February 6, 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 February 4, 2014, Brian Brady of Northwest Broadcasting, Inc. and Kevin Cuddihy of Univision Communications Inc., along with Chris Ornelas and the undersigned of the National Association of Broadcasters (NAB), met with Commissioner Pai and his Chief of Staff, Matthew Berry, to discuss matters of concern to televisions stations, including ownership and retransmission consent.

Mr. Brady and Mr. Cuddihy emphasized the ever increasing levels of competition faced by broadcast television stations in local markets from a myriad of multichannel video programming distributors (MVPDs) and online video providers. In particular, Mr. Brady described the competitive landscape for smaller broadcasters and the special challenges smaller market stations face in competing for audience share and advertising dollars in today's marketplace.

Mr. Cuddihy observed that pay TV providers' rising share of local advertising is fueled in large part by the rise of joint advertising sales arrangements that allow MVPDs to compete against broadcasters, but not each other, for advertising revenues. Cable systems in the same DMAs, including those separately owned, commonly agree to sell advertising and, in many cases, these agreements include their other MVPD "competitors" as well.[1] It would be both anticompetitive and fundamentally unfair to

[1] *See, e.g.*, 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).

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prevent or restrict local broadcast TV stations, but not their direct competitors, from selling advertising time jointly.

Beyond the lack of FCC restrictions on MVPDs' ability to sell advertising time jointly in local television markets, there also are no horizontal or vertical ownership restrictions in effect that limit consolidation among MVPDs on a local, regional or national level. As a result, Mr. Brady noted that smaller broadcasters must compete and negotiate retransmission agreements with highly consolidated MVPDs. The repetitive complaints from large MVPDs such as Time Warner or DISH that they are supposedly disadvantaged by negotiating retransmission consent with broadcast stations jointly are wholly unconvincing. In any event, Mr. Cuddihy stressed that cable operators often request the joint negotiation of retransmission consent.

In light of current competitive realities, joint arrangements are increasingly necessary for stations' ability to maintain their financial viability, and most importantly, their ability to continue offering high-quality service, including local news, to their viewers. For example, Mr. Cuddihy noted that joint arrangements have enabled Univision to offer Spanish-language news in markets such as Boston that have a relatively small number of Spanish-speaking viewers. As NAB has previously demonstrated, joint sales agreements and shared services 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."[2]

Mr. Brady and Mr. Cuddihy further emphasized that retransmission consent revenues are necessary for local stations to maintain costly local services, including news.[3] They stressed the value that broadcasters' signals provide to MVPDs, and noted, consistent with NAB's previous submissions, that the retransmission fees earned by broadcasters are dwarfed by the fees that MVPDs pay for cable networks with substantially lower levels of viewership.[4]

Finally, given the dramatic changes in the video marketplace and broadcasters' need for clarity in ownership regulation, Mr. Cuddihy and Mr. Brady discussed the importance of updating the FCC's ownership restrictions, including the television duopoly rule, and the need for timely completion of the quadrennial ownership reviews. Decisions about the

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[2] Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves, at para. 26, in NAB Reply Comments in MB Docket No. 10-71 (June 27, 2011).

[3] NAB has previously submitted economic studies demonstrating the importance of retransmission consent revenues to maintaining stations' financial viability and providing adequate resources for local news operations. *See* J.A. Eisenach and K.W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting (June 2011), attached to NAB Reply Comments in MB Docket No. 10-71 (June 27, 2011) (concluding that retransmission consent plays an important role in broadcast stations' financial viability, and that potential regulations limiting broadcast stations' ability to negotiate for retransmission consent would substantially reduce both the number of financially viable broadcast stations and their programming output, particularly news).

[4] *See, e.g.*, NAB Reply Comments in MB Docket No. 10-71 (June 27, 2011) at 17-18; Opposition of the Broadcaster Associations in MB Docket No. 10-71 (May 18, 2010) at 33-39.

regulatory treatment of particular joint arrangements between some television stations should not be made separate from determinations about the FCC's rules that restrict the ownership structures of all television broadcasters.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Jerianne Timmerman
Senior VP and Senior Deputy General Counsel

cc: Commissioner Pai
Matthew Berry