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The Honorable Mignon Clyburn, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket No. 09-182, 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

Dear Commissioner Clyburn:

We write to express our concern with a letter filed by the National Association of Broadcasters (“NAB”) in response to the Commission’s proposal to require attribution of joint sales agreements (“JSAs”) where a broadcaster sells more than fifteen percent of another station’s advertising time. In its letter, NAB puts forth a “compromise” to balance the Commission’s concerns about illegal *de facto* common control and the alleged public interest benefits that result from JSAs. Over the last two weeks, NAB and its members have contended that JSAs result in increased diversity and localism. Not only are NAB’s claims inaccurate, but its so-called compromise is merely a regurgitation of the existing standards that have led to runaway consolidation, cuts to newsrooms, duplicate newscasts, and the decimation of minority-owned broadcast stations.

NAB’s “compromise” entails an exemption from JSA attribution that would allow broadcasters to continue operating under the status quo if they disclose all arrangements and satisfy a two-pronged test. Under the first prong, a broadcaster would have to meet four standards that “establish licensee control of programming, personnel, and finances.”

The four indicia of licensee control are: 1) Programming 85% of air time; 2) Keeping 70% of net sales revenue; 3) Retaining ultimate control over advertising rates; and 4) Retaining the *option* to hire its own sales staff or to have another party carry out advertising sales. Each of these criteria is a restatement of current local marketing agreement (“LMA”) or JSA policy and can be found in several contracts appended to recent applications.¹ It follows that the first prong of NAB’s proposal offers no compromise at all.

Under the second prong of NAB’s exemption test, a licensee would have to demonstrate *only one* of seven categorical public interest benefits, the seventh of which is a catch all that may

¹ See File No. BALCDT - 20130619AFM Transferee Attachment 13, Asset Purchase Agreement, Exhibit B-2; File No. BALCDT—20130809ADF, Transferee Attachment 13, Joint Sales Agreement.

be whatever a licensee is able to sell to the Commission. Below, we illustrate how collectively, and independently, each fails to adequately protect the public interest.

- **Demonstrate localism through local news, weather and emergency information, public affairs, sports, and/or entertainment programming:** Under this standard, a broadcaster would merely have to put programming on the air. The Commission should ask itself what kind of programming even exists outside of the categories NAB names here. Moreover, JSA participants can satisfy this test with the standard 25 hours of programming that the operator already provides, which is typically the most profitable part of the schedule.
- **Expand ownership opportunities for new and diverse entrants and provision programming for niche audiences:** A broadcaster may be able to meet this standard by allowing a new entrant to own a sidecar corporation, exist as a nominal licensee, and promise that niche programming is on the horizon, as is the case now.
- **Make capital investments and technical improvements to improve service:** This is a practice that is routine and a part of the broadcasting business. Indeed, making capital investments and improvements to service is a part of any business.
- **Enable multicasting:** Again, this is a practice that is already routine and good for business.
- **Aid a financially struggling station or prevent layoffs:** The Commission already has a failing and failed station waiver process, so it is unclear what NAB means by “financially struggling” or why the existing policy is insufficient. Furthermore, given the history here and the Commission’s past willingness to accept the claim that a station is “failing” almost at face value, NAB’s suggestion of a more lax, less-defined standard just invites more gamesmanship. It also is disingenuous, since the primary purpose of these agreements is to outsource jobs and reduce employment levels.
- **Any other public interest benefits:** This is no standard at all. Essentially, NAB asks the Commission to take broadcasters on their word that they are serving the public interest. Such an open-ended mechanism is unworkable and unenforceable.

To summarize, JSA participants would be exempt from attribution if they continue to operate under their JSAs exactly as they are currently operating and if they do one thing as simple as air the weather, show that one of the stations multicasts, or do not let the station fall into disrepair by spending routine capital. Thus, 100% of today’s JSAs would be granted an exemption.

Given NAB’s proposal seeks to change nothing, the Commission should reject it and go forward with its plan to require attribution of certain JSAs. The Commission has a duty to promote competition in broadcasting. Joint Sales Agreements involve one licensee’s supposed competitor taking on the responsibility of doing the work to secure *all* of the licensee’s revenues.

