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November 21, 1991

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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

Dear Ms. Searcy:

On behalf of Westinghouse Broadcasting Company, Inc. ("Group W"), enclosed herewith for filing with the Commission is an original and nine (9) copies of its comments in response to the Commission's Notice of Inquiry.

Should there be any questions in connection with these comments, please contact the undersigned.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
Chartered

By: R. L. Woo
Ramsey L. Woodworth

Attorneys for Westinghouse
Broadcasting Company, Inc.

RLW/dw
Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

IIn the Matter Of:	)	
	)	
REVIEW OF THE POLICY IMPLICATIONS OF THE CHANGING VIDEO MARKETPLACE	)	**MM Docket No. 91-221**
	)	
	)	

TO: The Commission

COMMENTS OF WESTINGHOUSE BROADCASTING COMPANY, INC.

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November 21, 1991

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SUMMARY OF COMMENTS

Competition in the video marketplace has dramatically reduced the financial performance of over-the-air television stations, thus weakening their ability to serve their audiences and fulfill their public interest mandate. In order to respond to the challenge of multi-channel competitors, broadcasters need regulatory flexibility to create new opportunities in the delivery of free television programming in their local service areas. They also need guaranteed distribution on non-broadcast video distribution systems in their markets.

Group W recommends four specific steps that the Commission can take to help preserve free local television.

1. **Increased Distribution.** Broadcasters should be allowed to enter into innovative ownership and/or lease arrangements with other stations in their markets and their regions so that they can maximize the distribution and value of their local and syndicated programming and compete successfully in the program acquisition marketplace. This would require changes in the Commission's duopoly rules. Other Commission ownership, attribution and cross-interest rules and policies should be modified to allow, at a minimum, substantial minority investment in other local and regional stations to facilitate joint operating economies.

2. **Operational Economies.** Broadcasters should be allowed to enjoy the economies of operation which could be derived from joint news, programming, sales, engineering, accounting, and management with other television stations in their markets and adjoining markets in their other region.

3. **Guaranteed Distribution of Free Television.** Local free television stations must be guaranteed distribution to all homes in their local service area, whether the distribution be by cable, telco, or multiple channel satellite delivery. Such a must-carry obligation must be non-discriminatory vis a vis cable channels, meaning that on-channel carriage must also be guaranteed.

4. **Reservation of Technological Opportunities.** Local television broadcasters must be given the first opportunity to participate in technological advances, be they signal quality enhancement such as HDTV, or multiple signal distribution opportunities provided by video compression, including the possibility of multiple channel DBS broadcasting as an alternative to wire into the home distribution.

Group W believes these steps can be taken without adversely affecting the Commission's goals of **localism, diversity, nationwide availability of service, and broadcasting in the public interest.** Indeed, Group W believes that all of these public interest benefits can be significantly strengthened if broadcasters are given the opportunity to compete with alternative media fairly and fully.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

COMMENTS OF WESTINGHOUSE BROADCASTING COMPANY, INC.

Westinghouse Broadcasting Company, Inc., ("Group W"), hereby submits its Comments in the above-referenced Rule Making reviewing the Policy Implications of the Changing Video Marketplace. As the owner of five major market network-affiliated television stations, [1] Group W is keenly interested in a review of Commission regulations which impact on the ability of local television stations to compete with other video sources in their local markets. We welcome this proceeding and look forward to changes which will strengthen free, over-the-air broadcasting in this country.

Over the years, Group W has stressed local public service at all of its stations, not only to meet FCC public interest obligations, but also as the path to success in local broadcasting. Unfortunately, the decline of the viewer and advertising base of local stations, due to increasing competition from cable and other media, has caused, and will continue to cause in the future, significant revenue erosion. The direct result will be less resources available to create and produce those local programs which have been our

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1 KYW-TV, Philadelphia, Pennsylvania; KPIX, San Francisco, California; WBZ-TV, Boston, Massachusetts; KDKA-TV, Pittsburgh, Pennsylvania; and WJZ-TV, Baltimore, Maryland.

historical trademark. It will also impact our ability to obtain the quality entertainment programming that is so important to our audiences. This is an industry-wide phenomenon that threatens the economic basis of free television as we now know it.

