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 Rosenworcel and her Policy Director, Clint Odom, 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 rapid growth 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,[1] and, in many cases, these agreements include their other MVPD "competitors" as well. 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.

In light of current competitive realities, joint arrangements such as joint sales agreements 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. 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. [2]

Similarly, we emphasized that retransmission consent revenues are necessary for local stations to maintain costly local services, including news.[3] Mr. Brady and Mr. Cuddihy also agreed on the need for this revenue stream to enable broadcasters to pay for expensive sports programming and slow the migration of sports programming to pay TV platforms.

With regard to the effects of retransmission negotiations on consumers, Mr. Cuddihy stressed that the vast majority of negotiations between broadcasters and MVPDs conclude with no disruptions for viewers and that broadcasters' signals are always available to consumers free over-the-air. Mr. Brady observed that MVPDs' substantial early termination fees prevent consumers from switching to different pay TV providers, should they wish to do so for any reason.

Mr. Brady also noted the recent increase in the number of consumers solely reliant on free, over-the-air (OTA) broadcast television.[4] He further discussed the fact that younger consumers are increasingly relying on a combination of over-the-air and over-the-top video viewing, especially in light of high MVPD subscription prices.

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[2] 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." 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 for 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] According to the 2013 Home Technology Monitor Ownership Survey and Trend Report, 19.3% of all U.S. television households rely exclusively on OTA signals to watch TV, compared with 14% in 2010. Overall, nearly 60 million consumers rely solely on OTA TV, up from 54 million in 2012. Minorities make up 41% of all broadcast-only TV households. Lower-income households and homes with a young head of household (age 18-34) also disproportionately rely on OTA TV.

Given the public's continued and growing reliance on over-the-air viewing and local stations' provision of valued services including local news and emergency journalism, the Commission should be cognizant of the unequal regulatory burden it places on local TV stations in a highly competitive marketplace. Specifically, Mr. Cuddihy and Mr. Brady discussed the importance of updating the FCC's ownership restrictions, including the television duopoly rule, to reflect the changes in the video marketplace, and noted the need for timely completion of the quadrennial ownership reviews to provide clarity in ownership regulation. Both Mr. Cuddihy and Mr. Brady commented on broadcasters' important public role and their concern that broadcasters be able to fulfill this role in the video marketplace of the future.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Jerianne Timmerman

Jerianne Timmerman
Senior VP and Senior Deputy General Counsel

cc: Commissioner Rosenworcel
Clint Odom