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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-7

TO: The Commission

COMMENTS OF PRESS BROADCASTING COMPANY, INC.

Press Broadcasting Company, Inc. ("Press") hereby submits, as Comments in the above-captioned proceeding, the attached "Petition for Rule Making" which Press is filing simultaneously herewith. Because some of the issues addressed in that Petition are relevant to the instant proceeding, Press believes it appropriate to include a copy of that Petition in the docket of this proceeding. Press reserves the right to submit further comments on or before the deadline established for such comments herein.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

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Counsel for Press Broadcasting Company, Inc.

November 22, 1996

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

In the Matter of

THE FUTURE OF FREE,
OVER-THE-AIR BROADCAST TELEVISION

TO: The Commission

PETITION FOR RULE MAKING

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November 22, 1996

Summary

Broadcast signals, limited though they may be, are available at no direct cost to the public, while all multi-channel alternatives require individual consumers to make direct payments (normally in the form of monthly or annual subscription fees) in order to receive the service. In other words, broadcasting is a medium which delivers video programming **FREE** to **ALL** citizens, not just those who happen to be able to afford it.

As Chairman Hundt has expressly recognized, free over-the-air broadcasting is a "public good" which must be preserved in the interest of the American public. To that end, Press Broadcasting Company, Inc. ("Press") hereby proposes that each full service television broadcast licensee be granted a second 6 MHz channel subject to the following conditions:

-- The affected licensees would be required to agree to meet a reasonable, expedited timetable to construct and commence operation on the second channel.

-- Operation on the digital second channel would have to provide either (a) an HDTV service or (b) no fewer than four digitally-compressed subchannels (the programming on which would be subject to certain conditions described below).

-- Failure of a licensee to provide compliant HDTV or multi-subchannel services on the second channel by a certain date -- preferably a reasonably short time from the award of the second channel, in order to encourage prompt construction and operation, as well as aggressive and effective promotion of the digital concept to consumers -- would result in the loss of one of the two 6 MHz channels.

-- Meeting the deadline for commencement of HDTV or multi-subchannel operation would entitle the licensee to keep both 6 MHz channels, on the further condition that, by

a second, later deadline, one of those two 6 MHz channels is converted to full HDTV or multi-subchannel programming service. That later deadline would be established based on a certain minimum level (e.g., 75% -85%) of penetration of digital receivers in households within each station's market.

-- Each licensee's use of the four (or more) subchannels of service described above would be subject to certain limitations. In particular, at least one subchannel would have to be dedicated to some form of public interest programming (such as news, educational, children's, public access, informational, etc., programming). A second subchannel would be used for digitally-compressed transmission of the programming broadcast on the licensee's standard NTSC channel, thus encouraging consumers to convert to digital, as they would not, by doing so, lose access to the programming still available on the NTSC channel. The third and fourth channels (and any other additional channels which might be technically feasible) could be programmed as the licensee sees fit.

-- The limits described above would apply equally to commercial and non-commercial licensees, with the additional provision that non-commercial licensees could lease some (but not all) of their additional programming capacity to any third parties, including other broadcasters in the market. By contrast, digital subchannels on commercial stations would not be available for lease to other commercial broadcasters in that market.

-- All of the digitally-compressed subchannel programming would have to be made available to the public free of any direct charge.

The goal of this proposal is to assure the maximally efficient use of available spectrum in the public interest, which efficient use will result in substantial public interest benefits, including an increase of competition in the video programming delivery market and an increase in video programming free and over-the-air available to the American public.

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

In the Matter of

THE FUTURE OF FREE,
OVER-THE-AIR BROADCAST TELEVISION

TO: The Commission

PETITION FOR RULE MAKING

1. Press Broadcasting Company, Inc. ("Press") hereby requests that the Commission commence a rule making proceeding to consider and adopt proposals set forth below relative to the future of free, over-the-air broadcast television. Press's proposals are directed to questions raised by Chairman Hundt in recent speeches [1/], questions which go to the heart of the conundrum faced by the Commission and the broadcast television industry as they stand, together, on the toll plaza to the bridge to the twenty-first century. In Press' view, Chairman Hundt has asked many of the correct questions; Press submits that those questions can be answered in a manner which advances the common interests of the American public, the video programming production industry, and the television broadcast industry.