While the Commission's rules need not be used to give broadcasters a preferred position in this competition, those rules which place broadcasters at a competitive disadvantage can, and should, be modified or eliminated to even the playing field. Group W believes that this can be done without adversely interfering with the Commission's goals of **localism, diversity, nationwide availability of service, and broadcasting in the public interest.** Indeed, Group W strongly believes that all of these public interest benefits can be significantly strengthened if broadcasters are given the opportunity to compete with alternative media fairly and fully. That is the theme of these Comments, and should be the theme of this Proceeding before the Commission.

While the challenges of the growing multitude of subscriber-supported video services are significant, they need not be fatal to our free over-the-air broadcasting system. Nor are they only the Commission's responsibility to resolve. Group W, for one, is working feverishly to meet this challenge in the marketplace. As Commissioner Duggan only recently noted [2]

> It is similarly impressive to look at the efforts of Westinghouse -- Group W. In December, an article in Broadcasting Magazine described convergences between broadcasting and cable that Group W is working out on both the national and local fronts.
>
> . . . .
>
> At the local level, Group W's efforts include relationships between broadcasting and cable involving not only programming

2 Remarks of Commissioner Duggan, Broadcast Cable Financial Management Association's Annual Conference, April 22, 1991, Los Angeles, California.

but also advertising and business issues. WBZ in Boston, for example, is wholesaling news spots to local cable operators, who then sell the time at retail to local advertisers. Much of this is unused inventory that the station has trouble selling itself. Cable operators, however, can turn around and sell the time to small advertisers who need to reach only the area served by the cable system, not the full market of the broadcast station.

All we ask is for the Commission to deal with its own policies, adopted in a different milieu, which are no longer necessary to serve the intended purpose and which unnecessarily restrict the broadcaster's ability to respond effectively to the new competitive environment.

There are four critical steps that the Commission can take to help local broadcasters survive the competition noted above.

1. **Increased Distribution.** Broadcasters should be allowed to enter into innovative ownership and/or lease arrangements with other stations in their markets and their regions so that they can maximize the distribution and value of their local and syndicated programming and compete successfully in the program acquisition marketplace. This would require changes in the Commission's duopoly rules. Other Commission ownership, attribution and cross-interest rules and policies should be modified to allow, at a minimum, substantial minority investment in other local and regional stations to facilitate joint operating economies.

2. **Operational Economies.** Broadcasters should be allowed to enjoy the economies of operation which could be derived from joint news, programming, sales, engineering, accounting, and management with other television stations in their markets and adjoining markets in their other region.

3. **Guaranteed Distribution of Free Television.** Local free television stations must be guaranteed distribution to all homes in their local service area, whether the distribution be by cable, telco, or multiple channel satellite delivery. Such a must-carry obligation must be non-discriminatory vis a vis cable channels, meaning that on-channel carriage must also be guaranteed.

4. **Reservation of Technological Opportunities.** Local television broadcasters must be given the first opportunity to participate in technological advances, be they signal quality enhancement such as HDTV, or multiple signal distribution opportunities

provided by video compression, including the possibility of multiple channel DBS broadcasting as an alternative to wire into the home distribution.

These Comments will briefly review the changes in the video marketplace which have already occurred and which can be expected in the future. A number of these changes have already been excellently presented in the Commission's Office of Plans and Policy Working Paper, "Broadcast Television in a Multi-Channel Marketplace" ("OPP Working Paper"). The policy recommendations listed above will then be discussed in more detail. Finally, we will show how the four Commission public interest goals are served by adopting the recommended policy changes.

MARKETPLACE CHANGES

Changes in the competitive situation in the television broadcasting industry in the last 15 years have been well-documented in the OPP Working Paper. They will not be repeated here. However, several dramatic conclusions stand out.

