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* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.
ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400
TELECOPIER
(703) 812-0486
INTERNET
FLETCHERHEALD@msn.com

FRANK U. FLETCHER (1939-1965)
ROBERT L. HEALD (1956-1983)
PAUL D. P. SPEARMAN (1936-1962)
FRANK ROBERSON (1936-1961)
RUSSELL ROWELL (1948-1977)
RETIRED
EDWARD F. KENEHAN
CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
WRITER'S NUMBER
(703) 812-

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 22, 1996

BY HAND DELIVERY

DOCKET FILE COPY ORIGINAL

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

Re: NEW - Channel 56
New Castle, Pennsylvania

Dear Mr. Caton:

Transmitted herewith are an original and four copies of a Petition for Rule Making to allot Channel 57 to New Castle, Pennsylvania its first local transmission television service. A contingent application for construction permit for a new television station to operate on Channel 56 at New Castle is being transmitted simultaneously under separate cover, and requests for waiver of the contingent application rule and Section 73.607 of the Commission's rules are included in the application.

A request for waiver of the "freeze" imposed by the Commission in Advanced Television Systems and Their Impact on the Existing Television Broadcast Service also is included in the application and in the Petition for Rule Making.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,

Howard M. Weiss
Counsel for Pappas Telecasting of America,
A California Limited Partnership

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUL 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.606(b) of the	)	MM Docket No. _____
Commission's Rules, TV Table of Allotments,	)	RM No. _____
to allot Channel 56 to New Castle, Pennsylvania	)	

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

Pappas Telecasting of America, A California Limited Partnership ("Pappas"), by counsel, and pursuant to Section 1.401 of the Commission's rules, hereby requests the Commission to institute a rulemaking proceeding for the purpose of amending the TV Table of Allotments to allot Channel 56 to New Castle, Pennsylvania, as that community's first local television service.[1] Pappas proposes to amend Section 73.606(b) of the Commission's rules as follows:

	Channel No.	
City	Present	Proposed
New Castle, Pennsylvania	- - -	56

No change in the existing allotments is requested. In support of this request, the following is stated:

---

[1] The proposed allotment of Channel 56 at New Castle is within the freeze zone established by Advanced Television Systems and Their Impact on the Existing Television Service, 52 FR 28346 (published July 29, 1987) ("Freeze Order"). Accordingly, attached hereto is a request for waiver of the Freeze Order. As explained in greater detail therein, this petition is part of a series of rulemaking petitions and applications for new television stations, many of which request the Commission to waive its Freeze Order to permit the allotment of a new television channel and/or the acceptance of an application for a new television station in approximately 40 television markets.

The city of New Castle, Pennsylvania, is an incorporated community with a 1990 U.S. Census population of 28,334. New Castle is the county seat of Lawrence County, and is a principal business center. It has its own post office and eight zip codes, and is served by five (5) different railroads.

As demonstrated in the attached engineering exhibit, the coordinates of the proposed site meet the minimum distance separation requirements with respect to all known licenses, construction permits, pending applications, and pending rulemaking proceedings.

As stated above, the allotment of Channel 56 will provide New Castle with a first local television service, which will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various States and communities. 47 U.S.C. §307(b). See National Broadcasting Co. v. U.S., 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States); FCC v. Allentown Broadcasting Co., 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression"). In addition, the proposed allotment will promote the second television allotment priority established in the Sixth Report and Order in Docket Nos. 8736 and 8975, 41 FCC 148, 167 (1952), of providing each community with at least one television broadcast station. The proposed allotment also will permit an additional network to serve the Youngstown, Ohio, television market. Therefore, the allotment will serve the public interest.

Contemporaneously herewith, the petitioner is filing an application for a construction permit for the new facility contingent upon the grant of the proposed allotment. In the event its application is granted, the petitioner will promptly construct the new facility.

WHEREFORE, in light of the foregoing, Pappas Telecasting of America, A California Limited Partnership, respectfully requests the Commission to GRANT this petition for rulemaking, AMEND the TV Table of Allotments, and ALLOT Channel 56 to New Castle, Pennsylvania, as that community's first local television service.

