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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 92-259
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	
	)	
Broadcast Signal Carriage Issues	)	
	)	
Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates	)	MM Docket No. 90-4
	)	
Request by TV 14, Inc. to Amend Section 76.51 of the Commission's Rules to Include Rome, Georgia, in the Atlanto, Georgia Television Market	)	MM Docket No. 92-295 File No. RM-8016

TO: The Commission

PETITION FOR CLARIFICATION AND/OR PARTIAL RECONSIDERATION

1. Press Broadcasting Company, Inc. ("Press"), licensee of Station WKCF(TV), Clermont, Florida, hereby seeks clarification and/or partial reconsideration of one aspect of the Commission's Report and Order ("R&O"), 58 F.R. 17350 (April 2, 1993), in the above-captioned proceeding. As discussed below, the factors which, according to the R&O, may influence a station's inclusion in (or, presumably, exclusion from) a particular market for "must-carry" purposes should be refined to insure that the Commission's "must-carry" rules operate consistently with established judicial guidelines and with relevant copyright and public interest considerations.

2. Press recognizes that, in addressing the overall

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"must-carry" situation, the Commission's discretion was substantially circumscribed by Congress in the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). Thus, for example, the Commission cannot be faulted for adopting the various statutorily-mandated provisions governing most aspects of "must-carry".

3. However, to the extent that the Commission retained some measure of administrative discretion, and to the further extent that, in the R&O, it has elected to exercise that discretion, Press respectfully submits that the Commission may be taking a step which could have unfortunate repercussions. The particular subject of Press' concern is the list of factors which the Commission has indicated it will consider in assessing proposed changes in a station's "must-carry" market. See R&O at ¶47. In Press' view, that list is both over-inclusive and under-inclusive.

4. First, according to the Commission,

> [t]o show that [a] station provides coverage or other local service to the cable community . . ., parties may demonstrate that the station . . . is located close to the community in terms of mileage.

Id. But mere geographic proximity is not in and of itself evidence of coverage or service in any meaningful way. This is particularly true in view of the fact that it is not at all clear whether the proximity refers to the distance between the cable community, on the one hand, and, on the other, the station's city of license, its transmitter, or some other aspect of the

station's operation.

5. As this factor is stated in the R&O, implementation of that factor could have unintended adverse effects. For example, if mere geographic proximity between, say, a cable community and a station's transmitter is all that is needed to secure "must-carry" status, stations might be encouraged to relocate their antennas as closely as possible to communities with desirable cable systems. If they were successful in that effort, such stations could conceivably reduce their power substantially, relying on the cable system and the "must-carry" rules to assure delivery of their signal throughout the market. [1/] Such a result would be inconsistent with standard notions of copyright law and the "public interest", within the meaning of the Communications Act of 1934, as amended.

6. After all, cable systems enjoy exemption from copyright liability for carriage of "must-carry" signals primarily because such signals are assumed to be already available over-the-air in the cable market. Thus, before the Commission alters a station's "must-carry" status, the Commission should be satisfied that, in fact, that station's signal is available throughout all (or nearly all) of the relevant cable

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[1/] Conceivably, a full service station located in a well-cabled area could dramatically reduce its power -- and, therefore, the over-the-air reach of its signal -- by establishing a network of microwave links to deliver its signal to the various cable head-ends. Such a result, it seems to Press, would be inconsistent with the Commission's statutory obligation to assure efficient use of the radio spectrum.

market. Such an approach would be consistent with the Commission's own statutory mandate to assure the most efficient utilization of the spectrum, as it would encourage licensees to take maximum advantage of their frequencies. See 47 U.S.C. §307(b). By contrast, any rule or policy which might be used by a licensee as justification to reduce power (and, therefore, reduce available over-the-air service) would run contrary to the statutory mandate. [2/] The Commission's new "must-carry" rules, to the extent that they include certain signal strength requirements, appear to be designed to address the same concerns which Press is addressing here. Press wishes to assure that the Commission's passing reference to geographic proximity (apparently irrespective of signal coverage) cannot and will not be invoked to permit any station to minimize its over-the-air facilities.

7. Additionally, Press suggests that at least one more factor should be added to the list of factors to be considered by the Commission in determining the propriety of changing a station's must-carry market. That factor is whether the station can demonstrate that it has chosen to include themselves in the market by, e.g., voluntarily agreeing to pay programming costs based on market-wide prices. Press' own peculiar situation

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[2/] Press' suggested approach would also be consistent with legitimate concerns about any "must-carry" regime which could compel cable operators to carry broadcast signals which cable subscribers could not themselves receive over-the-air.

illustrates this. Station WKCF(TV) is licensed to Clermont, Florida, which is near Orlando. Periodically, questions have been raised as to whether Station WKCF(TV) should be deemed "local" to the overall Orlando market for "must-carry" purposes. [3/] Press has consistently taken the position that it has acquired its programming by bidding against other Orlando-market stations, that it has paid the full market price for that programming, and that its program suppliers have consistently understood that their programming was being sold to Press for broadcast to the Orlando market. In other words, from a copyright perspective, the copyright holders have been able to derive, through arm's length negotiations with Press, satisfactory consideration for the broadcast of their programming in the Orlando market. Where a broadcaster so includes itself, voluntarily, in a particular market, such voluntary inclusion can and should be considered compelling evidence that the station is "local" for "must-carry" purposes.

[3/] Press has invariably been found to be "local" to the Orlando market. See Press Television Corp., 4 FCC Rcd 8799 (1989), aff'd on recon., 6 FCC Rcd 6563 (1991); Press Television Corporation, 7 FCC Rcd 7218 (1992). Moreover, the Commission has proposed formally to expand the designation of the Orlando market to include "Clermont" therein. See Notice of Proposed Rule Making, 8 FCC Rcd 94 (released December 31, 1992). Press anticipates that that proposal, which is unopposed and which, as a technical matter, could and should have been granted in the R&O (see R&O at ¶50), will be granted in the near future. In the event that no such grant has occurred by the time that the instant Petition is considered by the Commission, Press specifically requests that the Commission take immediate, favorable action with respect to the formal inclusion of "Clermont" in the Orlando market designation.

WHEREFORE, for the reasons stated, Press Broadcasting Company, Inc. requests that the Commission clarify and/or partially reconsider its Report and Order in the above-captioned proceeding as set forth above.

Respectfully submitted,

/s/ Harry F. Cole
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