1. **The viewing share of local broadcast television stations has decreased dramatically in recent years.** This is particularly true for network affiliates, those very stations which have been deemed to be strongest over the years and which have traditionally provided the largest amount of local news and public affairs programming. Network affiliate viewing shares have fallen dramatically, from 63 in 1984-85 to 52 in 1989-90. [3] Affiliate viewing is even lower in cable households where it

3 Cable Television Advertising Bureau, Cable TV Facts, 1991 Ed., pp. 12-13; 1986 Ed., p. 14.

reached a 43 level in 1989-90 and a 39 share in pay cable households in that same year. Cable has accounted for the largest share of this viewership decline. As cable has become more profitable, its networks have been able to compete successfully for quality programming. For example, between 1984-85 and 1989-90, viewing of cable-originated programming rose from 14% to 26% of total viewing and from 24% to 39% of viewing in cable households. [4]

2. **Local broadcast stations' shares of available television advertising revenues are falling [5] and will continue to fall dramatically in the future.** In recent years broadcast revenues for local stations have become flat, with only a 5.7% increase between 1985 and 1989 for affiliates and a 1.5% decrease for independents.[6] Such statistics are particularly troublesome since video advertising is the sole source of broadcasters' revenues, unlike cable, which enjoys a second subscriber revenue stream. Not only is video advertising likely to grow very slowly over the next decade, but it can be anticipated that the dramatic shift of such revenues toward cable will accelerate.[7] Therefore, television stations' overall share of advertising can be expected to fall even further in the future. As television

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4 Cable Television Advertising Bureau, Cable TV Facts, 1991 Ed. , p. 6; 1986 Ed., p. 6.

5 McCann-Erickson, Inc., "Estimated Annual U.S. Advertising Expenditures", Advertising Age, April 1991.

6 NAB Television Financial Report, 1986-1990.

7 OPP Working Paper, p. ix.

advertising revenues have leveled off or declined, cable television advertising revenues were growing at a 22% rate in 1989,[8] , and are expected to increase phenomenally in the next 10 years. Revenues of $635,000,000 in 1990 are estimated to more than double to $1,500,000,000 in 1995 and quadruple to $2,402,000,000 in 1999. [9]

3. **Television station profits are also declining dramatically.** As audience shares and revenues declined in the late 1980s, costs continued to rise. The increased demand for programming caused by the rising number of over-the-air and cable channels has forced the price of programming to be bid up substantially. For example, between 1985 and 1989, broadcast programming rights rose from 11.8% of an affiliate's budget to 18%. [10] The last year has brought a shock wave of cost cutting to television stations throughout the country. Downsizing of 25% or more has been routine as stations struggle to keep their profit margins in line with expectations of investors and the needs of their debt service. While major market affiliates generally remain profitable, their profit margins have been slashed considerably. At the same time, many independent stations have become unprofitable.

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8 OPP Working Paper, p. 129

9 Paul Kagan and Associates, Inc., The Kagan Cable TV Financial Databook (June 1990), pp. 10, 12, 70.

10 NAB Television Financial Report, 1986-1990.

REGULATORY SOLUTIONS

The OPP Working Paper states that "the broadcast television industry has suffered an irreversible long-term decline in audience and revenue shares, which will continue through the current decade."[11] There is no question that these trends have affected and will affect the service which local television stations provide to their audience. The Working Paper concludes:

> This study shows that a reduction in the quantity and quality of broadcast service is highly likely and provides a factual basis for reconsideration of a large body of mass media rules. Changes in Commission rules to allow more efficient provision of service may have an important effect in allowing broadcasters to continue to offer service the public values.[12]

Local broadcasters are already scaling back local program production. Without the ability to operate more economically and compete more effectively, local broadcast service, the bedrock of the American broadcasting system, will suffer. However, this need not be the future story of over-the-air broadcasting. The potential still exists for broadcasters to consolidate their services and remain a strong competitor to other video media.

Group W believes that a substantial audience for broadcast television will remain throughout the next decade at a minimum. Since it is projected that about one-third of households in the United States will still not be cable subscribers by the year 1999,[13] **free over-the-air television will**

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11 OPP Working Paper, p. 159.