Respectfully submitted,

PAPPAS TELECASTING OF AMERICA,
A CALIFORNIA LIMITED PARTNERSHIP

By: _____
Vincent J. Curtis
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209
(703/812-0400)

July 22, 1996

WES, INC.
5925 CROMO DR.
EL PASO, TX 79912

915-581-0306

ENGINEERING EXHIBIT RM:

For New Castle, PA
CH 56

JUNE 14, 1996

ENGINEERING STATEMENT IN SUPPORT OF A
PETITION FOR RULE MAKING
TO AMEND
THE TV TABLE OF ASSIGNMENTS

WES, INC.

DECLARATION

I, Pete E. M. Warren III, declare and state that I am a Certified Engineer, Class I, Senior, with Master Endorsement radiating and non-radiating, by The National Association of Radio and Telecommunications Engineers, Inc., and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of WES, Inc., and that the firm has been retained to prepare an engineering statement in support of a Petition to Amend the TV Table of Assignments.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.

Pete E. M. Warren III

Executed on the 14th day of June, 1996

Narrative Statement

I. General

The purpose of this engineering statement is to support a request that the TV Table of Assignments be amended to add Ch. 56 at New Castle, PA. The proposed channel has no short-spacing, as can be seen by the channel spacing study. A contingent application will be submitted.

It should be noted that the area in question is within 320 kilometers (200 miles) of a US Border and, therefore, foreign concurrence is required.

II. ENGINEERING DISCUSSION

A. Proposed site:

We propose a site located at the following coordinates:

Latitude: 41 00 00
Longitude: 80 00 00

The allocation can be made in a wide area.

B. Channel Allocation Study

Exhibit 1 is a Channel Allocation Study of channel 56. The study indicates the required separation in kilometers to all known Licenses, Construction Permits, Open Allocations, pending Allocations, and pending Rule Makings.

Exhibit 2 is a map of the resulting arcs indicating minimum separation and a cross-hatched zone showing area to locate.

C. Public Interest Showing:

1. This would be the first allotment to New Castle, PA. The petitioner believes that the requested channel addition is in the Public Interest and, therefore, should be granted by the Commission.

2. An additional station in the area would allow for carriage of a fifth network.

III. SUMMARY

Petitioner request that the TV Table of Assignments be amended as follows:

City	Present	Proposed
New Castle, PA	None	56o

Pete E.M. Warren III

June 14, 1996

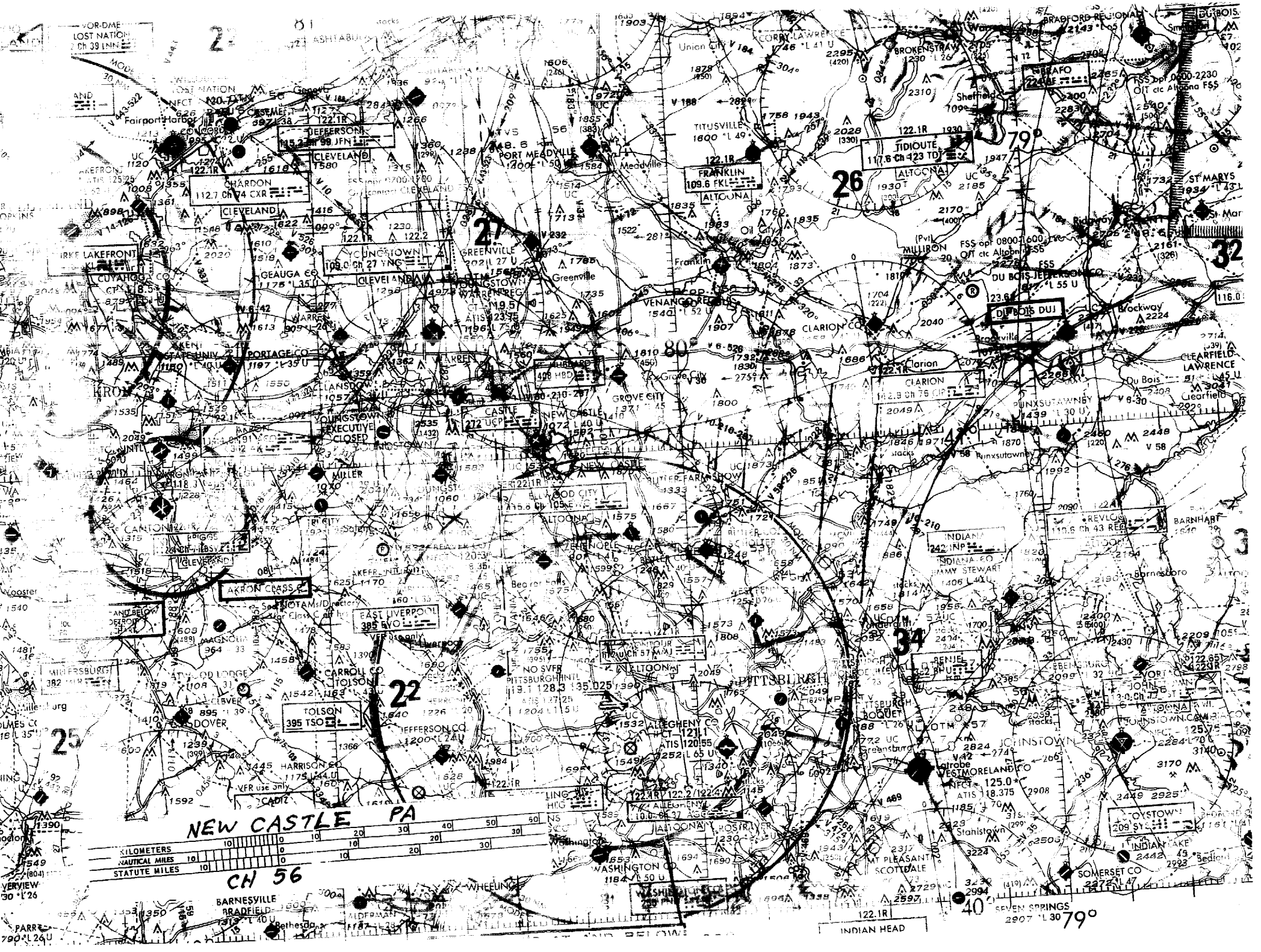
****** TV CHANNEL SPACING STUDY ******

Job title: NEW CASTLE, PA
Channel: 56
Database file name: c:\tvsr\tv960524.edx

Latitude: 41 0 0
Longitude: 80 0 0

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
41o	ALLOTM	2081	WHEELING	WV	1		210.7	120.3	119.9	.4
53+	WPGHTV	2085	PITTSBURGH	PA	1	L	180.4	56.0	31.4	24.6
53+	WPGHTV	2086	PITTSBURGH	PA	1	C	180.4	56.0	31.4	24.6
53+	WPGHTV	2087	PITTSBURGH	PA	1	A	180.4	56.0	31.4	24.6
58o	ALLOTM	2105	YOUNGSTOWN	OH	1		281.6	55.8	31.4	24.4
56+	CBLNTV	2125	KITCHENER	ON	1	L	351.9	253.8	248.6	5.2
49+	WEAO	2359	AKRON	OH	1	L	274.4	137.6	95.7	41.9
56-	ALLOTM	2826	COLUMBUS	OH	1		246.6	279.6	248.6	31.0

****** End of channel 56 study ******


NEW CASTLE PA
CH 56
KILOMETERS
NAUTICAL MILES
STATUTE MILES
CLEVELAND
CHARDON
112.7 Ch 74 CXR
YOUNGSTOWN
109.0 Ch 27 YNG
AKRON CLASS C
EAST LIVERPOOL
385 EVO
TOLSON
395 TSO
PITTSBURGH
FRANKLIN
109.6 FKL
TIDIOUTE
DU BOIS DUJ
CLARION
INDIAN HEAD
79°
80°
79°

REQUEST FOR WAIVER OF ATV "FREEZE"

INTRODUCTION

Petitioner respectfully requests that the Commission grant a waiver of its "Freeze Order"[1] so that it may petition to amend the Television Table of Allotments and apply for a construction permit for Channel 56 in New Castle, Pennsylvania. In July 1987, the Commission adopted the Freeze Order which temporarily fixed the Television Table of Allotments for 30 designated television markets and their surrounding areas (hereinafter "freeze zones").[2] The Freeze Order also proscribed construction permit applications for vacant television allotments in these areas.[3]

By its own terms, however, the Freeze Order envisions waivers "for applicants which provide compelling reasons why this freeze should not apply to their particular situations or class of stations."[4] Although New Castle falls within a freeze zone, "compelling reasons" exist for the Commission to waive the freeze.