This arrangement by definition destroys any possibility of competition between the two parties, and is plainly counter to the goals of the Communications Act. Furthermore, the evidence on the record clearly demonstrates that sharing arrangements are not only detrimental to competition², but also to localism³ and diversity.

Specifically with respect to diversity, NAB and other stakeholders have presented particularly misleading figures to suggest that JSAs have led to and will continue to lead to new, diverse entrants to the market. This claim is absurd. It may be true that 75 percent of black-owned stations are operated under JSAs, however the Commission should be mindful that 75 percent equals three stations out of a paltry four. What is more, *JSAs and other management agreements are responsible for that appallingly low number in the first place.*

In 2006, there were nineteen black-owned full-power commercial television stations. Now, as Commissioner Pai noted, there are at best four.⁴ In that same time period, the number of management agreements used by the top broadcasters tripled.⁵ Moreover, none of the black-owned stations in 2006 were in operational agreements. Now, three out of four black-owned stations are. Those nineteen stations used to keep all the station revenues and profits. Now, three out of four keep approximately one-tenth of the profits. This is not a recipe for diversity, or a path to wealth creation and independence.

As for Commissioner Pai's analysis of female ownership, we have not yet had the time to confirm his numbers. However, it is true that a large portion of the current licenses of which women control the majority voting shares are held by Mission Broadcasting, Nexstar's primary sidecar company. But it is disingenuous to suggest that outsourcing is somehow a tool for promoting female ownership using Mission Broadcasting, since its current female owner attained that status only after the death of her spouse.

Further, Mission is a prime example of the permanent second-class status that these supposed independent companies now have and will continue to have. While Mission recently filed a letter in this proceeding claiming that its Securities and Exchange Commission (SEC) filings demonstrate its independence, the truth is that these same filings show the company's total dependence on Nexstar.⁶ Under the tables cited by Mission in its recent letter is the following: "Under these local service agreements, Nexstar has received substantially all of our available cash, after satisfaction of operating costs and debt obligations. We anticipate that

² *Ex Parte* Submission of the United States Department of Justice, MB Docket Nos. 09-182, 07-294, 04-256 (filed Feb. 20, 2014)

³ See NABET/CWA Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 09-182 (filed March 12, 2014).

⁴ *Office of FCC Commissioner Ajit Pai Releases Results of Broadcast Ownership Diversity Research*, Mar. 20, 2014.

⁵ In 2006, Sinclair, Nexstar, LIN, Entravision, Gannett, Media General, Tribune, and Gray combined had outsourcing agreements in place that allowed them to provide ad sales, programming and/or management services to 37 different stations. This number now stands as of March 2014 at 116 stations.

⁶ See *Ex Parte* Submission of Mission Broadcasting, Inc. MB Docket Nos. 09-182, 07-294, 04-256 (filed Mar. 21, 2014).

Nexstar will continue to receive substantially all of our available cash, after satisfaction of operating costs and debt obligations.”⁷

In other words, no matter what the accounting of the cash flows between the two parties, at the end of the day and for the foreseeable future, Nexstar will control all of the gains from the Mission stations. Combine this reality with the fact that all of Mission’s licenses are operated by Nexstar and that Nexstar holds purchase option agreements for Mission’s FCC licenses, it clearly suggests a contingent financial relationship that confers *de facto* control of these licenses onto Nexstar. Furthermore, this arrangement cannot be credibly characterized as one that provides a path to independence and control for Mission, a company that due to its founder’s mortality, is now female-owned.

In sum, the Commission should not be persuaded by NAB’s and other parties’ attempts to render its JSA attribution proposal toothless. There is no need to speculate as to the public interest benefits that may flow from allowing JSA use to go on unchecked. The devolution of the broadcast market over past decade demonstrates that covert consolidation leads only to the same news on multiple channels, job losses, and diverse owners going out of business. The time is ripe for the Commission to remedy its past inaction and give independent owners an opportunity to thrive.

Sincerely,

/s/

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⁷ See Mission Broadcasting, Inc., Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2013, p. F-6.