it is conceivable that the American public would, today, already be enjoying some of the benefits of the dramatic increase in free, over-the-air programming which can reasonably be expected to flow from that proposal.

41. The Commission's delay, and the opportunities lost as a result of it, cannot now be undone. But that does not mean that the Commission should continue to ignore Press's proposal or the opportunities it promises for the Commission, the television broadcast industry and, most importantly, the American public. Press urges the Commission to issue a Notice of Proposed Rule Making concerning the proposals set forth herein at the earliest possible time, with appropriate coordination with other pending proceedings relating to the broadcast television industry. [18/]

42. Broadcasting -- free, over-the-air broadcasting -- has been the backbone of American mass communications for more than 50 years. It can retain that important role well into the 21st Century, if it is allowed by the Commission to shed the unnecessary competitive disadvantages to which it is subject. That can be easily accomplished in a manner which would promote competition and increase the availability of free, over-the-air programming at least four-fold (and conceivably a good deal

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[18/] Two such proceedings would be the Advanced Television rule making, MM Docket No. 87-268, and the Local Television Ownership rule making, MM Docket No. 91-221. Simultaneously with the filing of the instant Petition, Press is submitting copies of this Petition as attachments to comments in each of those proceedings. Press encourages the Commission to include consideration of the instant proposals in connection with any other proceedings to which they may be relevant.

more). For the good of the industry, for the good of the country -- and most of all, for the good of the public -- the Commission should take prompt steps in that direction.

Respectfully submitted,

/s/ Harry F. Cole
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November 22, 1996

ATTACHMENT A

BECHTEL & COLE
FILE COPY

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

| | | |
|---|---|---|
| In the Matter of<br><br>PROPOSED CHANGES IN THE REGULATION OF BROADCAST TELEVISION IN LIGHT OF EXISTING AND ANTICIPATED FACTORS AFFECTING THE BROADCAST TELEVISION INDUSTRY | ) | MM DOCKET NO. ____ |

TO: The Commission

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OFFICE OF THE SECRETARY

PETITION FOR RULE MAKING

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## SUMMARY

In view of the overriding interest in preserving the availability of free, over-the-air broadcast television, Press Broadcasting Company, Inc. ("Press") hereby submits for the Commission's consideration a proposal which, in Press' view, would be far more effective than other alternatives presently under consideration for assuring the continued health of the television broadcast industry.

The proposal calls for the immediate adoption of rules and standards permitting television broadcasters to utilize digital compression technology to provide, on the second 6 MHz channel already allotted to them in connection with the Advanced Television ("ATV") rule making, multi-channel program services. Such digitally compressed multi-channel service would serve as a transitional device between conventional NTSC operation and ATV operation. Since compression technology is already available and substantially less expensive than ATV technology, implementation of compression can likely be accomplished quickly. The continued NTSC operation on each licensee's original channel would provide a revenue source to permit initiation of digitally compressed transmission services. Once such services themselves become established, they would in turn provide a revenue source to assist in the economically burdensome conversion to ATV.

In approaching the dilemma of the broadcast television industry, the Commission must act with vision and insight. Press' proposal offers such a visionary approach.

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1. Press Broadcasting Company, Inc. ("Press") hereby petitions the Commission to adopt rules and policies [1/], described below, designed to permit the broadcast television industry to continue to compete in the still-developing video services marketplace and, thus, to assure the continued availability to the public of over-the-air broadcast television service into the next century.

## Introduction

2. As the Commission is aware, the future of over-the-air broadcast television available free to the viewing public is far from certain. Increased competition from a variety of alternative sources of video programming has substantially reduced broadcast television's once-dominant hold on America's viewers. Serious concern has been expressed about the viability of single-channel television broadcasting in an age of multi-channel competitors.

