

The Honorable Gordon H. Smith
President and CEO



March 20, 2014

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Commissioner Clyburn,

Thank you again for taking the time last week to talk with me about NAB's concerns with the current proposal before the Commission to declare that *all* same-market television joint sales agreements (JSAs) for more than 15% of advertising time attributable for purposes of the broadcast ownership rules. As we discussed, NAB believes that this proposal is unnecessary and will affirmatively undermine the public interest.

NAB and numerous individual broadcasters have demonstrated on the record that many sharing agreements have demonstrable benefits for the American people. Those benefits will be sacrificed if the current proposal is adopted. Early discussion of this proposal, along with the unexpected announcement of new "processing guidelines" for television assignment and transfer applications that require additional scrutiny for any sharing arrangement, have already had a significant negative impact on broadcast investment. Without investment and the economies of scale that flow from sharing arrangements, services and opportunities will be lost.

We appreciate your desire to find a balance between the Commission's concerns about *de facto* control and the fact that many existing and potential JSAs lead and will lead to increased diversity and localism. To this end, NAB has developed a compromise approach that would address the *de facto* control issue raised by the Chairman and the Media Bureau while maintaining the particular public interest benefits flowing from JSAs. Specifically, we propose that the Commission should create an exemption from JSA attribution and processing guidelines that would permit broadcasters to continue operating pursuant to existing JSAs – and enter into new JSAs – provided that they disclose all arrangements to the FCC and

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5449
Fax 202 429 5410
www.nab.org

satisfy the criteria below. A waiver policy will not strike the appropriate balance, as a reliance on waivers creates far too much uncertainty due both to their arbitrary nature and the Commission's complete discretion as to whether to act on them at all.

I. Meet Standards that Establish Licensee Control of Programming, Personnel and Finances

- Licensee must control at least 85% of programming.
- Licensee must retain at least 70% of net advertising revenue (i.e., sales agent may obtain a commission no greater than 30% of the net advertising revenue of the other station).
- Licensee must retain ultimate control over rates charged for advertising.
- Licensee must retain option to hire its own advertising sales staff or retain other sales services (non-exclusivity).

II. Demonstrate Public Interest Benefits

Parties must demonstrate clear and specific public interest benefits, including but not limited to one or more of the following:

- promotion of localism through provision of local news, weather and emergency information, public affairs, sports, and/or entertainment programming;
- promotion of diversity by expanding ownership opportunities for new entrants, including women and minorities, in broadcasting;
- provision of programming (whether local, regional or national) intended to serve traditionally underserved or niche audiences, such as racial and ethnic minorities, foreign language speakers, children, older persons and/or religious groups;
- making possible capital investments and technical improvements that improve service;
- enabling one or both stations to provide additional and/or innovative services, such as multicasting, mobile or online;
- aiding a financially struggling station, preventing lay-offs of personnel, particularly news staff, or imminent cut-backs in local programming and service; and/or
- such other unique public interest benefits identified by JSA participants and approved by the Commission.

The Commission can establish an enforcement mechanism and deadlines to ensure that specified benefits are delivered to the public, and require the attribution of JSAs that do not comply with applicable standards.

I look forward to working with you on this important effort.

Sincerely,

A handwritten signature in black ink, appearing to read "G. H. Smith". The signature is fluid and cursive, with a prominent initial "G" and a distinct "S".

Gordon H. Smith