12 OPP Working Paper, p. 3

13 Paul Kagan and Associates, Inc., The Kagan Cable TV Financial Databook (June 1990) p. 10.

remain the sole medium with the ability to reach all television households. This will be true, of course, only if broadcast stations are mandatorily carried on all cable systems. This is essential to guarantee the future of free television. Local broadcasters must also be able to strengthen their competitive position by acquiring other local and regional broadcast distribution outlets. This will enable them to recognize the economies of operation, and bargain effectively with programmers and advertisers as they strive to present a top-quality product to their viewers and obtain the revenues to support that product. Group W strongly believes that the changes in the video marketplace outlined herein and detailed elsewhere mandate that the Commission dramatically re-evaluate some of its current rules and their impact on the future of free local television. Listed below are some of the policy positions which would support local broadcasters in their efforts to remain the cornerstone of television service in this country.

1. **Increased Distribution.**

In order to be able to both produce and purchase quality programming in the future, local television stations must be allowed to own more than one local and/or regional broadcast television outlets over which they can distribute such programming. While some minimal diversity protection limitation or floor may be appropriate, multiple channel distribution is the only way for broadcast stations to ultimately compete with cable multi-channel program providers. Therefore, local broadcasters must be freed from regulatory restraints on purchasing additional stations in their markets or entering into innovative arrangements with other local broadcasters to combine forces to increase distribution of locally-produced and locally-acquired programming product.

The strength of local broadcasting would be best enhanced by amending the Commission's duopoly rules to allow one owner to purchase other stations in the market. This would allow a broadcaster to both increase distribution and obtain the operating efficiencies discussed below.

a. Local Programming Enhancements

Instead of cutting back on **local news** in order to save costs, a multiple station broadcaster could spread the cost of the current news operation over additional multiple newscasts, each with separate audiences and revenue-producing capabilities. For example, a network affiliate owner could schedule additional newscasts on a second station at 10:00 pm or 7-9:00 pm prime time, time periods currently impossible due to other network programming commitments. The net result would be substantially more news available to market audiences instead of creeping cutbacks in news at individually-owned stations.

Locally-produced public affairs is another genre of programming that is at risk of slowly dying due to the need to cut costs. If a local broadcaster could showcase such programming on a second outlet in his market, it could support these programs and their production staff with revenues from high viewership programs on its other station and have the added benefit of airing the public affairs programming in more attractive time periods on the second station.

Popular high quality syndicated programming would also flourish in a multiple station environment. Today's syndicated marketplace is flooded with inexpensive, lower quality programming because that is all local stations can afford. The combined resources of multiple stations will attract higher quality, more expensive programming to the local marketplace. Spreading the cost of high-quality syndicated programs over multiple stations in the market would also enhance the ability of the local broadcaster to attract the program to free television in the market rather than lose it to cable. The net result for the viewer would be more programs, better programs, and more time diversity for the viewing of such programs.

Sports is another category of programming which would flourish on free TV under these circumstances. All too often, stronger network affiliates are unable to bid for a substantial number of sports games because of the network schedules. The result is that free broadcasting is often represented by weak UHF independents in its bid for sports rights in competition with strong regional or national sports networks.[14] Recently, the Philadelphia 76ers basketball club struck a deal which will cause their games to all but disappear from over-the-air broadcasting in the Philadelphia area. Group W believes that the broadcasting of local sports franchises provides a public service to its viewers and has successfully negotiated baseball contracts in Pittsburgh and San Francisco. However, as network affiliates, its carriage of such games is limited. With another station in the market, Group W could put its considerable resources behind a bid for a variety of baseball, basketball, hockey, and other sports rights and secure these games for the free over-the-air television audience.

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14 Currently, 31 regional sports channels with 39.1 million subscribers compete with over-the-air television for local sports rights. OPP Working Paper, p. 78.

b. Regional Service

Another way to strengthen the competitive position of over-the-air broadcasters would be to amend the Commission's rules to allow the purchase of stations in adjacent markets whose Grade B contours may overlap. This would allow broadcasters to create regional broadcasting distribution systems to compete effectively with the regional reach of cable operators in their areas. They could also compete with regional cable networks and regional advertising areas which threaten to take national advertising dollars from local broadcasters. Such regional systems would also have many of the economies of scale noted below, resulting in more efficient operation, and more resources available to provide programming to all of the viewers in the region.

