February 3, 2014

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

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

Dear Ms. Dortch:

On January 30, 2014, Jane Mago and the undersigned of the National Association of Broadcasters (NAB) met with Courtney Reinhard, Erin McGrath and William Durdach of Commissioner O'Rielly's office.

We reiterated NAB's support for modification of the broadcast ownership rules to reflect changes in the media marketplace, and noted the need for the Commission to complete its statutorily-mandated quadrennial ownership reviews in a timelier manner. In addition, NAB stressed that the Commission should not look at one narrow issue -- specifically, the regulatory treatment of joint agreements between television stations – in a vacuum, as somehow separate from its rules regulating the ownership structures of all television broadcasters.

With regard to competition in today's media marketplace – the key focus of the Commission's quadrennial reviews[1] -- NAB stressed that television stations fiercely compete with other video providers for audience share and advertising dollars, both local and national.[2] We particularly noted cable operators' significant gains in their share of *local* TV market advertising. For example, between 2000 and 2010, cable's share more than doubled in the ten largest Designated Market Areas (DMAs) and either doubled or nearly doubled in other markets; as a result, cable TV's share of local TV ad

[1] Section 202(h) of the 1996 Telecommunications Act directs the FCC to review its ownership rules periodically to "determine whether any of such rules are necessary in the public interest as the result of competition."
[2] *See, e.g*., NAB Comments in MB Docket No. 09-182 (Mar. 5, 2012) ("NAB Ownership Comments"); NAB Reply Comments in MB Docket No. 09-182 (Apr. 17, 2012).

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revenues approached 25% in many markets.[3] Online video platforms are also rapidly increasing their share of the local advertising pie.[4]

NAB observed that pay TV's rising share of local advertising is fueled in part by joint advertising sales arrangements that allow multichannel video programming distributors (MVPDs) to compete against broadcasters, but not each other, for advertising revenues. As we have previously explained, cable systems in the same DMAs, including those separately owned, commonly agree to sell advertising and, in some cases, these agreements include their other MVPD "competitors."[5] It would be both anticompetitive and fundamentally unfair to prevent or restrict local broadcast TV stations, but not their direct competitors, from selling advertising time jointly.

NAB also noted that there are no horizontal or vertical ownership restrictions in effect that limit consolidation among MVPDs on a local, regional or national level. In many markets, smaller broadcasters accordingly must compete with highly concentrated MVPDs. As NAB previously documented, in over 100 DMAs, there is a single pay TV provider serving 40 percent or more of all MVPD subscribers. There is even one market where a single cable operator dominates the MVPD market with a share over 90 percent.[6]

Particularly in light of the myriad outdated restrictions on the common and cross-ownership of broadcast outlets, including TV stations in medium and smaller markets, it is absurd to contend that joint sales agreements (JSAs) or shared services agreements (SSAs) somehow convey undue competitive influence to broadcast TV stations in local markets. Repetitive complaints from MVPDs such as Time Warner that they are supposedly disadvantaged by negotiating retransmission consent with two broadcast stations in a joint arrangement are wholly unconvincing.[7] In any event, broadcasters in these arrangements have consistently stated that they offer to negotiate retransmission consent either jointly or for each station separately, and that cable operators at times request the joint negotiation of retransmission consent.[8]

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[3] NAB Ownership Comments at Attachment C.
[4] *See, e.g.*, NAB Ownership Comments at 14-15.
[5] *See, e.g.*, NAB Supplemental Comments in MB Docket No. 10-71 (May 29, 2013) at 10 & n.28; NAB *Ex Parte* in MB Docket No. 10-71 (Dec. 5, 2013) at 5 & n.22. *See also* Cable Advertising Bureau, *Local Cable, Major Market Interconnects*, available at http://thecab.tv/main/cablenetworks/ (visited Feb. 3, 2014) ("Interconnects, *which combine two or more local cable systems* and distribute a program or commercial signal simultaneously, allow the advertiser to reach their target with only one buy, one commercial tap and one invoice. This section lists the main interconnects in the Top 50 DMAs.") (emphasis added).
[6] *See* NAB Comments in MB Docket No. 12-203 (Sept. 10, 2012) at 15-16. *See also* NAB Comments in MB Docket No. 10-71 (May 27, 2011) at 28-32 for a more detailed discussion of cable concentration.
[7] *See, e.g.*, NAB *Ex Parte* in MB Docket No. 10-71 (Dec. 5, 2013) at 4-6; NAB Supplemental Comments in MB Docket No. 10-71 (May 29, 2013) at 8-14.
[8] *See, e.g.*, NAB Supplemental Comments in MB Docket No. 10-71 (May 29, 2013), at 13; NAB Comments in MB Docket No. 07-198 (Jan. 4, 2008), at 6. Presumably, these cable operators, like some broadcasters, find the joint negotiation of retransmission consent agreements to be more efficient, saving time and resources.