3. Of course, preservation of free over-the-air television remains a desirable goal. The Commission has clearly endorsed that view, and is considering at least several

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[1/] The proposals set forth herein implicate a number of regulatory areas, some of which are already the subject of on-going rule making proceedings. Since the instant proposals constitute a comprehensive, integrated overhaul of the existing regulatory structure for broadcast television, they are being presented in the context of an independent petition for rule making, rather than as separate proposals in separate, on-going proceedings. To the extent that these proposals may relate to such other proceedings, Press may submit comments therein in which this Petition is incorporated by reference.

regulatory mechanisms by which that goal might be achieved. [2/] In Press' view, however, the approaches proposed thus far by the Commission are somewhat misdirected, as they do not appear to realistically address the problem or to take maximum advantage of the technology available to reduce, if not correct, the problem. Indeed, at least some of the Commission's proposals (particularly those relating to relaxation of the multiple ownership and duopoly rules) would likely exacerbate, rather than amelioriate, the current plight of the television industry. [3/] The purpose

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[2/] Perhaps the most prominent examples of these efforts are proposals (1) to modify the multiple ownership rules governing television licensees, see MM Docket No. 91-221, and (2) to require provision of "high definition" service in the very near future, see MM Docket No. 87-268.

[3/] The Commission's proposed relaxation of its ownership rules is especially dangerous. Permitting common ownership of two or more television stations in a given market would permit the more affluent licensees in that market to gain a substantial, and perhaps destructive, competitive advantage over smaller and/or newer licensees. For example, under the existing regulatory scheme, each licensee has one station to program in a given market. If that licensee acquires programming which proves, for whatever reason, to be unpopular, the licensee has two choices: it can either continue to air the programming and suffer the resulting poor ratings (and poor advertising sales), or it can put that program on the shelf, absorb the cost of the program, and obtain and broadcast some alternative fare. But if, in a more relaxed regulatory environment, a single licensee controls two stations in a market, that licensee can average the cost of its programming over both stations, i.e., by airing the less popular programming on the second channel and thus avoiding a complete loss on it.

Because of this cost-averaging, a multi-station licensee can drive up program costs in the market (because it knows that it will be able to use virtually all of its programming regardless of public acceptance) and, as a result, jeoparize the survival of smaller, single-station licensees who do not enjoy the same ability to cushion against the potential need for additional programming. In other words, relaxation of the multiple ownership rules will aggravate existing competitive imbalances to the advantage of well-established stations and to the concomitant disadvantage of newer, less-established stations. The latter would, as a result, clearly

(continued...)

of this Petition is to suggest an alternative approach which encompasses certain essential elements of the Commission's current proposals, but which includes additional elements designed to assure and promote the continued vitality of broadcast television in the present and future competitive environments. In Press' view, its proposed broader approach affords a more realistic resolution of the matrix of technological and economic factors at issue here.

4. As matters presently stand, the Commission appears to be committed to the notion that each broadcast television licensee should provide a single program service to viewers. Admittedly, the Commission is taking steps to assure that such program service will be the most technologically advanced service possible (through the adoption of "advanced television" ("ATV"), or "high definition television", standards). But when the dust settles on the ATV proceeding, television broadcasters will still be left with the facilities to provide but a single service.

5. This is ironic, because in order to implement its ATV program the Commission has provided for pairing of television channels. It is therefore clear that for each broadcast television station presently in operation, a second broadcast

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[3/] (...continued)
be at even greater risk of failure under such a relaxed regime than is already the case under the existing multiple ownership schema -- and the Commission is well aware of the precarious existence which many television stations are already suffering. But the loss of any licensee would diminish the available diversity of programming, a result which should obviously be avoided if some reasonable alternative is readily available. And any regulatory steps which increase the likelihood of licensee failures should similarly be avoided.

television channel in the same community is technically available. However, the Commission's present approach fails to take maximum advantage of the opportunities presented by that circumstance. Instead, the Commission is treating the second available channel as nothing more than a mechanism to facilitate transition from a single-channel conventional television system to a single-channel ATV system.