An alternative to full ownership would be the ability to create **operational partnerships with other regional stations** whereby the stations might jointly acquire programming, jointly produce programming and jointly sell spots to regional advertisers. Such deals might take the form of a substantial minority investment in each other's facilities so that the parties reap the benefits of the partnership and have incentives to make it work. If current ownership rules are changed as suggested above, there would be no problem entering into such beneficial arrangement. If current ownership rules are not changed, the Commission should, at a minimum, revise its attribution standards to allow any investment by one station in another, so long as such investment does not constitute a controlling interest. The "single majority shareholder" policy will not always be available to allow significant investment. The alternative 5% guideline for attribution is unrealistically prohibitive in this situation and would prevent broadcasters from realizing many of the distribution and operational benefits described herein.

c. Leasing Program Time

These are only some of the programming benefits that multiple station ownership would provide in a local television market. Some of these benefits could also be obtained through **liberal leasing arrangements** in which substantial blocks of other stations' time could be purchased and programmed by another local owner. While this would provide some benefits, Group W does not recommend this approach since it would raise recurring issues of who actually controls the broadcast license issued by the Commission. It would be far better for the Commission to recognize that the public interest can indeed be served by direct, approved ownership of multiple stations in the market. These public interest benefits are summarized in a separate section below.

2. Operational Economies.

There is no question that multiple local or regional stations could be operated more efficiently than a single station. Cost savings would begin with significantly fewer management personnel and continue by combining financial departments, engineering departments, programming departments, sales forces, and news operations. In the context of multiple regional stations, news and programming could be customized to meet the immediate local needs, while other programming of general interest could be shared in a mutually advantageous manner. Joint sales forces would offer more variety to advertisers, and increase the stations' ability to compete with cable in the local marketplace. Local cable operators have a variety of channels and programs to sell to their local advertisers. Broadcasters with multiple outlets would be able to compete in a similar manner, offering multiple channels and multiple programs carried thereon. Station overhead could be dramatically reduced. Overall, cost savings would be substantial, and invigorate these stations in their strenuous competition with local and national cable channels.

An added benefit of second station ownership would be the possibility of saving a failing station in the market. As noted in the OPP Working Paper, many independent stations have been unprofitable in recent years and/or are projected to become unprofitable.[15] Some of these stations have gone off the air and others might be following shortly. It may not be possible to operate the stations independently in today's changed media environment. Group W believes such stations could be operated successfully and provide significant free over-the-air service to a local audience if operated jointly with a strong station in their market. Therefore, an existing local station owner may be the only potential buyer for such a station and the only way to keep multiple over-the-air outlets available in these markets.

3. Guaranteed Distribution of Free Television.

Like it or not, cable systems represent a monopoly in almost all television markets in the United States. Since approximately 60% of viewer households subscribe to cable, cable has a stranglehold on distribution of video signals to a majority of viewers. Therefore, it is clear that broadcast television stations simply cannot survive if they are not carried on cable.

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15 OPP Working Paper, p. viii.

For this reason, must-carry and on-channel carriage are essential to the future of broadcast television. Just as cable systems have been given a free license to carry local television signals and enjoy tremendous commercial benefits therefrom, so the Commission should make clear that must-carry and on-channel carriage of local television stations is, at the least, the quid pro quo which cable systems would pay for their free license. This should apply not only to cable, but to all video to home technologies, including telcos.

On-channel carriage is also critical to the ability of a television station to gather the audience it needs to survive. Over-the-air and cable channel position promotion must be consistent and singular. This point has been argued elsewhere in great detail and those details will not be repeated here. **Simply put, must-carry and channel positioning protection are as important to broadcasters' future as any regulation which the Commission can adopt or change in this Proceeding.**

