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November 29, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

Re: MM Docket No. 92-259  
Broadcast Signal Carriage Issues

Dear Sir:

Midwest KAAL Corporation, licensee of Station KAAL-TV, Austin, Minnesota ("Station KAAL"), though counsel and in accord with Section 1.1206 of the Commission's rules, hereby offers brief comments ex parte in strong support of a portion of the petition for reconsideration filed by the National Cable Television Association ("NCTA") in the above-referenced rulemaking proceeding. Specifically, Station KAAL urges the revision of new Section 76.62(a) of the Commission's rules which now requires carriage of the complete schedule of any distant broadcast signal carried on a cable system except where such carriage is prohibited by rule. See Petition of the National Cable Television Association for Reconsideration, filed May 3, 1993 in MM Docket No. 92-259, at 18-20.

As NCTA points out, there is no statutory basis for requiring that cable operators adopt an all-or-nothing stand with respect to the carriage of distant broadcast signals. Further, since the consent of the affected parties--broadcaster and cable operator--is required to permit part-time carriage, it is difficult to imagine a sound public policy rationale which justifies the Commission's intrusion into cable operators' market-directed efforts to offer programming which serves their subscribers' interests. In contrast, Station KAAL herein describes from its own experience how the enforcement of the new rule would seriously harm local television service.

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Special market circumstances led to Station KAAL's current need to rely on the part-time-only carriage of a distant signal in its market, part-time carriage that would not be permitted if the rule is retained intact. Due to a faulty FCC frequency allocations policy that has since been corrected, for over a decade Station KAAL's Channel 6 signal suffered severe over-the-air interference from a new non-commercial FM station's operation in Rochester, Minnesota. Rochester is within Station KAAL's hyphenated market of Austin, Minnesota-Rochester, Minnesota-Mason City, Iowa. This debilitating impediment to Station KAAL's service to Rochester was only corrected last year when the FCC approved the relocation of the interfering educational station to a new frequency in the commercial FM band. See Report and Order in MM Docket No. 91-103, 7 F.C.C. Rcd 6505 (1992).

During the ten-year plus period when KAAL was virtually unwatchable over-the-air in a major part of its market, the Rochester cable system conducted a viewer study which found distant station KSTP-TV, Minneapolis, Minnesota to be "significantly viewed" in Rochester. Despite this change in KSTP's status, however, the Rochester cable system recognized the importance to Station KAAL of its network's viewers in Rochester, and the parties entered into an agreement whereby, in exchange for KAAL not pursuing its syndicated exclusivity rights, the cable system provided KAAL with the equivalent of network non-duplication protection against KSTP. The ratings protection this provides to KAAL has played a key role in providing resources that are essential for Station KAAL to offer its current level of local television service to Rochester.

Absent the Commission's recent stay of new Section 76.62(a), however, Station KAAL would be denied this crucial benefit even though it serves the interests of all concerned parties. Necessarily, of course, Station KSTP has no objection to the KAAL/cable system arrangement and--as required by the retransmission consent rules--has expressly consented to this type of carriage arrangement. In sum, if Section 76.62(a) is not revised, local television service in this market will be seriously harmed for no public or private purpose.<sup>1</sup>

For many years, the FCC's policy has been to remove itself from intruding in the marketplace except where there is a

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<sup>1</sup> Station KAAL suggests that the rule should be amended to require only the full-time carriage of local television signals.

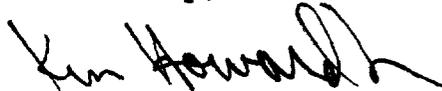
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compelling need for government regulation. The FCC has recognized that intrusive government policies of good intent often instead frustrate viewer choice. The Commission should recognize on reconsideration in this proceeding that this is exactly such a situation.

Market forces are virtually certain to provide greater public benefits than the overbroad regulatory fiat of current Section 76.62(a). The public interest thus requires the revision of Section 76.62(a) to permit partial carriage of distant television signals where the affected distant station so consents.

Thank you for considering these comments. Please contact the undersigned if you require additional information about this fact situation.

Sincerely,



Kenneth C. Howard, Jr.  
Counsel to Station KAAL-TV

cc: Chief, FCC Policy & Rules Division  
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Robert W. Hubbard, Station KSTP-TV  
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