I. FACTUAL BACKGROUND

This petition and accompanying waiver request are being filed contemporaneously with an application for a construction permit to bring New Castle its first local television service. The applicant is an entity owned primarily by Harry Pappas, a well-established broadcaster.

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[1] *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service,* RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed. Reg. 28346 (1987) ("Freeze Order").

[2] The freeze zones are determined by the minimum co-channel separation requirements set forth in 47 C.F.R. § 73.610 and have radii ranging from 169.5 miles to 219.5 miles for UHF stations depending upon the region of the country in which the proposed station is located.

[3] Freeze Order at *2.

[4] *Id.* at *3. Of course, the FCC is always required to consider waiver requests and is required to grant a waiver when grant of the waiver would better serve the public interest than application of the underlying rule or policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Simultaneously herewith, Petitioner is filing similar applications in other communities -- many of which also require a waiver of the Freeze Order.

These petitions and accompanying applications are being filed in tandem with a series of other rulemaking petitions and applications, which together cover many of the top 100 markets in which there are no full power stations available to primarily affiliate with The WB Television Network ("The WB"), a network with which the applicants have existing affiliations. The WB has indicated a willingness to enter into affiliation agreements with these applicants in the respective communities should they obtain a license.[5]

To the extent these applicants are able to obtain any of these licenses, the community will also benefit by getting a first local television service,[6] which will provide viewers in the community -- including children -- with the benefit of receiving another station's programming. And The WB will benefit, by taking another step toward achieving national penetration.[7] While these benefits -- including The WB's interest in building a nationwide network -- will obviously be maximized if the Commission waives the freeze in as many markets as are requested in these

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[5] We note, in this regard, that there is no commitment on any party's part to enter into such an agreement.

[6] Indeed, we must concede that this benefit will be achieved by grant of this waiver irrespective of whether the license is ultimately granted to any of these applicants.

[7] Establishing a nationwide network of affiliates is crucial given that The WB's national advertisers currently require coverage of *at least 80 percent* of the country. The WB's over-the-air broadcast affiliates, however, currently cover only 65% of the country. Cynthia Littleton, *WB, UPN rally the troops,* Broadcasting & Cable, June 10, 1996, at 20. Although The WB's over-the-air coverage is supplemented with superstation WGN(TV)'s cable coverage by approximately 19 percent, this cable coverage is far from equivalent to over-the-air broadcast coverage. This is because one third of all households (approximately 35 million households) do not subscribe to cable, and instead rely upon free television as their sole access to the video marketplace.

applications, the waiver request is not hinged on an all-or-nothing response. Simply stated, the more markets the better -- but each additional market will help.

II. GRANT OF THE WAIVER WILL SERVE THE PUBLIC INTEREST

As the Commission envisioned, in some cases the compelling reasons justifying a waiver will apply at the local level, while in other cases the compelling reasons will apply to a class of stations.[8] Here, there are compelling reasons at both the local *and* national level, making the grounds for a waiver particularly compelling.

At the local level, grant of the requested waiver would permit New Castle, Pennsylvania, to have a first local television service. At the national level, this petition and accompanying waiver request are part of a series of rulemaking petitions asking the Commission to allot new channels or reallot existing channels, the effect of which will be to create many new television stations -- and, correspondingly, more opportunities for a new network like The WB to obtain critical affiliates providing coverage -- in the top 100 markets. As set forth more specifically in the applications filed contemporaneously herewith, the stations will be owned by entities which have indicated their interest in affiliating the stations with The WB, a still incipient, over-the-air television network that currently lacks full power, primary affiliations in the communities specified in these applications.[9]

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[8] Freeze Order at *3.