2. Chairman Hundt has posed two "basic questions":

-- "How can we make sure that in a digital age broadcast TV continues to create the public good of a free medium serving the public interest?"

[1/] See, e.g., "A New Paradigm for Digital Television", speech prepared for delivery at "Digital Convergence: Reshaping the Media", September 30, 1996.

-- "How can we make sure that in a digital marketplace broadcast TV is commercially successful so that the private sector can support this public good?"

"A New Paradigm for Digital Television", September 30, 1996, at 2.

3. The problem which lies at the heart of these two questions is the fact that free over-the-air broadcast television -- a "free medium serving the public interest" -- is currently at a substantial competitive disadvantage because, technologically, each individual licensee constitutes a single channel delivery system competing with multi-channel systems offering many times the program choices of a single broadcast station. The reason for the competitive disadvantage suffered by broadcasters is understandable: consumers tend to value choice, and when it comes to programming, multi-channel video systems offer precisely that, while stand-alone broadcast stations are limited by the very nature of existing regulation.

4. But if that is the case, why not just let economic Darwinism work its magic and cause the single channel broadcasting species to die off, to be survived by the competitively preferable multi-channel species which have evolved? After all, isn't that the way evolution is supposed to work, with the old blazing the trail, only to be overtaken, surpassed, superseded and ultimately survived by the new?

5. While such a glib and non-analytical view may commend itself to some (including, presumably, proponents of existing multi-channel technology), that view fails to recognize one all-

important difference between broadcast and multi-channel non-broadcast systems: **BROADCAST SIGNALS, LIMITED THOUGH THEY MAY BE, ARE AVAILABLE AT NO DIRECT COST TO THE PUBLIC, WHILE ALL MULTI-CHANNEL ALTERNATIVES REQUIRE INDIVIDUAL CONSUMERS TO MAKE DIRECT PAYMENTS (NORMALLY IN THE FORM OF MONTHLY OR ANNUAL SUBSCRIPTION FEES) IN ORDER TO RECEIVE THE SERVICE.** In other words, broadcasting is a medium which delivers video programming **FREE** to **ALL** citizens, not just those who happen to be able to afford it.

6. An additional relevant consideration is the fact that, unlike some other multi-channel providers (most notably, DBS operators), broadcasting is an inherently **LOCAL** service which can be responsive to the particular needs and interests of the **LOCAL** audience. Historically (and correctly), the Commission has placed a high public interest value on precisely that element of localism, as the Communications Act mandates. E.g., Harriscope of Chicago, Inc., 5 FCC Rcd 6383 (1990).

7. The importance of a free system of mass communications cannot be overstated, particularly in our geographically vast, culturally diverse country which strives toward the ideal of democratic self-government. In such a setting, it is essential that the public, the citizenry, enjoy common access to common informational sources, if only to provide one and all a common basis for the dialogue and the cultural reference points which are necessary for the healthy development and functioning of our government and, indeed, our society. It is also essential that, given the fact that the audience's needs and interests vary from

locality to locality, the available mass media be willing and able to address just common nationwide matters, but also those which are of local or regional concern. The availability of free, over-the-air broadcast service -- a service which performs precisely these functions -- is clearly, in the words of Chairman Hundt, "a public good".

