NABOB Tuning In

June 25, 2014

Dear NABOB Members and Friends,

<u>SPRINT AND T-MOBILE ARE LINING UP TO JOIN COMCAST-TIME WARNER AND AT&T-DIRECTV AS MEGA-MERGERS RAISE ISSUES FOR FEDERAL REGULATORS AND THE INDUSTRY</u>

The momentum for mega-mergers has not slowed down. It is reported that Sprint and T-Mobile will announce their merger any day. Earlier this year, Comcast announced it would acquire Time Warner Cable in a transaction estimated to be worth $45 billion. Recently, AT&T announced that it will acquire DirecTV in a deal worth $48.6 billion. These deals follow a substantial consolidation of ownership in the broadcast television business that began last year.

The Sprint-T-Mobile, Comcast-Time Warner and AT&T-DirecTV transactions must gain approval from both the U.S. Department of Justice and the Federal Communications Commission. In addition, Congress has taken a great interest in these transactions. Both the Senate and House Judiciary Committees have held hearings on the Comcast-Time Warner deal, and the House Judiciary Committee held a hearing on June 24th on the AT&T-DirecTV deal. We can anticipate Congressional review of the Sprint-T-Mobile deal also.

In is anticipated that it will take approximately 9 months for each of the Sprint-T-Mobile, Comcast-Time Warner and AT&T-DirecTV transactions to work their way through the regulatory review process. It is too early to predict whether any or all of these transactions will be approved by the Department of Justice and FCC. Similarly, it is too early to predict, if each is approved, what conditions the government might place on such approvals.

NABOB is very interested in the review process, and we will have a number of questions to ask. For example, when Comcast announced the Time Warner deal, Comcast announced that it would need to spinoff cable television systems serving approximately 3 million subscribers, valued at $17 billion. Because cable television systems can be sold in distinct metropolitan units, NABOB recognized immediately that this was an ideal opportunity for Comcast to spinoff some of these cable television systems in several smaller transactions, which would provide African American entrepreneurs opportunities to purchase one or more of these cable television systems.

In March, NABOB contacted Comcast and asked that they consider spinning off some cable television systems in smaller transactions. Unfortunately, Comcast did not respond to NABOB's request, and instead, announced that it will spinoff all of the systems in a complicated deal with Charter Communications.

When the FCC reviews the Comcast-Time Warner deal, it will have to decide whether there are public interest benefits to the transaction that weigh in favor of the transaction, in spite of the potential loss of competition that will result from the merger. NABOB regards the Comcast decision not to spinoff any systems to African American entrepreneurs as a missed opportunity for Comcast to demonstrate a clear public interest benefit that would result from the transaction. NABOB will continue to press Comcast to reconsider its decision not to spinoff any systems to African American entrepreneurs.

Another issue that NABOB will monitor with respect to the Comcast-Time Warner transaction is the extent to which Comcast commits to carry channels, such as TVOne, on Comcast's basic tiers, so that consumers will not have to subscribe to high priced tiers to receive programing serving the African American community.

The AT&T-DirecTV deal has serious competitive implications for all broadcast television stations. AT&T has stated that its objective is to be able to offer subscribers a three-tiered service option of satellite television, telephone and internet service. As with the Comcast-Time Warner deal, to the extent that the merged companies increase the delivery of "over-the-top programming" (i.e., programming that is delivered via the internet), that programming may duplicate that of over-the-air television stations. This, in turn, could reduce the over-the-air television audiences and advertising revenue.

The Sprint-T-Mobile deal has the potential to negatively affect wireless mobile users. African Americans rely more heavily on mobile wireless services for internet access, because we subscribe to less fixed broadband service at home. T-Mobile, as the fourth largest mobile provider, has positioned itself as the low-price carrier among the top four. If it is acquired by Sprint, it is anticipated that its prices will rise significantly.

NABOB will continue to monitor these mega-mergers and will seek commitments from the merging companies to make business opportunities available for minorities and to limit the negative consequences of these mergers.

COURT APPROVES TOBACCO COMPANY REMEDIAL ADVERTISING PLAN WHICH EXCLUDES BLACK MEDIA

Much to the amazement and disappointment of NABOB and NNPA, on June 2, 2014, Judge Gladys Kessler issued a decision in which she approved the advertising plan presented by the tobacco companies and the Department of Justice, which completely excludes radio from any remedial advertising. Judge Kessler ruled that there will be no radio ad buy and only the following Black newspapers: Arizona Informant; Denver Weekly News; Inner-City News (CT); Gary Crusader; Louisville Defender; Insight News; St. Louis American; Omaha Star; Ohio City News; Black Chronicle; Portland Skanner; Seattle Skanner; and the Milwaukee Courier. In addition to excluding all radio, this list excludes approximately 200 NNPA member newspapers, particularly those in large markets where most African Americans live.

The judge's rationale (that network television and large daily newspapers reach more people) completely fails to appreciate the trust and engagement that African American audiences have with their own media. This multi-million dollar media campaign, like so many before it, will fail to effectively reach and connect with the African American community. And our community, not the tobacco companies, will be the big loser.