[9] Again, however, there is no commitment to affiliate, nor are there any penalties for failure to affiliate.

A. GRANT OF THE REQUESTED WAIVER WILL ACHIEVE MARKET-SPECIFIC PUBLIC INTEREST BENEFITS

Grant of the requested waiver will serve the public interest by providing New Castle, Pennsylvania, with its first local television service. The Commission has found on at least one occasion that a waiver of the Freeze Order was in the public interest, at least in part, because the proposed reallotment would provide the first local television service to the community.[10] In that case, the Commission noted that the proposed reallotment would promote one of the overarching priorities in the allotment of television channels -- providing at least one local television broadcast station to every community.[11]

In this case, the allotment of Channel 56 to New Castle will promote this Commission objective and, at the same time, promote the statutory objective set forth in Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of television broadcast stations among the various States and communities.[12] Grant of this waiver request is a necessary first step to bringing a first television station to this community. In and of itself, this presents a compelling justification for waiving the freeze.

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[10] *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Modesto and Ceres, California)*, 6 FCC Rcd 3613 (1991) (non-commercial educational channel).

[11] *Id.*; *see also Amendment of Section 3.606 of the Commission's Rules and Regulations; Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service; Utilization of Frequencies in the Band 470 to 890 MCS for Television Broadcasting*, 41 FCC 148, 167 (1952) ("Sixth Report and Order").

[12] 47 U.S.C. §307(b). *See National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to "secure the maximum benefits of radio to all the people of the United States"); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to "secure local means of expression").

B. GRANT OF THE REQUESTED WAIVER WILL ACHIEVE NATIONWIDE PUBLIC INTEREST BENEFITS

Waiving the freeze in this and the other communities applied for in this series of rulemaking petitions and applications will also promote significant public interest objectives on a national level. A waiver will advance the Commission's long-standing public interest objective of fostering the growth of new national over-the-air television networks.[13] And it will enhance broadcast diversity and competition in the local marketplace.

1. Grant Of The Requested Waiver Will Encourage The Development Of New National Television Networks

The Commission has long espoused a commitment to foster the ability of new networks to enter and compete in the television marketplace. As far back as 1941, when the Commission adopted its Chain Broadcasting rules, a primary goal of the Commission was to remove barriers that would inhibit the development of new networks.[14] The Commission explained that the Chain Broadcasting rules were intended to "foster and strengthen broadcasting by opening up the field to competition. An open door to networks will stimulate the old and encourage the new."[15]

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[13] *See Report On Chain Broadcasting,* Commission Order No. 37, Docket 5060 (May 1941) at 88 ("*Report on Chain Broadcasting*"); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting,* 25 FCC 2d 318, 333 (1970); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 47 C.F.R. § 73.658,* 5 FCC Rcd 3211, 3211 and n.9 (1990), (citing Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (Vol. 1 Oct. 1980)), waiver extended, 6 FCC Rcd 2622 (1991).

[14] *Report on Chain Broadcasting* at 88. Although the Chain Broadcasting rules were originally adopted for radio, they were applied to television in 1946. *Amendment of Part 3 of the Commission's Rules,* 11 Fed. Reg. 33 (Jan. 1, 1946).

[15] *Report on Chain Broadcasting* at 88.

The Commission has remained steadfast in its commitment to its goal of nurturing new networks. The history of the Commission's financial interest and syndication ("finsyn") rules is a case in point. Even as the regulation itself has changed over the last 25 years, the Commission has not wavered from the goal of nurturing new networks. In 1970, when it first adopted the finsyn rule, the Commission noted that "[e]ncouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission."[16] More than two decades later, when the Commission took action first to relax and later to eliminate the finsyn rule, it did so at the behest of the newest network entrant, Fox. Indeed, pending its review of the rule, the Commission granted Fox's request for a limited waiver of the rule.[17] As Commissioner Duggan explained, "Fox has been a bright and innovative force. The existence of a fourth network is certainly in the public interest. . . . Fox deserves to be encouraged."[18] In 1995, in deciding to phase out the finsyn rule entirely, the Commission similarly evaluated the rule's impact on "[t]he overall business practices of emerging networks, such as Fox, in the network television and syndication business . . . [and] [t]he growth of additional networks, including the development of Fox and its position vis-à-vis the three major networks."[19]

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[16] *Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d at 333.

