Independent Television

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Mr. Roy Stewart
Chief,
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Prime Time Access Rule: MM Docket No. 94-123
Written Ex-parte Communications

Dear Mr. Stewart:

During our meeting with FCC staff on June 29, 1995, the staff requested additional information that would quantify the negative impact on independent stations if the Prime Time Access Rule (PTAR) was repealed. The following provides additional information addressing this issue.

Background

There are a number of ways to quantify the loss to independent stations associated with a repeal of the Prime Time Access Rule. In our initial comments, we demonstrated that, on average, 16% of an independent station's total revenues emanate from the one hour access period.[1] The statistical analysis performed by the Law and Economics Consulting Group, Inc., demonstrated that access period ratings on independent stations would drop by 2.34 ratings points if the rule was repealed, representing a 58% decline in access period ratings.[2] Using this basic analysis we can estimate the net loss to independent stations in several ways.

Please note that the analysis that follows dramatically under estimates the total revenue loss to independent stations. These estimates are based solely on the financial impact of a ratings loss associated with repealing PTAR only during prime access.

The analysis does not attempt to calculate additional ratings losses that would occur outside the prime time access period. As LECG's study points out, repealing the Prime

[1] *INTV Comments* in MM docket No. 94-123, filed March 7, 1995, at 44.

[2] Law and Economics Consulting Group, Inc., *Economic Report*, MM Docket Nol 94-123, filed march 7, 1995 at 58.

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Time Access Rule will reduce station ratings not only during the access period, but also during the first hour of prime time following the access period.

Also, the analysis does not attempt to forecast additional loss of profits that would result from an increase in programming prices if the Prime Time Access Rule was eliminated. As we documented in our initial comments, our member stations anticipate that program prices for Grade A off-network programs are expected to increase by 38%, Grade B off-network programs would increase by 28%. If stations were forced to bid for top quality first run programs, a station's programming costs for the access period would rise by 17%.[3]

In short, the revenue loss must be combined with the expected increase in programming costs. To keep the analysis simple, however, we focus solely on the revenue loss associated with a decrease in ratings. We would hope, however, that the FCC will bear in mind that programming costs will be increasing at the same time. In fact, that is why opponents of the Prime Time Access Rule, especially Disney, are in this fight – to increase the price they get for off-network programming.

Repealing PTAR equals a 9.3% drop in total station revenue, wiping out the profit margin and cash flow of many stations.

It is safe to assume that a loss in ratings correlates directly with a loss in revenue.[4] To the extent stations receive, on average, 16% of their revenues during the access period, a 58% decline in access period ratings equals amounts to an overall 9.3% decline in total station revenues.

Given the fact that independent stations, especially UHF independent stations are, from a financial perspective, the weakest stations in a market, this will have a devastating impact on their ability to provide service to their local communities. This will be discussed more fully below. There are very few businesses that can absorb a 9% decline in total revenue without reducing service.

Table 1 illustrates the revenue impact of a 9.3% revenue loss on independent and Fox affiliated stations using the *1994 NAB/BCFM Television Financial Report.* This report arranges financial data based on market subsets. For independents, the report examines markets 1-10, 11-25 and 26-50. Fox affiliate financial data are reported in two market categories; markets 1-25 and markets 26-50. In each market category the report analyzes

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[3]*INTV Comments*, Appendix Volume, Tab 7 at 1-3.

[4]This assumption actually underestimates the loss in revenue that would confront many local stations. According to LECG's Economic Report, independent stations would suffer, on average, a 2.34 ratings point loss based on an average of 4.01 ratings during the access period. *LECG Economic Report* at 48. Such a loss would bring the average station's ratings during the access period from 4.01 to 1.66 ratings points. Many advertisers will not purchase time on a station unless it can guarantee at least a 2 rating. As a result, the ratings decline associated with a repeal of the Prime Time Access Rule may drive away advertisers on stations because they would fall below the 2 ratings point threshold. Thus, the revenue loss would be far more dramatic than the analysis presented above.

total revenue, cash flow and profit. For each market category, statistics are provided for the average station, median station, and the 25th percentile.

