



March 24, 2014

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Ex Parte Communication in MB Docket Nos. 10-71, 09-182, 07-294, 04-256

Dear Ms. Dortch:

The attached letter from Senator Gordon Smith, President and CEO of the National Association of Broadcasters, was sent today to Chairman Tom Wheeler and is being filed for inclusion in the record in the above-referenced proceedings.

Respectfully submitted,

A handwritten signature in black ink that reads "Jane Mago". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jane Mago  
Executive Vice President & General Counsel  
National Association of Broadcasters

cc: Commissioner Clyburn, Commissioner Rosenworcel, Commissioner Pai,  
Commissioner O'Rielly, Phil Verveer, Adonis Hoffman, Clint Odom, Matthew  
Berry, Courtney Reinhard, Jonathan Sallet, William Lake

1771 N Street NW  
Washington DC 20036 2800  
Phone 202 429 5300

The Honorable Gordon H. Smith  
President and CEO



March 24, 2014

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Wheeler:

I appreciated the opportunity to meet with you last Friday. After reflecting on our productive conversation, there are a few further thoughts I would like to offer. Having served in the government for nearly two decades, I understand and appreciate the challenges that come with the responsible exercise of great power. I have served alongside many exemplary public servants of both political parties, all of whom worked hard to do what they believed was right for their constituents, their states and their country.

One of the most incredible challenges in any prominent role, such as yours, is anticipating the unintended consequences of well-meaning actions. Often we try to do the right thing, but an unanticipated consequence may occur that we either did not see coming or was much greater in significance than we had originally imagined.

As I said in our meeting, NAB firmly disagrees with your view of Joint Sales Agreements (JSAs). Nonetheless, I think we can agree that the business community's reaction to it has had a significantly negative effect on the broadcast television industry. Rather than simply "tidying up" decades-old ownership rules, the proposal to effectively eliminate the use of JSAs in small and medium markets has cost many millions of dollars of investment in the U.S. television broadcast industry and will lead to significant job losses.

I have no doubt that you did not intend curtailed investment and fewer American jobs to be the practical effect of the proposed rules. Given your investment background, I am confident that you understand the importance of encouraging

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investment and innovation in *each* of the telecommunications sectors. I suspect, therefore, that you are also concerned with the business community backlash to the attempt to tie up supposedly loose ends.

As Wall Street clearly recognizes, our industry engages in fierce competition with the cable and wireless sectors in any number of areas. We already fight that battle on a daily basis with one hand tied behind our backs – onerous broadcast ownership rules, public interest requirements that apply only to us, and other assorted broadcast-only regulations. One effect of the JSA proposal is to take our one free hand and put it in a sling. It hampers our ability to be a competitive force among the giants in the cable, wireless and technology industries. We need to work together to foster competition, innovation and investment, not impair them.

One particularly harmful part of the proposal, from a business perspective, is the suggestion that the JSAs already in existence must unravel within two years. These agreements between businesses have already been blessed by the FCC itself for more than a decade. Indeed, *the FCC has approved 85 JSAs in its merger reviews since 2008*. Small and medium-sized American companies have relied detrimentally on the FCC's determinations that those agreements were consistent with the public interest. Nothing has changed about the character of those agreements.

Businesses must be able to trust the FCC – or any agency, for that matter – on matters that the agency has approved. Why would anyone invest in a regulated entity if they knew that the rules could change mid-stream and new rules would be applied retroactively?

The swift and negative reaction of investors has been stark and now the general emerging perception on Wall Street is that regulators, and not the women and men running broadcast companies, are going to diminish the broadcast television industry. Therefore, I believe it's time to take a step back and reevaluate. NAB has already submitted to the Commission a new way forward that both addresses the Commission's legitimate concerns about JSAs, while allowing those that truly foster the public interest to continue and thrive. This way forward will give investors confidence that the Commission will not be a 1970s-style heavy-handed regulator, but one that responds to market forces and seeks to encourage broadcasters, as well as wireless and cable companies, to compete and drive the American economy.

Again, thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gordon H. Smith". The signature is fluid and cursive, with a large initial "G" and "S".

Gordon H. Smith