[17] *Fox Broadcasting Co.*, 5 FCC Rcd at 3211 (1990).

[18] Broadcasting & Cable, May 7, 1990, ed., p. 28; *accord, Application of Fox Television Stations, Inc. for Renewal of License of Station WNYW-TV, New York, New York*, 10 FCC Rcd 8452, 8528-29 (1995) (Commissioner Quello stating in his concurring statement, "I believe . . . that the creation of the fourth network was a compelling public interest goal.").

[19] *Evaluation of the Syndication and Financial Interest Rules*, 10 FCC Rcd 12165, 12166 (1995).

Appropriately, the Commission's goal of fostering new networks has not been limited to Fox. When the Commission first expanded its multiple ownership rule, it did so with the stated hope of fostering new networks.[20] In addition, the Commission has crafted rules and granted a variety of waivers designed to foster the development of new networks over the years. In 1967, for example, the Commission granted a waiver of the dual network rule to ABC -- the then new network entrant -- in connection with ABC's four new specialized radio networks. Although operation of the four networks violated the dual network rule, the Commission nevertheless concluded that waiver of the rule was appropriate because ABC's proposal "merits encouragement as a new and imaginative approach to networking."[21] The Commission explained that it was "of more than usual importance to encourage to the extent possible innovation and experimentation in the operation of networks."[22] In 1981, the Christian Broadcasting Network was granted a limited waiver of both the prime time access and the finsyn rules.[23] The Commission reasoned that a waiver was appropriate because the rules were adopted in part to attempt to ensure the development and growth of other "lesser" organizations.[24] The

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[20] *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, 100 FCC 2d 17, 45 (1984) ("*Multiple Ownership*") (relaxing restrictions on multiple ownership advances "Commission's diversity goal by providing alternatives to the three television networks"). Although Fox was the first of these alternatives, there has never been, nor should there be, any notion that one alternative was all that was needed.

[21] *Proposal of American Broadcasting Cos., Inc. to Establish Four New Specialized "American Radio Networks,"* 11 FCC 2d 163, 168 (1967).

[22] *Id.* at 165.

[23] *Request of the Christian Broadcasting Network, Inc. for Waiver of Section 73.658(j)(4) of the Commission's Rules*, 87 FCC 2d 1076, 1078 (1981).

[24] *Applicability of 47 C.F.R. § 73.658(g) and 47 C.F.R. § 73.658(k) to Home Shopping, Inc.*, 4 FCC Rcd 2422, 2423 (1989) ("*Home Shopping*").

Commission followed the same line of reasoning in subsequently granting Home Shopping Network waivers of the dual network and prime time access rules. The Commission noted, for example, that simultaneous operation of two Home Shopping networks was "consistent with the Commission's goals of encouraging alternatives to traditional networking."[25]

Most recently, the Commission expressed its continued interest in fostering new networks in proposing to amend various network/affiliate rules. Sprinkled throughout the notice of proposed rulemaking are questions about the impact that the proposed changes could have on the latest entrants, The WB and UPN.[26] For example, the Commission queried whether its prohibition on time optioning "might inhibit the growth of new networks."[27] Likewise, in considering whether to eliminate its prohibition on exclusive affiliation, the Commission expressed its concern "that permitting exclusive affiliation in smaller markets might preclude the development of new networks in those markets, thus depriving the public of the benefits of competition and diversity."[28] The Commission's interest in helping, not harming, new networks is clear.

Although the Commission has noted that it is not the FCC's function to assure competitive equality in any given market, it has acknowledged its "duty at least to take such actions as will create greater opportunities for more effective competition among the networks in

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[25] *Home Shopping*, 4 FCC Rcd at 2423.

[26] *Review of the Commission's Regulations Governing Programming Practices and Broadcast Television Networks and Affiliates*, Notice of Proposed Rulemaking, 10 FCC Rcd 11951, 11964-65 (1995) ("Network/Affiliate NPRM").

