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BEFORE THE

Federal Communications Commission

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In the Matter of	:	
	:	
Review of the Policy Implications of the Changing Video Marketplace	:	MM Docket No. 91-221

REPLY COMMENTS OF KING WORLD PRODUCTIONS, INC.

King World Productions, Inc. ("King World") submits these reply comments[1/] for the narrow purpose of demonstrating that the proposal for reform of PTAR advanced by the television network interests -- principally CBS -- is contrary to the public interest, economically unsound and fundamentally unrelated to the preservation and enhancement of free, over-the-air broadcasting.

We will show in these comments that CBS' proposal to modify the Prime Time Access Rule ("PTAR") must be firmly and unequivocally rejected. It ignores the very real contribution that PTAR has made to program diversity and choice enjoyed by the American public over the past two decades and the continued need for this important counter-balance to the power of the networks in furtherance of the interrelated objectives of local station autonomy and program diversity.

In support, the following is stated:

1/ King World is also a member of the Program Producers and Distributors Committee ("PPDC"), with whose comments King World wholly concurs.

1. Any discussion of potential modification to PTAR must start from the unassailable premise that PTAR has worked and continues to work. In the past two decades the number of first run syndicated series aired in the United States has increased dramatically. The quality and diversity of program choice made available to the American public by companies like ours is comparable to that of the networks. Assured of at least some access to the prime time daypart on network-affiliated stations in the top 50 markets, companies like King World have invested and continue to invest in new and innovative programming. Above all, viewer response to first run syndicated programs demonstrates that PTAR has achieved its fundamental goal of making available -- through free, over-the-air television -- programming responsive to the diverse needs and interests of the American public.

2. CBS does not dispute any of this. Instead, CBS argues that precisely because the rule has worked, it is no longer needed. CBS comments at 56.[2/] ABC evidently does not share CBS' assessment of the need for modification for PTAR. For example, in this proceeding, ABC asserts that there is no need for the option time

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2/ Somewhat contradictorily, CBS defends its proposal for greater network compensation flexibility in part on the grounds that

> The average affiliate has in the prime time 'access' period alone approximately 26 hours each month of non-network time to fill.

CBS Comments at 54. But, the avowed purpose of CBS's proposal to modify PTAR is to reduce the amount of those hours filled by first run syndicated programming.

ban because the concerns underlying that rule "have been addressed through" PTAR (Comments of Capital Cities/ABC at 32); and in other proceedings involving changes in the marketplace, ABC has asserted that "[q]uite arguably, it is more important than ever to preserve the opportunities for first run syndication in the top markets ...". Comments of Capital Cities/ABC in MM Docket No. 90-162 at pp. 42-45 (filed November 21, 1990). In any event, CBS' contention that the application of PTAR to off-network programming should be repealed finds no support in public interest considerations.

3. CBS maintains that network-affiliated and independent stations broadcast "hours and hours" of first run syndicated programming during nonaccess time periods and asserts that, therefore, "there is simply no reason to suppose" that rescission of the off-network proscription would result "in even a slight reduction" in the quantity of first run syndicated programming in the marketplace. CBS Comments at p. 72. This merely repeats an argument which the Commission considered and rejected when it initially adopted PTAR. The Commission pointed out that access to television stations -- particularly network affiliates -- in the top 50 markets during the "crucial prime time evening" hours is "the key to a healthy syndication industry"; as a result, the "success of syndicated programs" in other dayparts and in markets below the top 50 simply "is not substantially relevant" to the purposes of the rule. <u>Amendment of Part 73 of the Commission's Rules</u>, 23 FCC 2d 382, 394 (1971).

4. Notwithstanding the changes that have occurred in the video marketplace since that decision, PTAR remains the cornerstone for "truly independent sources of prime time programming." Id. Despite the growth in syndication revenues pointed out by CBS, the fact remains that total syndicated revenues are less than 15% of total advertising expenditures on the three major over-the-air television networks. Broadcast Television in a Multi-channel Marketplace (OPP Working Paper No. 26) 6 FCC Record 3996 at 4010 (1991) (OPP Working Paper). CBS itself acknowledges that off-network programming newly introduced to syndication carries with it a built-in audience demand whereas first run programming must wholly create audience acceptance from the ground up on a market-by-market basis. CBS Comments at 57-58. In these circumstances, the ability of first run syndicated programming to compete effectively against off-network programming in markets below the top 50 and in dayparts other than the "crucial prime time evening" television hours provides absolutely no support for CBS' conclusion that the off-network restrictions of PTAR serve no purpose in the current marketplace. Access by first run syndicated programming to the audiences reached by network affiliates in the top 50 markets remains indispensable.