The events that led up to this terrible result began at the start of this year. On January 13, 2014, Target Market News broke the story that the U.S. Department of Justice and the largest tobacco companies had negotiated a consent order in the long running litigation between the Department of Justice and Philip Morris, RJ Reynolds, and Lorillard, in the U.S. District Court for the District of Columbia. The proposed consent order provided the details of an advertising program the tobacco companies have been directed to air to provide the public the truth about the negative health effects of using tobacco products. The consent order created a national advertising campaign. But the national ad campaign directed no advertising dollars to the African American community, even though for decades our community was heavily targeted by the tobacco companies' misleading ads promoting smoking and hiding the truth about the potential negative health effects.

On January 15, 2014, NABOB wrote to Attorney General Eric Holder asking him to review the consent order proposed by the Department of Justice. In the letter, NABOB explained that the consent order requires the tobacco companies to air commercials that contain "corrective statements" informing the public of the harmful effects that smoking causes. NABOB pointed out that, in the litigation, it was demonstrated that the tobacco companies had specifically targeted African American communities, particularly young people, with advertising and promotions designed to increase smoking. Yet, the proposed consent order required that the corrective commercial campaign be run exclusively on ABC, CBS, NBC, and 35 newspapers, including some Spanish language newspapers. The consent decree did not obligate the tobacco companies to place any commercials on Black owned media, or even media targeting the African American community. We asked Attorney General Holder to have his Department revise the consent decree to specifically require the tobacco companies to advertise on Black owned media.

On January 17, 2014, NABOB was invited by the National Newspaper Publishers Association to join in filing an amicus brief advising the court of the need to use Black owned media to effectively reach and inform the African American community. NABOB and NNPA requested that our members be added to the media included in the consent decree.

On January 22, 2014, Judge Kessler held a status conference. Judge Kessler noted that the settlement that the DOJ and tobacco companies had offered to her for approval raised a number of concerns that she plans to consider before deciding whether to approve the settlement. The first concern that the judge raised is whether the advertising plan in the settlement failed to target a significant part of the public. This is clearly the point that NABOB and NNPA raised in our amicus brief.

On April 22, 2014, the tobacco companies and the Department of Justice proposed a revised consent decree to the judge. In the revised consent decree, the tobacco companies and the DOJ proposed some token use of Black newspapers and <u>no</u> use of Black radio. On May 28, 2014, NNPA and NABOB filed an opposition to the proposed revised consent decree, and we will continue to press our case that the settlement must be rejected by the judge and revised to include meaningful use of Black owned media in the advertising campaign.

<u>FCC MOVES TO ENCOURAGE TELEVISION STATIONS TO PARTICIPATE IN ITS SPECTRUM INCENTIVE AUCTION IN 2015</u>

It has been reported that the FCC has hired an investment banking firm to help develop educational material to use to persuade television broadcasters to participate in the FCC's Incentive Auction next year. The investment banking firm is reported to be Greenhill & Co. Greenhill's key assignment will be to put together a "book" that explains why participating in the auction might be in a broadcaster's interest.

The hiring of Greenhill follows the May 15, 2014 order, in which the FCC adopted its first set of rules for the Incentive Auction. The FCC announced a number of decisions about the auction, but acknowledged that it will need to decide several more key issues. The issue most watched by television station owners is the opening prices for spectrum to be turned in by broadcasters. In addition, the FCC will decide at a later time what steps it should take to protect low power television stations.

Television stations across the country, especially in the top 30 TV markets, are likely to be impacted by the Incentive Auction, either by turning in spectrum in exchange for a payment from the auction proceeds, or because of changes in their operating frequencies resulting from the FCC "repacking" station frequencies to meet the frequency changes required by the auction.

NABOB ASKS FCC TO APPROVE THE MARSHALL-NEXSTAR JSA DEAL AS A MODEL FOR FUTURE DEALS

In Comments filed June, 18, 2014, NABOB asked the FCC to approve the sale of three television stations from Nexstar Broadcasting to Marshall Broadcasting Group. The deal for stations KPEJ-TV, Odessa, Texas, KMSS-TV, Shreveport, Louisiana, and KLJB, Davenport, Iowa, includes Joint Sales Agreements (JSAs) for Nexstar to sell all of the Marshall advertising time. Having historically opposed JSAs, NABOB has recently supported such JSA arrangements if they will lead to meaningful minority ownership. In the past, JSA agreements have come with additional options agreements that lock the station up for up to 30 years. In addition, often the station operating the JSA owned the facilities of the station subject to the JSA. The Marshall-Nexstar deal has no such agreements.

In supporting the deal, NABOB noted that the Commission, when granting the Nexstar –Marshall deal, should set forth clear guidelines for this deal and for future deals, which NABOB hopes to see. The conditions NABOB requested are: (1) a plan for the station subject to the JSA to develop its own sales staff, (2) if there is a Shared Services Agreement, a plan for the JSA station to develop some independent operations, (3) if the JSA operator is guaranteeing a loan, the loan guarantee documents should be supplied to the Commission, and (4) the station subject to the JSA and the JSA operator should file annual reports on their success in implementing the plans described above.

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