8. Under the Commission's present plans, conversion of the over-the-air broadcast television industry to a "high definition" or "advanced", digital mode would be accomplished by granting each station a second 6 MHz channel and by then ordering each station to commence "advanced" operation on that second channel, offering a single channel of "high definition" programming, within a relatively brief period of time. At the conclusion of a similarly brief period of simultaneous operation on the two channels, broadcasters would be required to relinquish their original channel. [2/]

9. With all due respect to the Commission, that approach makes little sense and seems designed to aggravate, rather than alleviate, the competitive disadvantages suffered by

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[2/] Press understands that the digital mode of operation currently contemplated by the Commission would, through multiplexing or compression technology, permit the transmission of at least four digital (but not necessarily "high definition") signals on a standard 6 MHz channel. To the extent that any additional standards may need to be adopted to specifically provide for such multiplexing capability, Press urges the Commission to adopt such standards as promptly as possible. In any event, Press states for the record that it supports the Grand Alliance standard so long as that standard would permit, in addition to HDTV transmissions, the digital multi-channel operation proposed by Press herein.

broadcasters. First, while it may seem a swell idea that broadcasters take the plunge into advanced television, no one in his or her right mind could reasonably believe that it makes economic sense for a business operator to incur substantial costs (by all estimates, running into the millions of dollars for transmission and studio equipment) to acquire and install equipment capable of delivering a certain type of programming (i.e., "advanced" or "HDTV" programming) where (a) the available supply of such programming ready and available for broadcast is exceedingly limited [3/] and (b) the number of consumers who have, or are likely in the short term to have, equipment capable of receiving that programming is approximately zero.

10. The Commission's currently proposed approach is thus akin to requiring all gas stations to obtain and install expensive equipment capable of pumping natural gas as an automotive fuel, even though there are virtually no natural gas-powered cars currently on the road. As a theoretical, academic matter, imposing such a requirement might arguably lead, eventually, to an increased demand for, and an increased supply of, natural gas as an automotive fuel. And the requirement might

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[3/] Press acknowledges that most movie- or film-based programming is generally ready for "high definition" transmission, while most tape-based programming is not. Unfortunately, it is a fact that most movie product (and many film-based programs) tend to be unavailable to broadcasters. Rather, in today's market such programming product is routinely made available to the public through distribution mechanisms other than broadcasting (e.g., pay-per-view, multi-channel providers, home rental). As a result, the majority of programming presently available to broadcasters is not HDTV-ready.

arguably lead, eventually, to an increase in the number of cars capable of running on natural gas. But common sense compels the observation that the more likely effect, particularly in the short-term, would be severe economic pressure on the competitively disadvantaged businesses forced to incur substantial costs which could not be recouped in any reasonable short- to mid-term. [4/]

11. In short, contrary to the goal set by Chairman Hundt in his recent speeches (i.e., the preservation of a commercially successful free over-the-air television industry), the Commission's proposed approach would likely have precisely the opposite effect, imposing greater economic burdens on the already disadvantaged industry.

12. Similarly misguided, in Press's view, is the notion espoused by some that the second 6 MHz channel should not be given to existing broadcasters but, instead, should be auctioned off to the highest bidder. Such a short-sighted approach might provide a momentary fiscal benefit to the Federal treasury, but it would certainly have long-lasting adverse effects on the

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[4/] And it must be noted that the gas station analogy is imperfect because, under the hypothetical circumstances, a gas station would incur mainly the costs of acquisition and installation of the new pump -- if no one used the pump, it would just sit there, and the operator would not incur any additional significant on-going operational costs associated with the pump. By contrast, under the Commission's scenario, broadcasters would be required not only to acquire and install the new transmission equipment, but also to operate it continually. This would entail, in addition to routine costs such as power and personnel, the costs of acquiring programming, promoting the station's service, and the like.

entire American public. If the additional spectrum were to be auctioned, any services which might ultimately be provided on that spectrum -- whether those services be video or non-video -- would necessarily be offered on a subscription or for-fee basis, so that the operator could recoup some or all of the auction price. That, in turn, would defeat the goal of increased, free, over-the-air programming choice for all Americans. And, while it might be claimed that the Commission could simply prohibit subscription operations on that spectrum, such a prohibition would then drive down the revenues which could be expected to be realized through the auction process. Thus, the net effect of auctions would in any event be less than desirable, and certainly less than touted by auction proponents.

