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December 29, 1993

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 93-254 / Limitations On Commercial Time On TV Stations

Dear Mr. Secretary:

On December 20, we filed Joint Comments in the above-referenced proceeding on behalf of various broadcast licensees and a national advertising representative association. We have discovered that one licensee was omitted from the list of participating parties on pages 7 and 8. Accordingly, we are resubmitting five copies of the Joint Comments with corrected pages 7 and 8 to reflect the full list of parties joining in the comments. No change has been made in the substance of the comments.

Please contact this office if there is any question regarding this matter.

Sincerely,

William H. Fitz

William H. Fitz

Enclosure

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List A B C D E

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

In the Matter of)
)
Limitations On Commercial Time) MM Docket No. 93-254
On Television Stations)

To: The Commission

JOINT COMMENTS

The undersigned broadcast licensees and national advertising representative association (the "Joint Parties"[1]) submit these comments in response to the Notice of Inquiry, 8 FCC Rcd 7277 (1993). The Notice inquires whether the FCC should "reestablish[] limits on the amount of commercial matter that a television station can broadcast."

Over-the-air television stations which, uniquely among all video media, provide local, universal and free television service, confront daunting challenges as they face a burgeoning variety of multichannel, multi-revenue-stream competitors and prepare to make the major investments that will be required for advanced television. Particularly in this environment, the Joint Parties respectfully urge that it is vitally important that the FCC avoid eroding the one video service available free to all Americans by imposing needless, inherently unfair regulations that would stifle competition, innovation and free speech.

[1] The undersigned broadcast licensees represent a cross-section of broadcast stations, both VHF and UHF, serving small, medium-sized and larger communities. Station Representatives Association is an association of representatives for stations which serve as sales agents for TV and radio stations in connection with sale of station time to national and regional advertisers. In television, on an industry-wide basis, such sales account for the largest single source of revenue of stations.

Since its 1984 decision to eliminate television commercial-time restrictions,[2] the FCC has relied on private marketplace forces, not government-imposed standards, to determine appropriate commercial levels on television stations with the exception of the new Congressionally-mandated limits on certain children's programming. See Television Deregulation, 98 FCC 2d 1076, 1101-05 (1984), recon. denied, 104 FCC 2d 357 (1986), aff'd in part and remanded in part sub. nom., Action For Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987).[3] The FCC's 1984 decision reasoned that the substantial direct and indirect costs of governmental intervention -- including "the paperwork burden of record keeping, reviewing and monitoring" and "the anti-competitive affects [on] or stifling commercial experimentation [by broadcast stations] and intrusion into the realm of commercial speech protected by the First Amendment"[4] -- were unjustified and unnecessary in view of the safeguards provided by competition in the video marketplace.

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[2] The prior requirements included, for example, 16-minutes-per-hour-processing guidelines and a ban on program-length commercials. See Notice at ¶ 2, fn. 15.

[3] In 1991 the FCC, as required by the Children's Television Act of 1990, adopted rules limiting the number of minutes that commercial television stations and cable operators may air per hour during certain children's programming. See Children's Television Programming, 6 FCC Rcd 2111, Erratum, 6 FCC Rcd 3535, reconsideration granted in part and denied in part, 6 FCC Rcd 5093, further modified by Order, 6 FCC Rcd 5529 (1991). The new rule, although limited to children's programs, nevertheless imposes significant administrative burdens on television stations. To comply, for example, designated staff must closely monitor children's programs to assure that no more than the prescribed amounts of advertising air in any clock hour; stations must take steps to assure that commercials scheduled in such programs do not contain the likeness of a program character or are otherwise associated with the program in order to avoid creating a prohibited program-length commercial; and they must prepare a certification of commercial compliance for placement in the public file each quarter and explain any commercial overages in the license renewal application.

[4] Television Deregulation, 98 FCC 2d at 1103.

That cogent cost-benefit regulatory analysis remains just as valid today under the President's recently announced program "to reform and make more efficient the regulatory process." _See_ Executive Order 12866 of September 30, 1993, 58 Fed. Reg. 51735 (October 4, 1993). With the aim of promulgating only necessary regulations and reducing the regulatory burden on the American public and industries, the first principle of regulation under this Executive Order requires that agencies specifically "identify the problem that it intends to address (including, where applicable, the failure of private markets ... that warrant new agency action)."