## The Proposal

6. What Press proposes is the creation of a multi-channel over-the-air broadcast television service which would operate, initially, as a useful transition between conventional and ATV television service and, ultimately, as an independently viable supplement to ATV service. That is, we propose that the Commission allot, **immediately**, a second full 6 MHz television channel ("the Second Channel") for **immediate** use by each existing television licensee (or permittee [4/]), subject to the following considerations:

-- The Second Channel would have to be utilized for the transmission of two or more separate compressed digital television signals, while the other channel ("the First Channel") would remain dedicated to conventional NTSC service. The precise number of digital television signals which could be transmitted on the Second Channel is a technical matter which the Commission can resolve by adoption of appropriate technical standards in this Petition.

-- One of the two (or more) compressed signals on the Second Channel would be dedicated to simultaneous retransmission of the NTSC programming being broadcast

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[4/] A permittee would become eligible for a Second Channel only after the permittee had constructed its First Channel station and commenced operation pursuant to program test authority.

by the licensee on the First Channel, while the remaining compressed signal(s) would be utilized for almost [5] **any** type of programming at all, without regard to conventional "renewal expectancy" considerations, since the licensee's NTSC operation on the First Channel (and, ultimately, its ATV operation) would, as a routine matter, continue to be subject to conventional public interest obligations. [6]

-- Within some definite period (e.g., five-seven years), each licensee would have to convert one of its two 6 MHz television channels to provide an ATV service. Upon such activation, the licensee would be permitted to continue to operate the other channel as a source of multiple program services through the same compressed digital technology (with the proviso that one of those program services could also be transmitted in an ATV mode). Failure to convert one of the 6 MHz channels to

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[5] In the interest of promoting program diversity, we suggest that the use of the additional compressed signal(s) be initially limited as follows: no single licensee could transmit more than one of the existing national television networks (i.e., ABC, CBS, NBC, Fox) on any of its facilities within the same market, or no single licensee could provide more than one fully local, independent service. Television licensees would thus be encouraged to transmit other existing "network" television services already made widely available to the public by broadcast networks, cable systems and other multi-channel video providers (e.g., Arts and Entertainment, CNBC, Lifetime, MTV, ESPN, etc.), or similar services which might be developed in response to the likely increase in demand. Indeed, it is likely that broadcast networks seeking to generate new revenue streams may elect to provide a variety of new services to their existing affiliates and/or other broadcasters with excess channel capacity. We do not pretend in this document to begin to catalog all of the programming possibilities. Rather, the goal of Press' proposal is the establishment of a regulatory system which would encourage maximum programming diversity by maintaining maximum flexibility in the use of available channels.

The purpose of the initial restriction on channel use is to assure that, at least initially, the current balance of pre-existing broadcast programming among stations is maintained. These program restrictions would be removed upon inauguration of ATV service, at which time the licensee wold be permitted to use all of the compressed signals of its non-ATV channel as it sees fit.

[6] Each noncommercial licensee would also be given a second 6 MHz channel to program, although use of that Second Channel might not be necessarily restricted to noncommercial programming. For example, the Commission might allow noncommercial licensees (as well as commercial licensees) to lease to third parties any excess channel capacity in order to generate revenue.

ATV would result in the forfeiture of one channel. The advantages of this proposal are obvious: by incorporating the concept of multi-channel broadcast transmission based on digital compression, the proposal facilitates the otherwise jarring (and arguably unworkable) transition between current broadcast service and ATV service. Moreover, it provides over-the-air broadcasters with a multi-channel business with which to compete with other multi-channel systems both now and for the foreseeable future, thus enhancing the continued viability of the broadcast industry. And, perhaps most importantly, it is consistent with the Commission's statutory mandate to assure the efficient use of radio spectrum for the benefit of the public interest: by adopting this proposal, the Commission would be increasing by a factor of at least three times the number of over-the-air video broadcast services available to the viewing public within the portion of the spectrum presently allotted for over-the-air broadcast television.