13. As the Chairman has indicated, free over-the-air broadcast television is a public good which should be fostered, not trashed. And the more free over-the-air program choices are available, the greater the public good -- particularly if the public interest obligations advocated herein by Press are included as a condition to the availability to broadcasters of the additional subchannel capacity. Because of this, it would plainly <u>not</u> be in the public interest simply to stand by and allow free over-the-air broadcasting to wither and die in the heat of multi-channel competition. This is especially so if a simple means of regulatory irrigation is available which would have the double benefit of providing broadcasters a competitive boost while also providing the audience, the American public,

with a substantial increase in free, over-the-air program choices.

14. Such a means of regulatory irrigation is, indeed, available. Press submits that the Commission can and should take the steps outlined below in order to (again in the Chairman's words) "make sure that in a digital marketplace broadcast TV is commercially successful so that the private sector can support this public good".

15. Press's proposal is simple. First, we take as a given the technical premise already advanced by the Commission, i.e., that for each existing broadcast television station occupying a 6 MHz channel of spectrum, a second 6 MHz channel is available. Second, we also take as a given the further technical premise that digital (but not necessarily "high definition") television signals can be compressed in such a way as to permit the simultaneous broadcast of at least four, and possibly significantly more, different programs on "subchannels" over a single 6 MHz channel. The Commission has indicated that it, too, recognizes this capacity.

16. In other words, if each television broadcast station were awarded a second 6 MHz channel, each station could broadcast at least four different free, over-the-air programming choices -- assuming, for the moment, that each licensee maintained its current standard NTSC transmission system on its existing facility (thus providing one channel of programming) and four digitally-compressed subchannels on the to-be-awarded additional

6 MHz of spectrum (one of which would, at least initially, duplicate the licensee's NTSC programming, but in a digital mode).

17. Press therefore proposes that the Commission proceed with its plans to award a second 6 MHz channel to each television licensee. But conditions would be imposed on the use of that second channel (and, ultimately, the first channel as well). Those conditions would include the following:

-- The affected licensees would be required to agree to meet a reasonable, expedited timetable to construct and commence operation on the second channel.

-- Operation on the digital second channel would have to provide either (a) an HDTV service or (b) no fewer than four digitally-compressed subchannels (the programming on which would be subject to certain conditions described below).

-- Failure of a licensee to provide compliant HDTV or multi-subchannel services on the second channel by a certain date -- preferably a reasonably short time from the award of the second channel, in order to encourage prompt construction and operation, as well as aggressive and effective promotion of the digital concept to consumers -- would result in the loss of one of the two 6 MHz channels.

-- Meeting the deadline for commencement of HDTV or multi-subchannel operation would entitle the licensee to keep both 6 MHz channels, on the further condition that, by a second, later deadline, one of those two 6 MHz channels is converted to full HDTV or multi-subchannel programming service. That later deadline would be established based on a certain minimum level (e.g., 75% -85%) of penetration of digital receivers in households within each station's market. [5/]

[5/] The final conversion of the licensee's original channel from NTSC to digital operation should be deferred until digital receiver penetration reaches a substantial level. Otherwise, members of the public who do not own digital receivers would be left without any free, over-the-air service at all. The precise

(continued...)

-- Each licensee's use of the four (or more) subchannels of service described above would be subject to certain limitations. In particular, at least one subchannel would have to be dedicated to some form of public interest programming (such as news, educational, children's, public access, informational, etc., programming [6]). A second subchannel would be used for digitally-compressed transmission of the programming broadcast on the licensee's standard NTSC channel, thus encouraging consumers to convert to digital, as they would not, by doing so, lose access to the programming still available on the NTSC channel. The third and fourth channels (and any other additional channels which might be technically feasible) could be programmed as the licensee sees fit. [7]

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[5] (...continued)
level of penetration necessary to trigger the final conversion is a matter which need not be resolved at this point. However, to assure that the conversion point is reached sooner rather than later, Press suggests that the Commission should seek legislation requiring manufacturers to include digital capability in all receivers to be built after a certain date. In much the same way that the equivalent "all-channel" requirement assisted in the early survival of the UHF television industry, so too could such legislation play a part in infusion of digital broadcasting into American culture.