5. CBS also claims that the proliferation of independent stations that has occurred in the last decade renders PTAR'S off-network proscription unnecessary. This amounts to an argument that, even if the repeal of the off-network proscription were to

drive first run syndicated programming from network-affiliated television stations in the top 50 markets, there would be no harm to the public interest. CBS states that a likely result of its proposal would be a "redistribution of off-network and first run programming between affiliates and independent stations and between access scheduling and scheduling in other day parts." CBS Comments at 73. But, the "redistribution" anticipated by CBS is hardly benign in terms of the public's ability to enjoy alternative sources of programming.

6. The unstated premise underlying CBS' claim is that "redistribution" will entail the movement of first run syndicated programming from network affiliates to independent stations and the correlative movement of off-network programming from independents to affiliates. This premise is probably correct. But, independent stations in the top 50 markets simply cannot supply access to audience of the requisite size to provide a reasonable likelihood of success of first run syndicated programming. <u>OPP Paper</u> at 4019-20. Thus, "redistribution" will diminish the ability of producers and syndicators of first run programming to gain access to the dominant stations in the key markets upon which the successful development of first run programming indispensably depends. The adverse effects of this "redistribution" will be felt by the American public in terms of diminished program diversity and choice.

7. CBS' final argument in support of its claim that PTAR should be modified has nothing to do with the public interest values that the rule is intended to and in operation has served. CBS maintains that, because of deficit financing and because producers cannot count on after-market revenues from the sale of off-network programming to network affiliates in the top 50 markets, the application of PTAR to off-network programming alters the producer's calculus of risk and thereby "raises the price a network must be willing to pay to get the program produced." CBS Comments at 59. Even if network economics were, of itself, an adequate reason to warrant re-exploration of the rationale for PTAR, this line of reasoning simply does not support the conclusions CBS has reached.

8. PTAR does not exclude off-network programming from the marketplace during conventional network prime time or even during the access period created by PTAR. If CBS is correct in its claim that independent stations in the top 50 markets provide an adequate substitute for network affiliates as an outlet for the distribution of first run syndicated programming during the access period, then independent stations -- and Fox affiliates -- should offer a more than adequate market for the distribution of off-network programming with its built-in public following. Certainly, CBS cannot have it both ways, contending, on the one hand, that the off-network proscription of PTAR is unnecessary because of the existence of independent stations in the top 50 markets, but

claiming, on the other, that the economics of network programming are significantly affected by PTAR despite the existence of those self-same independent stations. In any event, even if CBS is correct that PTAR has the incidental effect of altering the cost of programming to the networks, this is far outweighed by the public interest need to assure that first run programming has access to the American public through the dominant stations in the top 50 markets, the network affiliates.

9. Moreover, CBS' analysis of the effects of PTAR upon the price that it pays for the acquisition of network programming ignores the fundamental changes upon network economics that will be realized when the Commission's new financial interest rule becomes fully operational. Although the new rule does establish certain procedural safeguards, it basically permits a network to acquire a continuing financial interest in the off-network syndication of virtually all programs or series that it airs. See 47 CFR § 659(a). In the proceedings leading to the new rule, the networks' argued that, if permitted to retain continuing financial interests in network programming, they would become "willing participants" in the downstream syndication "risks"; and that, by "risk pooling", the networks would be able to "reduce the riskiness to the program supplier and, therefore, the network's own program costs . . ." Report of Robert W. Crandall (submitted with Joint Comments of Capital Cities/ABC Inc., CBS Inc., and National Broadcasting Company, Inc. in Docket MM 90-162) at 32 (filed June

14, 1990). The networks have now been given the opportunity to participate in the downstream profits resulting from syndication of off-network programming, and to thereby alter both the program suppliers' calculus of risk and the networks' own program costs. Accordingly, any possible discussion of modification of PTAR because of its supposed impact upon network program costs ought to be tabled at the very least until the effects of the new financial interest rule can be comprehensively measured and assessed.

10. More broadly, because PTAR is founded upon public interest considerations and continues to serve the goals of diversity and local station autonomy without material impairment of network economics, it should be preserved intact. King World, no less than the networks, has as a vital stake in the preservation and enhancement of a universal system of free, over-the-air television service. No less than the networks, we are committed to the view that over-the-air television can remain competitive with other video distribution systems only by the maintenance of a fair and competitive marketplace which allows television stations to compete through access to the broadest possible range of programming responsive to the needs and tastes of the American public. But, the CBS proposal is not responsive to the problems confronting over-the-air television or in furtherance of the maintenance of such a marketplace. Rather, the modification of PTAR proposed by CBS would simply enable the networks to more

effectively exploit their newly acquired rights to retain continuing financial interests in network programming, to the detriment of alternative program suppliers in the first run syndication market and, ultimately, to the detriment of the American public. CBS's proposed modification of the rule should be dismissed.

Respectfully submitted,

Jonathan Birkhahn
Vice President, Business
Affairs and General Counsel
King World Productions, Inc.

Of Counsel:

Ian D. Volner
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, DC 20036

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