As one of two potential grounds for re-regulation, the FCC's _Notice_ observes that "if the market were to fail to regulate commercial excesses, then it [the FCC] would be obliged to reconsider that aspect of deregulation." _Notice_ at ¶ 2. It is most notable, therefore, that after nearly a decade of experience, the FCC does not identify in the _Notice_ any development which it classifies, even on a tentative basis, as a commercial excess or abuse. This lengthy experience during the period of deregulation provides strong reason for the FCC to conclude that it would be unwise and inappropriate to reimpose costly, burdensome commercial guidelines on the television industry.

As an alternative potential basis for re-regulation, the FCC observes in the _Notice_ that it is not bound by the 1984 deregulation decision if changed circumstances in the video marketplace warrant a different result. _Notice_ at ¶¶ 3, 6. To be sure, major changes have occurred in that marketplace. But the developments have augmented rather than reduced self-regulatory forces, making it even less necessary for FCC commercial standards.

The FCC has well documented the proliferation of sources of video programming[5/] and the "plethora of new services and choices for video consumers."[6/] For example, as the FCC has found,[7/] there are nearly 1,500 operating full-power TV stations, Fox has emerged as a robust competitor to ABC, NBC and CBS,[8/] and there are well over a 100 national or regional cable networks. The FCC has further found that "[b]y 1990, approximately 90 percent of television households were passed by cable; of all television households, approximately 60 percent subscribed to cable"; that "[w]ith cable channels included, more than half of all households now receive at least 30 channels"; and that "[o]ther multichannel video providers, such as home satellite dish systems and MMDS, as well as home videocassette recorders, also provide alternative sources of video programming."[9/] This expansion of multichannel and other video alternatives has made the television marketplace intensely competitive.[10/] And it now appears that television stations will face competition from telephone companies, as those entities seek to play a major

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5/ See e.g., Review of the Commission's Regulations Governing Television Broadcasting, 7 FCC Rcd 4111 (1992) ("NPRM"); Notice of Inquiry, 6 FCC Rcd 4961 (1991); F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996 (1991) ("OPP Report").

6/ NPRM, 7 FCC Rcd at 4111.

7/ Id. at 4112.

8/ Recent announcements by Paramount Pictures and Warner Bros., of course, suggest that other broadcast networks may be on the horizon.

9/ NPRM, 7 FCC Rcd at 4112. More than 92 million of the nation's 92.1 million TV homes are passed by cable, and more than 60% of TV households subscribe to cable. See Broadcasting, August 17, 1992, at 45. And, over 78% of TV households have video-cassette recorders. See Broadcasting and Cable Market Place 1992, at xxiii; OPP Report, 6 FCC Rcd at 4066.

10/ See, e.g., OPP Report, 6 FCC Rcd at 4018-20.

role in the emerging superhighway of multichannel, multifaceted services.[11/]

The variety of sources of video programming available to consumers provides a compelling basis for continuing the existing regulatory approach which relies on marketplace forces to govern the level of commercialization. To the extent that viewers might become dissatisfied with commercial levels on some television programs, they have a larger number of alternatives today than in 1984, thereby assuring the existence of a strong economic incentive for stations to limit commercial load. The composition of today's video marketplace makes it especially unwise to single out television stations for regulation of commercial limits and to interfere with the natural development of broadcast stations as they seek to compete with multichannel video providers -- competitors that are not wholly dependent on advertiser support for their viability. In addition, in view of the absence of documented commercial excesses and abuses requiring governmental intervention, well-established First Amendment principles make it inappropriate for the FCC to adopt standards which would impede the free flow of truthful and nondeceptive speech in lawful commercials by broadcast stations.[12/]

The Notice makes reference to the emergence of 105 stations which have opted, at least in part, for a "home shopping" rather than the

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[11/] Last year, of course, the FCC authorized local telcos to engage in the new video dial tone service, see Telephone Company-Cable Television Cross-Ownership, CC Dkt. 87-266, FCC 92-327 (released August 14, 1992), and earlier this year, the Administration announced its "National Information Infrastructure: Agenda For Action," a proposal for developing a nationwide communications infrastructure that will disseminate a wide range of service and information to every office building and household in the U.S. Most recently, TCI (the largest cable company) has agreed to merge with Bell Atlantic, a telco-cable combination that reportedly would have access to over 40% of all American households.