[6] The Commission would determine the types of programming appropriate for this subchannel. By way of example, Press anticipates that such programming would include all-news services (akin to CNN Headline News, the Fox News Channel, MSNBC, or various local all-news channels already available), educational services such as (or modelled after) The History Channel, The Learning Channel, or The Discovery Channel, children's programming, governmental access programming, and the like. Of course, the availability of this subchannel and the requirement that it be used in this manner would likely lead to the production of even more programming to fill the resulting demand therefor. Indeed, such services could be made available (or specially produced) by existing noncommercial licensees and program producers for broadcast by other, commercial entities.

[7] Some restriction on use of such additional channels may be appropriate to assure that, in a given market with, say, six separate licensees, no single licensee transmits more than one of the established over-the-air network services (i.e., ABC, CBS, NBC, Fox) or one of those established networks together with one of the emerging networks (UPN, WB). The goal is to assure reasonable access to desirable programming for all licensees in a
(continued...)

-- The limits described above would apply equally to commercial and non-commercial licensees, with the additional provision that non-commercial licensees could lease some (but not all) of their additional programming capacity to any third parties, including other broadcasters in the market. By contrast, digital subchannels on commercial stations would not be available for lease to other commercial broadcasters in that market.

-- All of the digitally-compressed subchannel programming would have to be made available to the public free of any direct charge.

18. The advantages of this approach are clear. First and foremost, the public would enjoy the immediate benefits of a quadrupling (and, ultimately, quintupling) -- at least -- of the program services available over-the-air for free. Where each television licensee presently provides a single program service, the proposed system would permit each such licensee to provide that original program service plus at least three others (while the licensee is required to duplicate its original programming on one of its compressed subchannels) and four others (once that duplication requirement is removed) or more (if, as Press suspects will be the case, compression technology permits more than four compressed subchannels per 6 MHz channel).

[2/] (...continued)
market. Of course, no such restriction would apply in smaller markets with, for example, three or fewer existing stations. In such cases, a single licensee would be permitted to transmit more than one of those established networks -- thus bringing to the audience in those markets program service(s) which are not presently available there because of the limited number of local television stations. The precise manner of setting such rules need not be resolved here and now; it suffices for purposes of this Petition to suggest that some such restrictions, aimed at balancing the goals of maximum fair competition and maximum diversity of over-the-air program service, may be appropriate.

19. Think of this vast expansion of free over-the-air programming this way. In the "average" [8/] television market, there tend to be four stations which are affiliates of one or another of the major commercial broadcast networks (i.e., ABC, CBS, NBC, Fox), two stations affiliated with one of the two developing networks (i.e., UPN, WB), one station which is an independent, and one noncommercial station. That means that, in such an "average" market, there would now be a total of eight free over-the-air broadcast television program services. By contrast, an average cable operator can currently offer 75 channels of programming, and often more, while a DBS operator can offer 150 channels or more. Under those circumstances, it is no surprise that the single-channel television broadcasters are competitively disadvantaged.

20. But if each of those broadcasters is given the opportunity to provide, free and over-the-air, a total of at least four separate program services, suddenly the over-the-air service providers can offer the public at least 32 separate services, and ultimately at least 40 (when the initial duplication requirement is removed). In other words, over-the-air broadcasters can provide to the local television audience a

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[8/] While there is really no such thing as an "average" market, Press's review of a range of markets within the Top 100 indicates that, for the most part, markets with at least 7-10 local broadcast television stations that provide reasonable signal levels to all or most of their respective markets appear to be most common. Markets below the Top 100 appear generally to have approximately four local stations.

real competitive alternative to multi-channel service providers. [9] And since the programming services from the over-the-air broadcasters would be free (as opposed to the monthly subscriber fees charged by the various multi-channel service providers), that competitive alternative should be extremely attractive to the public.