The table examines the impact of a 9.3% decline in total station revenue. For example, the average independent station in markets 1-10 had approximately $42 million dollars in annual revenue, a cash flow of $11 million and a profit of $7.6 million. A 9.3% decline in total revenue amounts to $3.9 million. For the average independent station in these markets, this would reduce cash flow from $11 million to $7.1 and profit from $7.6 million to $3.7 million or 51%.

This analysis reveals a dramatic reduction in independent station and Fox affiliate revenue. However, the most telling statistics occur with the "marginal" stations.

For example, looking at the 25th percentile stations in the top ten markets, the 9.3% revenue loss all but wipes out these stations' cash flow (from $1.15 million to $83 thousand). Also, with PTAR in place, these stations had a negative pre-tax profit of $570 thousand. Eliminating PTAR would put these stations $1.63 million in the red.

The statistics become more dramatic in the medium and smaller markets. For the median station in markets 11-25, with elimination of the Prime Time Access Rule, profitability would drop from $1.2 million to a loss of $310 thousand. In these markets, stations in the 25th percentile would see their red ink nearly double with respect to their profitability.

The same is true in markets 26 to 50. In these markets the average station is currently earning $538 thousand in profits. Repealing the Prime Time Access Rule would wipe out all the profits of the average station and result in a loss of $279 thousand. This shift from profitability to non-profitability also occurs for the median station in these markets. As for the 25th percentile stations, the red ink grows dramatically.

Without belaboring the point, repealing the Prime Time Access Rule would have a tremendous negative impact on independent and Fox affiliated stations in the top 50 markets. This is especially true for the "marginal" stations, *i.e.*, those in the 25th percentile. The revenues loss associated with repeal of the rule would mean a change in the balance sheet from black to red.

Estimated loss based on a percentage of annual advertising revenue $312 million dollars.

As described in Table 2, the dollar loss to independent and Fox affiliated stations can be derived from looking at total loss in advertising revenue resulting from a decline in ratings. In the top 50 markets, we believe this loss to be approximately $312 million dollars annually. The basis for this conclusion is as follows.

A local station's total revenue is derived from two primary sources: local advertising sales and national spot sales. Total advertising revenue from these two sources for all independent and Fox affiliated stations in all markets amounts to $3.62 billion dollars annually. Of this amount, 85% comes from independent and Fox affiliated stations in the top 50 markets. This amounts to $3.367 billion.

The $3.367 billion represents the total revenue for independent and Fox affiliated stations that is derived from all time periods. As we noted above, however, on average, the access period accounts for 16% of a local station's total revenue. Thus, the annual revenues attributable solely to the access period is 16% of $3.367 billion, or $538.832 million dollars.

Using the LECG's analysis, repeal of the Prime Time Access Rule would lead to approximately a 58% decline in access period ratings. Making the safe assumption that losses in ratings correlate directly with a loss in revenue, one merely multiplies total access revenues ($538.832 million) by 58%. Accordingly, in the top 50 markets, independent stations (which include UPN and WB affiliates) and Fox affiliates would lose $312 million annually.

This amount can be expressed on an average per station basis. There are approximately 182 commercial, independent, UPN, WB and Fox affiliated stations in the top 50 markets. This number excludes home shopping, foreign language, and religious stations. Accordingly, this analysis estimates that the average station would lose approximately $1.714 million per year.

Revenue loss based on cost-per-point analysis.

To further corroborate the expected loss of revenue we examined actual costs-per-rating point (CPP) data from the top 50 markets. This analysis appears on Table 3. The CCP figures are based on the actual cost-per-ratings-point charged by local television stations for a 30 second spot during the access period. The figures used are for the fourth quarter of 1995. For example, an advertiser seeking to purchase a 30 second spot during the access period in LA would pay $763 per ratings point.