[27] *Id.*

[28] *Id.* at 11967.

major markets."[29] If the freeze is lifted and if Petitioner is ultimately granted a construction permit for the new station, Petitioner intends to affiliate with The WB. Petitioner has an obvious interest, therefore, both as an existing and future affiliate of The WB, in helping the network to succeed. Indeed, even if the license is ultimately awarded to another entity, the public is served by the creation of a new station available for affiliation. Petitioner is well aware that the single most difficult impediment for The WB has been finding enough television stations with which it can affiliate to gain the requisite national reach.[30] At best, The WB has been the fifth, and often the sixth, entrant in those top 100 markets in which it has an affiliate. Coupled with the fact that almost two-thirds of all television markets have only four commercial television stations, the ability of any new network to find affiliates is severely limited.

Lifting the freeze in communities in which The WB has no primary, full power affiliate will afford the applicant entities the opportunity to build new stations with which The WB can develop a primary affiliation. There is no guarantee, of course, that Petitioner's application will

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[29] *Television Broadcasters, Inc.*, 4 RR 2d 119, 123 (1965) (Commission granted a short-spacing waiver to an ABC affiliate based largely upon its finding that the station had inferior facilities compared to those available to the other national networks in the market, which resulted in a "serious competitive imbalance"), *recon. granted in part on other grounds*, 5 RR 2d 155 (1965). *See also Peninsula Broadcasting Corporation*, 3 RR 2d 243 (1964) (same); *New Orleans Television Corp.*, 23 RR 1113 (1962) (short-spacing waiver granted for the purpose of assuring the existence of a third truly competitive station in the market, thereby making available competitive facilities to the networks).

[30] The WB has, in a variety of proceedings, explained to the Commission that its primary challenge in establishing itself as a nationwide network has been finding a sufficient number of stations with which to affiliate. *See, e.g.*, Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (Oct. 30, 1995; Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (Aug. 22, 1994). UPN has expressed similar difficulties in its own efforts to establish a nationwide presence. *See* Comments of the United Paramount Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 at 21-22 (Oct. 30, 1995).

be granted or that the station will ultimately affiliate with The WB. But whether it is The WB or some other new network that gains an affiliate and thereby strengthens its efforts to obtain a nationwide reach, the public benefits. Quite simply, therefore, a grant of this waiver request will further the significant public interest objective of encouraging the emergence of a new national network or networks.

2. Grant Of The Requested Waiver Will In Turn Enhance Diversity And Competition In The Local Marketplace

Lifting the freeze will also enure to the benefit of local viewers.[31] In addition to the reasons unique to this community,[32] the Commission has long recognized that network economies of scale enhance the type of programming available to viewers by fostering news gathering, editorializing and public affairs programming.[33] As the Commission has noted, "efficiencies that might flow from the stations forming the nucleus of a new network" would "permit the production of new and diverse, including locally produced, programming."[34]

The emergence of the Fox network is illustrative. As the Commission has observed:

> The emergence of Fox has greatly enhanced source diversity by offering viewers alternative, network-quality prime time programming. It has also bolstered outlet

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[31] Network/Affiliate NPRM, 10 FCC Rcd at 11955-56 ("Furtherance of diversity and competition remains the cornerstone of Commission regulation.").

[32] *See supra* at section II. A.

[33] *Multiple Ownership*, 10 FCC 2d at 45.

[34] *Review of the Commission's Regulations Governing Television Broadcasting*, 7 FCC Rcd 4111, 4113 (1992).

diversity by providing a solid financial base to Fox's affiliates, many of which were formerly marginal independent UHF stations.[35]

Simply stated, television viewers have benefited from the advent of a new network in a number of ways beyond the choice of more network programs. Network programming, after all, is only on the air for a portion of the broadcast day, particularly for new networks. For periods when the stations receive no network feed, the enhanced financial viability of these stations has permitted them to buy higher cost (and higher quality) syndicated programming. In addition, many of the stations have been able to add their own locally produced news and public affairs shows. For example, numerous Fox affiliates now have a 10 p.m. local newscast.[36]

There is no reason to think that four -- or five -- network affiliates in a market is "enough." The public benefits with each additional source of diversity and competition. Lifting the freeze will achieve these twin goals.