21. Broadcasters, too, would benefit. With a quadrupling (or more) of their capacity to offer program services, broadcasters would enjoy a commensurate increase in potential revenue streams and would likely be willing and able to take greater risks in developing "public interest" programming. That is, instead of being able to sell advertising time on just one channel, they could sell it on four (and ultimately five or more) channels. The creation of (and profits derived from) these additional revenue streams could then be used by the broadcasters to assist in the financing of the equipment upgrade to HDTV/ATV standards. Likewise, by leasing excess channel capacity (much in

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[9] As an example of the benefits which might be expected from such a multi-channel broadcast system, the newly-created Fox all-news channel would certainly have been able to find an over-the-air outlet in the New York market if each New York area television station could provide up to four different program services, especially if each station were required to provide at least one channel of such "public interest" programming. As another example of the useful synergy made possible by Press's proposed system would be enthusiastic cross-promotion of an individual licensee's various services. Recall the reports last summer of the reluctance on the part of some NBC affiliates to promote MSNBC, the NBC all-news cable channel, during the affiliates' broadcast of Olympic coverage. Presumably, if each such affiliate were able to broadcast the MSNBC service on an over-the-air subchannel, such reluctance would be replaced by avid enthusiasm.

the same way that excess capacity on ITFS systems is presently available for lease), noncommercial operators would be able to offset the loss of governmental funding which they have suffered in recent years.

22. The increased number of separate channels (or subchannels) which would thus be made available to broadcasters is a major improvement over any other approach to addressing the competitive disadvantage suffered by broadcasters in the video delivery market. While some may argue that similar (if less dramatic) results could be achieved through relaxation of local duopoly rules -- thus enabling a single entity to control two or more stations in a given area -- that argument would be imperfect. The general problem faced by the broadcast industry as a whole is not that any one broadcaster is competitively disadvantaged against multi-channel providers. If that were the case, then perhaps some duopoly relaxation might have some salutary in the inter-industry competition between broadcasting and multi-channel providers. [10/]

[10/] This is not to say that some relaxation of the duopoly rules might not be appropriate to alleviate competitive imbalances within the broadcast industry itself. For example, in a market dominated by VHF stations affiliated with the established networks (ABC, CBS, NBC, Fox), it might be entirely appropriate to allow two non-affiliated UHF stations to be commonly owned or controlled, in order to allow both such stations to compete more effectively against their dominant competitors. However, the relief to be derived from such duopoly would be limited to intra-broadcast competitive imbalance on a market-by-market basis, and even then, in Press's view, only after careful Commission review of the public interest arguments both pro and con. What Press is proposing in the instant Petition is a more universal approach to addressing the

(continued...)

23. But, in fact, the problem is that the entire broadcast industry is competitively disadvantaged against multi-channel providers, and that problem is getting worse rather than better. In the early days of the cable industry, for example, cable systems could generally provide the public with 12-40 channels of programming per market, as compared with, perhaps, six or eight free, over-the-air television signals per market. But now, many major market cable systems offer at least 75-100 channels, and those systems have been joined by MMDS and DBS operators (with the latter capable of providing 150 or more channels). And yet, the number of free, over-the-air television signals per market has not substantially increased from the early days.