We have analyzed these effects using the ratings decline data reported by LECG on a market-by-market basis. In that report, LECG noted that the ratings loss associate with the repeal of the Prime Time Access Rule became more acute in smaller markets. For example, the ratings loss in the 30th market was actually 2.98 ratings points, well above the average 2.34 ratings point loss reported by LECG.[5]

To calculate the per station loss we have made the following assumptions. During the access hour, as with any time period, it is common for there to be approximately 12

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[5]As LECG explained, its report analyzes the top 30 not the top 50 markets. The top 30 markets were analyzed because there were almost no independent stations below the top 30 markets in the pre-PTAR years. Thus the top 30 markets were used because these markets provided a pre-PTAR base line.

The above analysis is based on the actual ratings declines reported by LECG on a market-by-market basis. For markets 31-50, we have used the average 2.34 ratings point decline reported by LECG. Given the fact that LECG found that the ratings decline increased -- exceeding the average -- as markets grew smaller, the analysis presented in Table 3 underestimates the actual losses occurring in markets 31-50.

minutes of commercial time (24 thirty-second spot availabilities).[6] Not all of these advertising slots will be available to a station for local or national spot advertising. It is common for syndicated programming to be sold on a "barter" basis. This means that some of the advertising slots have been filled with advertisements sold by the syndicators themselves. Also, many of these slots have been filled with a combination of promotional announcements for up-coming shows and public service announcements. On average, approximately one-third of the available 30 second slots will not be available for station advertising, leaving two-thirds of the slots, *i.e.*, 16 slots available for local stations to sell.

Using this analysis we can estimate the total revenue obtained by a station during the access period. Looking at weekdays only, (five access hours per week), there are 260 weekday access hours per year. In terms of total advertising time slots, simply multiply 16 (the number of 30 second access time slots during the access hour) times 260 hours, which equals 4,160 thirty-second weekday slots annually.

Now if one takes a station in a specific market, for example Los Angeles, we know that, on a cost-per-point basis, a single thirty-second spot is valued at $763. Over the course of the year the revenue-per-point value to a station during the access period is $3,174,080 ($763 times 4,160 thirty-second slots).

Using the market by market ratings loss contained in the LECG report, we can determine the revenue loss on a cost-per-point basis. For example, in Los Angeles, repealing the Prime Time Access Rule would result in a .46 ratings decline. In terms of actual dollars lost, this amounts to a $1.46 million dollar loss per station per year ($3,174,080 times .46 ratings point drop). In other words, the station could have earned $1.46 million more if the PTAR remained in place.

An alternative way of explaining this is to take the cost-per-ratings-point value of a thirty-second spot during the access hour -- which is $763 in Los Angeles. This means that a .46 ratings point is worth $351 dollars. This amount represents the total dollar loss per 30 second advertising slot ($763 x .46). Because there are 4,160 local advertising slots per year, this amounts to a 1.46 million dollar per station annually.

In Chicago, for example, a thirty-second access period slot is worth $403 dollars per ratings point. LECG estimates that there would be a 1.43 ratings point decline if the Prime Time Access Rule was repealed. This equals $576 loss per thirty second spot. On an annual basis this amounts to $2.39 million.

Table 3 also details the impact of this dollar loss on an average station's profitability. The average station in markets 2-10 would lose approximately $2.4 million dollars annually. Using NAB/BCFM financial data, the average independent station posted a profit of $7.7 million dollars. Taking out $2.4 million in revenue means that the average station in these markets would see a 31.6% decrease in profitability. The relative losses would become more significant in markets 11-15 (67.9% decline in profits). In markets 26-50 station profitability would be wiped out completely. Looking at the overall loss for the average station in the top 50 markets, we would expect to see a $1.455 million loss per station.

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[6]Obviously, there could be more time devoted to advertising depending on the program. The 12 minute per hour figure is a conservative estimate.

Cross-corroboration

The analysis presented above provides three separate methods of calculating the revenue loss to independent stations and Fox affiliates if the Prime Time Access Rule was repealed. As with any analysis projecting revenue declines, there will always be an upper and lower band. Nevertheless, despite employing three separate methods, the estimates of total dollar loss are remarkably close, leading to the conclusion that they fairly approximate the financial harm to independent stations if the rule is repealed.