3. Grant Of The Requested Waiver Is Supported By The WB's Goal Of Increasing The Amount of Educational And Informational Programming Available To Children Nationwide

Even while the Commission is contemplating regulating the amount of educational and informational children's programming that a licensee must air, it can do nothing, of course, to regulate the quality of such programming. The reality is that the newest, smallest stations in a community already have the worst chance of obtaining quality educational programming at an affordable price -- and this is unlikely to change. To ensure that *all* affiliates of The WB,

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[35] *Evaluation of the Syndication and Financial Interest Rules*, 8 FCC Rcd 3282, 3333 (1993); *modified*, 8 FCC Rcd 6736 (1993); *modified*, 10 FCC Rcd 12165 (1995).

[36] Approximately 40 percent of Fox affiliates now broadcast a local evening news program. T.L. Stanley, Michael Freeman, *"There's No Excuse,"* Broadcasting & Cable, June 10, 1996 at 5.

including any newly built stations that could result from these series of applications, have high quality, educational children's programming, The WB will add to its network feed a 30-minute educational children's program each weekday commencing in September 1997.[37] This production will continue irrespective of whether the FCC adopts a quantitative rule with respect to educational children's programming.

In addition, The WB will continue to produce and air top quality educational and informational interstitials like the "Crazy Careers" segments that it already airs. The WB also will continue to include, in its line-up of entertainment children's programming, shows that incorporate morals and lessons and include segments that have education as a significant purpose.[38] Finally, The WB will continue to air one hour of prime time family programming, which is specifically designed to include programs that the entire family can watch together. The WB has committed the 8-9 p.m. hour for this purpose, and will continue to do so.

In short, lifting the freeze could help bring The WB's network programming -- including The WB's children's programming -- to this community. This, in turn, would increase the amount of programming specifically designed to meet the educational and informational needs of children, as well as family programming, available to viewers. Lifting the freeze is therefore in the public interest for this reason as well.

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[37] This program is in development with Norman Lear.

[38] Storylines for *Animaniacs* and *Pinky and The Brain,* for example, are often adapted from classical literature or history. *Animaniacs* segments have also portrayed life during different historical periods. In other segments, the *Animaniacs* and *Pinky and The Brain* characters have provided basic introductions to modern scientific principals.

III. GRANT OF THE REQUESTED WAIVER IS NECESSARY AS SOON AS POSSIBLE

A freeze order, by its nature, causes delay. Newly emerging networks, however, are too fragile to be able to afford delay.

The WB has been on the air for only one and a half years, and has a long, treacherous path to travel before earning a profit. It has been widely reported that an initial investment of approximately $300 million was necessary for the launch of The WB and that first year losses for the network were in the $50-$75 million range.[39] The WB is not expected to break even for four years. [40] The WB, like any new network, is thus starting its network life in the red.

The establishment of a new network as a profitable entity will depend in large measure upon the life blood of any national network -- its primary affiliates. Accordingly, if The WB is to survive, let alone flourish, it must be allowed to compete for affiliates *now* in communities in which it has none. The freeze works directly against the emergence of this new network competitor. Expeditious action on the part of the Commission is needed, therefore, to allow the construction of new television stations that are potential WB affiliates. Granting the freeze waiver is a necessary step to achieving this end -- both in general and for Petitioner in particular.

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[39] David Tobenkin, *New Players Get Ready to Roll: UPN and WB Prepare to Take Their Shots*, Broadcasting & Cable, Jan. 2, 1995, at 30 ("*New Players*"). The WB's losses for the first quarter of 1996 were $24 million. Michael Katz, *Time Warner Reports First-Quarter Losses*, Broadcasting & Cable, April 22, 1996 at 55.

[40] *New Players* at 30.

CONCLUSION

For all of the foregoing reasons, Petitioner asks the Commission to grant a waiver of its Freeze Order. Indeed, in order to make opportunities available for these new potential affiliates at the earliest possible time, Petitioner also respectfully requests that the Commission rule on this petition expeditiously.

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 22nd day of July, 1996, a copy of the foregoing "Petition for Rulemaking" was hand delivered to the following:

Mr. Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, DC 20554

Barbara Lyle

Barbara Lyle