In light of current competitive realities, NAB discussed the importance of joint arrangements to stations' ability to maintain their financial viability, and most importantly, their ability to continue offering high-quality service, including local news, to their viewers. JSAs and SSAs are vital to local station operations because television broadcasting generally and local news production specifically are subject to strong economies of scale and scope.[9] Placing limitation on broadcasters' ability to achieve economies of scale and scope "result[s] in higher costs, lower revenues, reduced returns on invested capital, lower output and, potentially, fewer firms."[10] As demonstrated in economic analyses submitted previously, such arrangements "allow broadcasters, especially in small markets, to reduce their fixed costs – i.e., to realize economies of scale and scope – and thus continue to operate where it would otherwise be uneconomic to do so."[11] "Depriving stations, especially smaller ones, of the ability to engage in [sharing arrangements] could have a significant impact on both the production of local news and on the stations' ultimate financial viability."[12] The Commission itself has previously recognized the special economic and competitive challenges faced by TV stations in smaller markets.[13]

Finally, NAB emphasized the numerous submissions by broadcasters demonstrating that sharing arrangements enable and/or increase the production of local news; improve emergency journalism; and permit the upgrade of station facilities, particularly in smaller markets.[14] We explained that these important local services would be harmed by regulatory actions reducing both broadcasters' ability to spread the very substantial costs of such services across more than a single outlet and to compete for vital advertising revenues. In a marketplace that permits ever increasing consolidation among MVPDs (which may also freely form joint advertising arrangements in local markets), there is no public interest basis for further competitively disadvantaging local

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[9] J.A. Eisenach and K.W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting (2011), at 1 ("Economies of Scale Report"), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) ("Reply Declaration") in NAB Reply Comments in MB Docket No. 10-71, at Appendix A (June 27, 2011).
[10] Economies of Scale Report at 2.
[11] Reply Declaration at para. 26.
[12] *Id*.
[13] *See, e.g.*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064, 21092 (2007); Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13697-98 (2003).
[14] *See, e.g.,* NAB *Ex Parte* in MB Docket No. 09-182 (Dec. 3, 2012) at 4-6 (summarizing many broadcaster submissions in the record). *See also* Letter to Marlene H. Dortch, FCC Secretary, from M. Anne Swanson of Dow Lohnes in MB Docket No. 09-182 (Jan. 8, 2013); Letter to Marlene H. Dortch, FCC Secretary, from Joshua Pila of LIN in MB Docket No. 09-182 (Jan. 16, 2014); Letter to Marlene H. Dortch, FCC Secretary, from Jennifer A. Johnson of Covington & Burling LLP in MB Docket No. 09-182 (Jan. 28, 2013); *Ex Parte* of Bonten Media Group, Inc. in MB Docket Nos. 09-182 and 07-294 (Jan. 22, 2013); *Ex Parte* of Bahakel Communications Ltd. in MB Docket Nos. 09-182 and 06-121 (Jan. 16, 2013); Letter to Marlene H. Dortch, FCC Secretary, from Eve Reed of Wiley Rein LLP in MB Docket No. 09-182 (Jan. 16, 2013); *Ex Parte* of LIN Media in MB Docket No. 09-182 (Jan. 16, 2013); Letter to Marlene H. Dortch, FCC Secretary, from David Pulido of TTBG, LLC, licensee of Station KPTH in MB Docket no. 09-182 (Jan. 4, 2013) (describing additional broadcaster sharing arrangements and their benefits to viewers in many local markets).

TV stations. The Commission, moreover, should not consider altering the regulatory treatment of TV joint arrangements without addressing the larger, long-pending ownership issues, particularly the continuation of an overly restrictive TV duopoly rule that a reviewing court found arbitrary and capricious over a decade ago.[15]

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

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cc: Courtney Reinhard
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[15] *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.2d 148 (D.C. Cir. 2002).