Average Annual Per-Station Revenue Loss
Top 50 Markets
(millions)

Table 1: NAB/BCFM data	**$2.1**
Table 2: Advertising Share	**$1.714**
Table 3: Cost-per-point	**$1.455**

Thus, we would expect the actual annual dollar loss from repeal of the Prime Time Access Rule to range between $1.45 to $2.1 million per station. As noted previously, this dollar loss <u>underestimates</u> the actual revenue impact of repealing the rule. It does not take into account increased programming prices that would surely accompany the rule's repeal. Also, it does not take into account the revenue loss associated with a loss of ratings during the time periods immediately following the access rule. As all parties to this proceeding agree, losing ratings in one time period decreases ratings in the next time period.

Public interest considerations

INTV submits that the revenue losses presented above will have significant public interest ramifications. As a general rule, the Commission has always presumed that the economic health of a station is directly related to the quality of service it provides to the community. This presumption appears throughout FCC history, and no explanation is given why it should not apply in this proceeding.

As the above analysis demonstrates, million dollar losses on an annual basis will wipe out the profit margins and cash flows of numerous independent stations. Using the analysis provided by the 1994 NAB/BCFM Financial Report, the median independent station in market segments 11-25 and 26-50 will lose their profitable status. Marginal stations, those ranked in the 25th percentile, will nearly double the red ink on their balance sheets.[7]

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[7]The FCC should remember that the 1994 NAB/BCFM data base presents an extremely optimistic picture of a local station's financial situation. The report is based on 1993 data. Advertising markets, like the economy as a whole, were fairly strong. In the next few years, however, economic growth is expected to slow, and we may be entering a recessionary period. Local independent television stations will not be immune from these

The financial impact on the second and third independent stations in the market will make it even more difficult for the new off-air television networks. As we have stated in our earlier comments, new networks depend on a strong affiliate base to grow. To the extent the FCC believes that new off-air networks are in the public interest, it should not impair the financial health of their affiliate base.

At the individual station level, there is no doubt that a loss of $1.45 to $2.1 million will hurt a station's ability to provide news and public affairs programs. The report submitted by LECG clearly documents an increase in news expenditures during the 1982-1992 time period.[8] Moreover, INTV's initial comments document the explosive growth of regularly scheduled news programs on independent stations.[9] We also document the tremendous up-front costs of starting news operations. It is inconceivable that stations would be in a position to commence new news broadcasts when confronted with a 1.6 to 2 million dollar loss due to the repeal of the Prime Time Access Rule.

To be more specific, when a station faces a loss in revenue, that loss can be spread across all programming budgets. Nevertheless, cost cutting may not be spread equally across a station's total budget. For example, operating expenses for local stations are relatively fixed. To gain a further understanding of what reduced revenues would mean to existing news operations, we asked stations that currently have newscasts what would happen to news operations if access period revenues declined.[10]

Stations responding to the questions indicated, on average, that approximately 17.4 percent of their access period revenues were used to finance their news and public affairs operations. Using the revenue loss estimated presented above, this means that between $253,000 to $365,000 fewer dollars will be flowing to the average station's news and public affairs operations. Of course the impact may vary from station to station. However, the average station responding to the survey indicated that access period revenues accounted for 11.6% of their total news budgets.

The Commission should not foster policies that will force stations to cut back on service. This is precisely what will happen if the Prime Time Access Rule is eliminated. Given this analysis, repeal of the rule is completely unwarranted.

In making a final public interest analysis, the Commission should consider the following facts. First, INTV has documented real revenue losses to local independent and Fox affiliated stations. These losses will affect service adversely, especially news and public affairs operations.

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downturns. During this time period, these stations will be expected to invest millions of dollars converting to advanced television. Now is not the time to impair the economic health of these stations.

[8] Law and Economics Consulting Group, *Economic Report* at 58.

[9] *INTV Comments*, Appendix Volume, Tab 8.

[10] *INTV Comments*, Appendix Volume Tab 7 page 5.

