Girls Club, Festival of Trees, which supports people with special needs, Rochester Fest Community Celebration and Cardboard Box City. With coordinated planning these organizations receive greater awareness.

In summary, the viewers in the market are better served by this relationship. Further, more news/community affairs employees are retained in this collaboration then would likely occur with the stations operating independently. There would not be local news on KXLT without this relationship.

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