[12/] Infomercials, for example, allow for the presentation of more detailed information to viewers.

traditional entertainment-information format. Notice at ¶¶ 3, 6. But that development does not represent a breakdown in the marketplace warranting intrusive FCC regulations. Such stations -- which include several minority-controlled stations and a number of marginal ones which might not otherwise have become operational -- comprise less than 10% of licensed full-power, commercial television stations. The FCC has repeatedly found, moreover, that "home shopping stations are serving the public interest, convenience and necessity." Home Shopping Stations, 8 FCC Rcd 5321 (1993), petition for reconsideration pending; accord, Media Family, Inc., 2 FCC Rcd 2540 (1987). Significantly, it determined earlier this year that "[t]here is no evidence that the marketplace has failed to serve television viewers with its evolution to the present number and variety of home shopping services." Id. at 5326.

The FCC has "view[ed] the relatively new 'format' as an example of licensee experimentation and regulatory flexibility," not as a marketplace failure, and has concluded that "such stations, by their news and public affairs programs, provide another outlet for responding to the issues confronting the community." Family Media, Inc., 2 FCC Rcd at 2542. It has also found that "the format's continued success and expansion would not likely occur without significant viewer support;" that "the existence and carriage of home shopping broadcast stations play a role in providing competition for nonbroadcast services supplying similar programming;" and that "home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner." Home Shopping Stations, 8 FCC Rcd at 5326-27. Thus, the fact that a relatively few stations across the country have experimented with home shopping programming does not provide a basis for reimposition of commercial limits on the television industry.

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In summary, neither marketplace failures nor changed circumstances since 1984 justify reestablishing commercial limits on television stations, an action that would impose significant burdens on one competitor in the video marketplace and impede competition, innovation and free speech. Accordingly, the Joint Parties respectfully urge that the FCC continue its regulatory approach that relies on marketplace forces, and not FCC standards, to monitor the commercial level of off-air television stations, with the exception of the Congressionally-mandated limits on 12-and-under children's programming.

Respectfully submitted,

BENEDEK BROADCASTING CORPORATION

KDLH(TV), Duluth, MN
KHQA-TV, Quincy, IL
WBKO(TV), Bowling Green, KY
WHSV-TV, Harrisonburg, VA
WIFR(TV), Rockford, IL
WTAP-TV, Parkersburg, WV
WTOK-TV, Meridian, MS
WYTV(TV), Youngstown, OH

CHRONICLE BROADCASTING CO.

KAKE-TV, Wichita, KS
KLBY-TV, Colby, KS
KRON-TV, San Francisco, CA
KUPK-TV, Garden City, KS
WOWT(TV), Omaha, NE

LIN BROADCASTING CORPORATION

KXAN-TV, Austin, TX
KXAM-TV, Llano, TX
KXAS-TV, Ft. Worth, TX
WAND(TV), Decatur, IL
WANE-TV, Ft. Wayne, IN
WAVY-TV, Portsmouth, VA
WISH-TV, Indianapolis, IN
WOOD-TV, Grand Rapids, MI

MIDWEST TELEVISION, INC.

KFMB-TV, SAN DIEGO, CA
WCIA(TV), CHAMPAIGN, IL
WCFN(TV), SPRINGFIELD, IL
WMBD-TV, PEORIA, IL

PROVIDENCE JOURNAL COMPANY AND
KING BROADCASTING COMPANY

KASA-TV, Santa Fe, NM
KMSB-TV, Tucson, AZ
WCNC-TV, Charlotte, NC
WHAS-TV, Louisville, KY

KGW-TV, Portland, OR
KHBC-TV, Hilo, HI
KHNL(TV), Honolulu, HI
KING-TV, Seattle, WA
KOGG(TV), Wailuku, HI
KREM-TV, Spokane, WA
KTVB(TV), Boise, ID

THE SPARTAN RADIOCASTING COMPANY

KIMT(TV), Mason City, IA
WBTW(TV), Florence, SC
WJBF(TV), Augusta, GA
WMBB(TV), Panama City, FL
WSPA-TV, Spartanburg, SC

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