Second, there is absolutely no evidence in the record quantifying any harm to network affiliates as a result of the off-network portion of the Prime Time Access Rule. On the contrary, network affiliates have benefitted financially from PTAR because first run syndicated programming gives them more local advertising availabilities -- hence revenue to the station -- when compared to network programming. They have provided no evidence that news and public affairs programs have suffered due to the Prime Time Access Rule. On the contrary, affiliates, especially those in the central and mountain time zones, often use the first half-hour of the access period to run their news programs.

Third, there is zero evidence that increasing prices for off-network programs will lead to greater public interest programming. Disney has made no attempt, much less a commitment, to providing more public affairs shows from the increased profits it will make in the absence of the off-network rule. It is likely that increase revenues will be used for non-broadcast purposes, such as Euro-Disney.

Finally, INTV believes that the burdens in this proceeding should be placed equally on all parties. Parties supporting repeal of the Prime Time Access Rule or the off-network rule should be required to quantify the increased public benefits that would flow from repeal. To date they have failed to do so.

Sincerely,

David L. Donovan
Vice President, Legal and
Legislative Affairs

cc: Office of the Secretary
Michael Katz, Chief, Office of Plans and Policy
The Honorable Reed Hundt
The Honorable James Quello
The Honorable Andrew Barrett
The Honorable Rachelle Chong
The Honorable Susan Ness

TABLE 1

Effect of PTAR Repeal on Profit and Cash Flow of Independent Stations and Fox Affiliates

% Revenue in Access:	16.0%
% Revenue Loss in Access:	58.0%
Overall Revenue Loss:	9.3%

Independents: Markets 1-10	Average	Median	25%ile
Revenue	$42,093,983.00	$20,208,568.00	$11,501,368.00
Cash Flow	$11,020,648.00	$6,072,000.00	$1,150,817.00
Profit	$7,691,798.00	$2,365,839.00	($570,914.00)
Revenue Loss	$3,906,321.62	$1,875,355.11	$1,067,326.95
Cash Flow	$7,114,326.38	$4,196,644.89	$83,490.05
Profit	$3,785,476.38	$490,483.89	($1,638,240.95)

Independents: Markets 11-25	Average	Median	25%ile
Revenue	$16,639,548.00	$16,375,423.00	$6,443,082.00
Cash Flow	$4,305,708.00	$2,567,410.00	$756,546.00
Profit	$2,559,101.00	$1,209,528.00	($591,137.00)
Revenue Loss	$1,544,150.05	$1,519,639.25	$597,918.01
Cash Flow	$2,761,557.95	$1,047,770.75	$160,627.99
Profit	$1,014,950.95	($310,111.25)	($1,189,055.01)

Independents: Markets 26-50	Average	Median	25%ile
Revenue	$8,811,385.00	$5,638,533.00	$3,361,718.00
Cash Flow	$2,130,100.00	$658,079.00	($168,324.00)
Profit	$538,084.00	$62,311.00	($1,255,304.00)
Revenue Loss	$817,696.53	$523,255.86	$311,967.43
Cash Flow	$1,312,403.47	$134,823.14	($480,291.43)
Profit	($279,612.53)	($460,944.86)	($1,567,271.43)

Fox Affiliates: Markets 1-25	Average	Median	25%ile
Revenue	$45,303,190.00	$32,545,171.00	$22,914,531.00
Cash Flow	$19,605,441.00	$12,979,980.00	$9,425,206.00
Profit	$13,953,565.00	$8,866,097.00	$3,894,883.00
Revenue Loss	$4,204,136.03	$3,020,191.87	$2,126,468.48
Cash Flow	$15,401,304.97	$9,959,788.13	$7,298,737.52
Profit	$9,749,428.97	$5,845,905.13	$1,768,414.52

Fox Affiliates: Markets 26-50	Average	Median	25%ile
Revenue	$13,027,793.00	$12,946,732.00	$10,466,739.00
Cash Flow	$4,560,791.00	$4,316,655.00	$2,791,412.00
Profit	$1,868,651.00	$1,372,831.00	$19,944.00
Revenue Loss	$1,208,979.19	$1,201,456.73	$971,313.38
Cash Flow	$3,351,811.81	$3,115,198.27	$1,820,098.62
Profit	$659,671.81	$171,374.27	($951,369.38)

