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November 18, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Report of *Ex Parte* Communications
MM Docket No. 03-185 and RM-10335**

Dear Ms. Dortch:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to report that **oral *ex parte*** presentations have been made to Commission staff members with regard to the above-captioned proceedings, as follows:

November 17, 2003:

Johanna Mikes Shelton, **Office of Commissioner Adelstein**

November 18, 2003:

Jonathan Cody, **Office of the Chairman**

Stacy R. Fuller, **Office of Commissioner Abernathy**

Catherine C. Bohigian, **Office of Commissioner Martin**

Jordan Goldstein, **Office of Commissioner Copps**

The presentation was made by the **Community Broadcasters Association** ("CBA"), represented by Warren L. Trumbly, President; Linda K. Trumbly; CBA Board Members J. Douglas Williams, Gary Cocola, and Lawrence Rogow; and Peter Tannenwald and Gregory V. Haledjian of this law firm. The meeting was held to introduce Mr. Trumbly, as new President of CBA, and to discuss pending matters of interest to the Class A and Low Power Television ("LPTV") Industry.

The discussion included references to MB Docket No. 03-185, where CBA representatives indicated that their upcoming written comments will stress technical flexibility for Class A and LPTV stations, the need to preserve the permanent spectrum status of Class A

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stations, and the importance of providing a new opportunity for digital LPTV stations to qualify for Class A status.

CBA also noted the importance of providing syndicated and network program exclusivity for Class A and LPTV stations, which is the subject of RM-10335, and the undesirable consequences of delay by the Commission in taking action in response to the petition.

A copy of this letter is being delivered to the meeting participants by e-mail. Mr. Rogow also delivered copies of RM-10335 to the meeting participants, along with a memorandum, which is attached to this letter.

Very truly yours,



Peter Tannenwald

cc: (by e-mail)
Johanna Mikes Shelton, Esq.
Jonathan Cody, Esq.
Stacy R. Fuller, Esq.
Catherine C. Bohigian, Esq.
Jordan Goldstein, Esq.
Brooke Temple, Esq.,
Counsel for Venture Technologies Group, LLC

Memorandum

Date: November 18, 2003

To: CBA Board Members

From: Larry Rogow, Venture Technologies Group, LLC

Re: Status Report on Petition to Update Program Exclusivity Rules

Program producers' rights to extend program exclusivity to certain classes of television stations are unenforceable. In 2001, Venture Technologies Group, LLC ("VTG") filed a petition at the Federal Communications Commission ("FCC") seeking to update the FCC's rules so that all television stations can enforce exclusive program agreements against the unauthorized importation of duplicative programming by cable and satellite providers. To date, the Commission has not acted on this petition.

VTG's motivation to file the petition stemmed from its acquisition of LPTV station WAWA-LP, Syracuse, New York and its ensuing battle with the dominant cable operator in Syracuse – Time Warner Cable, a division of Time Warner ("Time Warner"). In early 2001, a local full power station in Syracuse dropped its UPN affiliation. Soon thereafter, VTG signed an exclusive agreement with UPN to be the exclusive UPN affiliate in the Syracuse market. It also signed exclusive program agreements to distribute programs supplied by Time Warner, Sony, 20th Television, and numerous other major program producers.

VTG started negotiations with Time Warner, upfront agreeing to pay for carriage of WAWA-LP. Time Warner was well aware that it needed to continue to provide UPN network programming to its subscribers. It should have been a win-win situation.

However, rather than carry VTG's local UPN station, Time Warner opted to import UPN superstation WSBK out of Boston, Massachusetts over the objections of UPN. Thus, Time Warner incurred program fees to import the WSBK signal as well as additional compulsory copyright fees, all of which end up being passed on to subscribers. This was done to minimize local competition in the Syracuse advertising market. There is no other logical reason to do it.

If WAWA-LP was a full-power station, it could invoke the protection of the Commission's network non-duplication rules and prevent Time Warner from using WSBK in this anti-competitive manner. But WAWA-LP is a low-power station and, accordingly, cannot utilize the protection of this exclusivity rule. Effectively, Time Warner imported a UPN station, without the approval of UPN and in contravention of the exclusive program agreement signed by WAWA-LP and UPN, but neither UPN or WAWA-LP could stop Time Warner because the current FCC rules permit this odd predicament to exist. Contractual programming agreements play second fiddle to antiquated Commission rules.

This loophole that excuses cable operators from respecting programming rights to LPTV stations (as well as of noncommercial stations) must be changed, which the Commission intended to do in 1988, after a Further Notice of Proposed Rulemaking. Time Warner's anti-competitive actions have required VTG to sell the station to a local broadcaster. We could not continue to compete when our program rights were violated.

VTG operates UPN LPTV stations in other markets, including Las Vegas, Nevada. We have discussed our Petition for a Rulemaking on this issue with Nevada's Senators Ensign and Reid, as well as with Al Mottur in Senator Ernest Holling's office and David Sohn in Senator Ron Wyden's office – all who support us on our proposed rulemaking. Additionally, we have been received supportively by Stacy Fuller in Commissioner Abernathy's office, Jordan Goldstein in Commissioner Copps's office, Johanna Mikes Shelton in Commissioner Adelstein's office, and Paul Gallant, formerly in Commissioner Powell's office.