24. Thus, what is needed by broadcasters is not an opportunity to "circle the wagons" by condensing the ownership or control of the existing limited number of stations into fewer and fewer hands. Rather, what is needed is a mechanism to increase the ability of broadcasters to deliver multiple channels of programming, creating a stronger competitive situation. Press's instant proposal provides just such a mechanism. Far from simply consolidating the existing limited number of broadcast signals into the hand of fewer and fewer owners, Press's proposal would increase the number of separate free, over-the-air programming opportunities and choices for all broadcasters and, more

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[10] (...continued)
competition between broadcasting as a whole and multi-channel providers.

importantly, for all members of the audience. [11]

25. Press's proposal may, oddly enough, also be welcome by the cable industry. Press does not propose that the programming on the digital broadcast subchannels be subject to an mandatory cable carriage requirements -- any cable carriage would be subject to arm's length negotiations between cable operator and broadcaster. But Press anticipates that the availability of additional programming opportunities will drive some, if not many, broadcasters (or program producers) to create a wide variety of new and alternative programming, cable carriage of which may very well be quite desirable.

26. After all, throughout their mutual history the cable and broadcast industries have enjoyed a symbiotic relationship. Cable operations have historically depended on broadcast services as a fundamental aspect of the programming offered on cable, and broadcast licensees have depended on cable operators to extend their signals into wired homes. Until the relatively recent advent of local all-news cable channels in some markets, most if not all of a cable operator's local programming came from the

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[11] Press anticipates that at least some members of the broadcast community may take the position that Press' proposal would further fragment an already dangerously fragmented audience. But the fact is that audience fragmentation has been underway for some 15 years or more already, and it is not likely to reverse itself; to the contrary, with DBS's current provision of 150+ channels today (with the potential for more in the future), it is clear that fragmentation is and will be a fact of life, and it is likely to increase rather than decrease. Press's proposal would allow broadcasters to participate in that phenomenon in a unique, public interest manner, providing additional free, over-the-air program choices to all members of the public.

carriage of local broadcast stations. Thus, the relationship between cable and broadcast, while occasionally adversarial in some limited respects, has for the most part been mutually beneficial. [12/]

27. And those mutual benefits would likely be enhanced by Press's proposal, as cable operators would enjoy increased sources of programming, including (in all likelihood) locally-oriented programming to appeal to local viewers. [13/]

28. The Commission, too, would benefit. First, by introducing additional competition into the video programming delivery market, the Commission would be accomplishing its long-held goal of advancing the public interest by fostering maximum competition.

29. Second, the Commission would also be complying with its statutory mandate to make efficient use of the radio spectrum. See 47 U.S.C. §307(b). What could be more efficient than to quadruple or quintuple the number of programming services which could be delivered over a given amount of spectrum?

[12/] This is not to say that cable and broadcast are, have ever been, or should be deemed fungible. To the contrary, cable (and MMDS and DBS) is a closed system with the ability to provide, e.g., a variety of premium programming services for a fee. That distinction would remain, and be strengthened, if Press's proposal were to be adopted, since cable operators would continue to be able to offer such for-fee programming, while broadcasters would be prohibited from seeking any payment for their programming.

[13/] It goes without saying that, unlike cable operators, DBS operators are not in a position to offer, easily and on a cost-effective basis, any significant amount of locally-oriented programming.

30. Third, the Commission would be advancing its statutory "public interest" mandate (see 47 U.S.C. §309) by assuring that (as proposed by Press) at least 25% of the newly-available free over-the-air subchannels were required to include "public interest" programming, including, for example, children's programming. Imagine not just three hours a week of children's programming, but an entire channel devoted entirely to such programming! As Chairman Hundt has said in connection with the desirability of increasing the available children's programming,

> Government can provide, for the benefit of all, certain structures that can prime the pump, jumpstart a process, kickstart some initiatives.

"Now We're For Children" (delivered May 1, 1996, Annual Conference on Children and the Media). Press's multi-channel broadcasting proposal could provide just such a "jumpstart" for children's programming. Or if not children's programming, how about educational programming . . . or news . . . or public affairs? The benefits to the public are obvious.