Source: *1994 NAB/BCFM Television Financial Report*

TABLE 2

ANNUAL
ESTIMATE OF LOST REVENUE DUE TO ELIMINATION OF PRIME TIME ACCESS RULE

* **TOTAL SPOT REVENUE, ALL MARKETS INDEPENDENT AND FOX AFFILIATES**

NATIONAL SPOT	1.962 (Billion)
LOCAL (Approx.)	2.000 (Billion)
Total Revenue All Time Periods All Markets	**3.962 Billion**

* **TOP 50 MARKETS**

85% Revenue is in Top 50 Markets	**3.367 Billion**

* **ACCESS PERIOD REVENUE**

16% of Total Station Revenue	**538,832 Million**

* **ABSENT PTAR, THERE WILL BE A 58% DECLINE IN RATINGS YIELDS -- A CORRESPONDING LOSS IN REVENUE**

312,522 Million (LOSS)

TABLE 3

Rank	CPP	Rat Pt Loss	Per Station Loss	Mkt Range Avg Per Station Loss	Mkt Range CurrentAvg Profit	Mkt Range Projected Profit	Change
1	$649	-1.36	($3,671,782.40)				
2	$763	0.46	$1,460,076.80				
3	$403	1.43	$2,397,366.40				
4	$341	1.72	$2,439,923.20				
5	$461	1.4	$2,684,864.00				
6	$414	2.02	$3,478,924.80				
7	$335	2.23	$3,107,728.00				
8	$259	2.31	$2,488,886.40				
9	$183	2.31	$1,758,556.80	**Markets 2-10**			
10	$198	2.49	$2,050,963.20	**$2,429,698.84**	**$7,691,798.00**	**$5,262,099.16**	**-31.6%**
11	$213	2.5	$2,215,200.00				
12	$192	2.54	$2,028,748.80				
13	$159	2.44	$1,613,913.60				
14	$152	2.56	$1,618,739.20				
15	$171	2.69	$1,913,558.40				
16	$226	2.71	$2,547,833.60				
17	$123	2.7	$1,381,536.00				
18	$143	2.72	$1,618,073.60				
19	$182	2.78	$2,104,793.60				
20	$116	2.74	$1,322,214.40				
21	$153	2.84	$1,807,603.20				
22	$159	2.8	$1,852,032.00				
23	$143	2.83	$1,683,510.40				
24	$95	2.9	$1,146,080.00	**Markets 11-25**			
25	$104	2.81	$1,215,718.40	**$1,737,970.35**	**$2,559,101.00**	**$821,130.65**	**-67.9%**
26	$155	2.9	$1,869,920.00				
27	$181	2.92	$2,198,643.20				
28	$86	2.92	$1,044,659.20				
29	$101	2.98	$1,252,076.80				
30	$101	2.98	$1,252,076.80				
31	$111	2.34	$1,080,518.40				
32	$104	2.34	$1,012,377.60				
33	$102	2.34	$992,908.80				
34	$117	2.34	$1,138,924.80				
35	$74	2.34	$720,345.60				
36	$87	2.34	$846,892.80				
37	$113	2.34	$1,099,987.20				
38	$82	2.34	$798,220.80				
39	$74	2.34	$720,345.60				
40	$63	2.34	$613,267.20				
41	$59	2.34	$574,329.60				
42	$64	2.34	$623,001.60				
43	$59	2.34	$574,329.60				
44	$95	2.34	$924,768.00				
45	$91	2.34	$885,830.40				
46	$87	2.34	$846,892.80				
47	$46	2.34	$447,782.40				
48	$61	2.34	$593,798.40				
49	$71	2.34	$691,142.40	**Markets 26-50**			
50	$58	2.34	$564,595.20	**$934,705.41**	**$538,084.00**	**($396,621.41)**	**-173.7%**
		Avg. loss	$1,455,193.47				