4. **Reservation of Technological Opportunities.**

In recent years, new technology has changed the face of video distribution in the United States. The rapid expansion of channel availability in cable and other non-broadcast services has brought an extraordinary number of viewing options to the American public. Broadcasters do not oppose this march of technology, but rather only seek an opportunity to participate fully in it. **Therefore, local television broadcasters must be given the first opportunity to participate in technological advances.** The Commission has set a precedent in its HDTV proceedings for addressing broadcaster needs to ensure that free television and its hundreds of millions of viewers are able to continue to provide quality service in this era of technological explosion. Therefore, as digital video compression technology advances, broadcasters should be not be deprived of the right to use this technology to create multiple channels to compete directly with cable and its multiple channels. As satellite technology advances, broadcasters should not be deprived of the right to use spot beam technology, for example, to create alternative distribution mechanisms to further compete with cable and telco delivery. Broadcasters are committed to free television and only ask the Commission to help it to obtain the resources necessary to support the delivery of free television to the public despite the considerable competition offered by services such as cable for which a fee is charged.

PUBLIC INTEREST BENEFITS

The Commission has identified four core public interest goals in its regulation of broadcast television. These are: **(1) localism; (2) diversity; (3) nationwide availability of service; and (4) public interest standards for broadcasters.** Group W believes that the policy changes suggested above not only are consistent with current levels of these goals, but will ultimately add to the benefit the public receives. Summarized briefly below are the public interest benefits as seen by Group W:

1. **Localism.** Net local programming would increase as stronger stations have the resources to produce more programming and have the time periods in which to place such programming. Local sports would be more likely to stay on free television, as stronger locally operated stations can bid effectively against regional sports networks and local cable sports channels.

Existing local news and programming resources would be preserved and used efficiently to provide new programming to fill the available hours on both stations. Local program quality would be maintained and increased as stations' return on programming resources increases.

2. **Diversity.** Depending on diversity of ownership alone to maintain diversity of programming would prove to be an unsuccessful policy in today's difficult competitive environment. Stations which are consistently weak financially simply cannot afford the quality programming to maintain true diversity. On the other hand, an existing committed local broadcaster, with strong financial resources, can bring more diverse programming into the marketplace by owning and operating multiple stations. Old re-runs and movies would be replaced by local news, sports and information or other high-quality syndicated programming. Combined stations would have the increased financial ability to compete for a variety of quality programs. Furthermore, greater resources and efficiencies would allow diverse local production to remain viable in the market and find a home on a second station.

3. **Nationwide Availability of Service.** Multiple ownership would clearly strengthen the weaker local free television outlets and in many cases preserve them from failure. Free television would be given the multi-channel opportunity to compete with cable for audience and advertising revenues. New revenue sources for all

stations involved would allow better competition for quality programming and talent, much of which is now moving to the cable industry.

4. **Broadcasting in the Public Interest.** Ownership of a second station would create a new outlet for local news, information, and public affairs programming by stations with the financial resources to produce such programming. The record is clear that many financially-strapped independent stations provide little local news, information, or public affairs. A multiple station owner could afford to do substantial local programming, such as a local television talk block on a daily basis, a multiplicity of newscasts at various times throughout the day using the resources of a single news department, free local sports on an expanded basis, and higher quality entertainment programming demanded by local viewers.

CONCLUSION

Competition in the video marketplace has dramatically reduced the financial performance of over-the-air television stations, thus weakening their ability to serve their audiences and fulfill their public interest mandate. In order to respond to the challenge of multi-channel competitors, broadcasters need regulatory flexibility to create new opportunities in the delivery of free television programming in their local service areas. Allowing strong local stations to own more than one station, or at a minimum to program significant blocks of time on other stations in their markets, will provide multiple benefits, including: (1) new revenue sources for the stations; (2) operating efficiencies in the use of existing local news and programming resources; and (3) more diversity and higher quality local programming available to the public.

The free U.S. over-the-air television service is the best in the world because the Commission has allowed it to operate as a profitable private business with minimum regulation. These profits have generated the highest quality programming for the American viewing public. **If free television is to continue to be great, indeed if it is to survive, broadcasters must be free to compete with pay services over multiple-channel systems. Otherwise, it will become a second-class business, providing second-class service, and the losers will be those millions of Americans who rely on over-the-air broadcasting for their television viewing.**

Therefore, Group W respectfully submits that the Commission issue a Notice of Proposed Rule Making incorporating the recommendations contained herein.

Respectfully submitted,

Westinghouse Broadcasting Company, Inc.

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