7. Let us examine the various components of the proposal. We take as a given the proposition, propounded by the Commission in the ATV proceeding, that sufficient channel space is available provide each existing television licensee with an additional 6 MHz television channel. There appears to be minimal dispute, if any, about the correctness of that proposition.

8. We also take as a given that available technology would permit the compression of at least two, and possibly three or more, digital television signals for transmission on a given 6 MHz channel with no significant degradation of signal quality.

Such compression techniques are already in use in some areas (notably the cable television industry) and, according to press reports, are currently being tested by broadcast networks and satellite companies. Admittedly, the Commission's rules do not presently provide for such transmission on broadcast stations. Nevertheless, development and adoption of standards for such digital compression should be assigned the highest priority for purposes of this proposal. Such standards would be of use to conventional broadcasters, cable and satellite operators and, ultimately, ATV broadcasters: ideally, the standard to be adopted by the Commission would lead to the availability of standardized receiving equipment to be used and useable for **all** available video services. Since, as noted, digital compression technology is already in place in certain parts of the video marketplace, it is likely that consensus on the governing technical standards (which would be applicable to broadcast, cable and satellite operators) could be reached quickly. Such prompt adoption by the Commission of nationwide standards for compressed transmission, and the widespread (if not universal) demand for standardized receivers, would provide valuable impetus to the receiver industry to respond with commercially-available digital decoders very shortly after adoption of the standards. We anticipate that such decoders would be compatible with standards, to be adopted by the Commission, governing ATV compression.

9. Under the Commission's existing ATV transition plan, all television licensees will be required to shift over to ATV service within approximately five years. That transition

will require an enormous capital investment with little hope of recoupment in the short run (or, conceivably, the long run). After all, just because licensees have paid substantial sums for ATV equipment does not mean that advertisers will necessarily be willing to pay more for advertising time, particularly since it is unclear how long it will take the public to acquire ATV receivers in large enough numbers to make advertising on ATV stations even roughly as effective as advertising on existing NTSC stations. And public acceptance of ATV receivers will also be affected by the availability and cost of such receivers, and the apparent desirability of receiving ATV service. This last factor is especially significant, since abrupt conversion to ATV service will also be plagued by a likely shortage of programming product ready for ATV transmission. [7/] In other words, while it is nice to believe that simply mandating ATV service will assure its success, there are compelling reasons to believe that success is far from assured, at least in the near-term. Indeed, as the Commission's ATV roll-out plan is presently structured, the huge investment and limited returns which can be expected could seriously erode the foundation of the over-the-air television industry.

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[7/] With the possible exception of certain film products, the vast majority of programming currently available for transmission is in NTSC format. In our view it will be years before a significant quantity of ATV-formatted programming will be available for the thousands of ATV stations contemplated by the Commission's current regulatory approach to ATV conversion. Our proposal would permit, indeed encourage, the continued provision of at least two NTSC-based video services on compressed channels during the likely years-long development of an adequate supply of ATV programming.

10. Press' proposal would provide a useful buffer between conventional and ATV service which would reduce, if not eliminate, that likely erosion. The ability to provide digitally-compressed multi-channel programming receivable on existing conventional receivers (albeit with a decoding mechanism) would afford broadcasters the opportunity to compete on a more equitable basis, and possibly even cooperate, with existing multi-channel program providers. [8/] To the extent that the introduction of this new multi-channel option might take some time to develop public acceptance, each licensee's continuing NTSC programming on its First Channel would provide the revenue stream necessary for the viability of the licensee. This use of an existing technology to subsidize, in effect, a developing technology is not unprecedented. Much the same approach was taken when the FM radio service was still new and, for the most part, unaccepted by the public. The Commission permitted common ownership of FM stations by owners of the then-dominant radio medium, AM stations, in an effort to foster FM development. Even a cursory review of the present-day radio industry reveals how successful that strategy ultimately proved to be.