31. Fourth, the public acceptance of digital technology which could be anticipated by the sudden availability of 20-40 [14/] free, over-the-air program services would encourage the public to acquire digital converters necessary to receive that

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[14/] In smaller markets with only four local stations, a quintupling of available over-the-air signals would produce a total of 20 stations. In larger markets, the number of new signals would be commensurately greater. And all of these estimates are based on the assumption that only four subchannels would be available on the second channel. Press understands that the number of subchannels would likely be significantly more than four.

programming. This would in turn pave the way for ultimate conversion to digital HDTV/ATV service, as it would accustom viewers to digital service without forcing them immediately to acquire an entirely new receiver. [15/]

32. Thus, Press's proposal presents the prospect of a win-win-win scenario. The broadcast industry wins because it would secure a multi-channel capability not currently available to it, a multi-channel capability which would permit it to compete effectively against the various multi-channel video delivery systems already in place. Further, the broadcast industry would obtain additional potential revenue streams the profits from which could be utilized in the ultimate (and expensive) conversion to full HDTV/ATV operation.

33. The Commission would win by advancing its own (and Congress's) well-established goals of enhancing competition, maximizing efficient use of the spectrum, and providing the public with a substantial increase in free over-the-air video service.

34. And the big winner would be the public, which would find its free, over-the-air programming choices quadrupled (or

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[15/] Press understands that compressed digital signals can be received and converted by a set-top converter and viewed on the vast majority of television sets currently available in the marketplace. While the precise cost of the converters is not known at this point, Press anticipates that, in any event, that one-time-only cost is likely to be no more than the cost of acquiring and installing a DBS receiving dish -- indeed, the cost would be limited to, in effect, the cost of the converter box used in a standard DBS system, without the need for the dish or, more importantly, the on-going, monthly subscription fees.

quintupled, or more) nearly instantaneously. Members of the public who are content with the available, non-digital over-the-air programming will not be disrupted at all for the immediate future. Members of the public who prefer greater choice in programming and the other advantages that digital transmission will provide -- and who, as a result, have been driven to subscription-based video delivery services -- will suddenly find a real alternative to subscription-based multi-channel services. And, indeed, the availability of such additional over-the-air program choices would likely have a substantial competitive effect on those subscription-based services.

35. In addition to these positive factors, Press's proposal also provides the Commission, the industry and the public a far more reasonable conversion process. Again, while the Commission may think that conversion to HDTV/Advanced television can be accomplished through simple administrative fiat, that notion ignores reality. Even if a technical standard were to be adopted today, the fact remains that there is very limited programming available now for that standard and, more importantly, there is virtually no reception hardware available.

36. So even if conversion is mandated by the Commission, there is good reason to believe that there will be no audience for the new service, at least in the short term. But much of the cost of the conversion -- both for the hardware and the software -- will be due and payable in that very short term. That means that broadcasters will be bearing an extreme economic

burden with limited prospect of any significant economic benefit.

37. In view of all of this, the Commission's current plan is a prescription for failure, the likely result of which will be the continued erosion of free over-the-air broadcasting. Press, like Chairman Hundt, believes that that free over-the-air service is a public good which should be preserved, not sacrificed in some vain and ill-conceived effort to secure "progress".

38. By contrast, Press's instant proposal would permit a reasonable transition between the analog and digital ages in a number of ways. First, it would provide broadcasters with enhanced economic ability (through the increase in revenue streams) to navigate the transition. Second, it would provide the public with the incentive to begin the process of upgrading their hardware for digital reception -- the prospect of receiving multiple channels of video programming for free, over the air, should be a tremendous incentive for the vast majority of the public. Third, it would provide an extended (but not unreasonably so) time during which new programming could be developed (and older programming converted or enhanced), so that a reasonable resource of digital-friendly programming would be available. And, of course, during the transition period and beyond, the public would benefit from a remarkable increase in free, over-the-air programming, including programming directed to a wide variety of public interest considerations. [16/]

[16/] Moreover, as noted above, the opportunity for noncommercial stations to lease two or more of their subchannels to other

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