11. And public acceptance of the new video option would likely not be long in coming: substantial portions of the public are already familiar with some of the program services

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[8/] Far from threatening other multi-channel providers, Press' proposal would create a healthier competitive video environment which could encourage, inter alia, mutually beneficial strategic alliances between and among various types of providers (including cable systems, broadcast networks, other programming sources, etc.) to the ultimate benefit of the viewing public.

which would likely be available, and the public could therefore be expected to embrace an alternate delivery system for that programming, particularly if that alternate delivery system were priced competitively vis-à-vis existing delivery systems. Moreover, the likelihood of prompt public acceptance of the new video option would be increased by the fact that broadcasters are -- and have been since the beginning of broadcast television service -- by their very nature directly attuned to the needs and interests of their local audiences. Broadcasters could be expected to rely on that sensitivity to local needs and interests in the design and implementation of their new video services.

12. Additionally, a transitional step into a digitally-compressed multi-channel mode would make economic sense for broadcasters. The necessary equipment would certainly cost appreciably less than that which would be necessary for a top-to-bottom conversion to ATV. Thus, it would not require the assumption of any huge debt service just to get started. Additionally, digital compression and transmission equipment could conceivably be utilized in an ATV environment as well. In that respect, the acquisition of such equipment could be viewed as prudent preparation for the advent of ATV, and not wasteful acquisition of soon-to-be-obsolescent gear.

13. And perhaps most important in the economic context, once the digitally-compressed multi-channel broadcast service gains public acceptance, it will provide a solid additional revenue stream to the broadcast industry, an additional revenue stream which would immeasurably assist in the

transition to ATV. While the pool of available advertising revenues might be relatively stable when the multi-channel service is first introduced, the ability to "narrowcast" on the various channels would likely broaden that pool to include advertisers previously unwilling to spend substantial funds to reach a large audience, but now willing and able to reach far more targeted audiences. In other words, the likelihood of an increased revenue stream for broadcasters would be enhanced by the "narrowcasting" potential of multi-channel service.

14. Press envisions for the television broadcast market a scenario similar to the development of FM radio. In the earliest days of FM, the Commmission concluded that it would be appropriate, in order to encourage the fledgling FM service, to permit existing AM broadcasters to obtain FM licenses. The idea, of course, was to permit the then-healthy AM service to, in effect, subsidize the new FM service. Press' proposal is based on the same concept applied doubly: first, the existing NTSC television service on the First Channel will assist in subsidizing the multi-channel service and, second, once it begins to produce the anticipated revenues, the multi-channel service will assist in subsidizing the ATV service. This approach appears to Press to be far more sensible -- and far more likely to succeed -- than the Commission's present plan, which calls for an economically onerous conversion to ATV without any possibility of intervening development of supplemental revenues with which to pay for that conversion.

15. From the public interest perspective, this

proposal is desirable in a number of ways. First and most obviously, it promotes maximally efficient use of available spectrum. Even if digital compression were to permit the broadcast of only two program services on a given 6 MHz channel, the result would be a tripling of available over-the-air services (assuming the implementation of the Commission's current plan of "pairing" newly-allotted 6 MHz channels with stations already operating on different 6 MHz channels). Thus, in a market which currently includes only six over-the-air broadcast services, the result would be at least **12** such services (i.e., the six existing services and the six non-duplicated services on one of the two multi-channel signals); that number could increase to **18** such services with the advent of ATV service, which would eliminate the need to dedicate one of the multi-channel signals for duplication of the over-the-air programming from the NTSC station. The numbers would be even more impressive if compression technology were to permit four or more services to be provided on a 6 MHz channel: for example, if compression were to permit four services on a single channel, a market currently enjoying over-the-air service from five network stations (ABC, CBS, NBC, PBS, Fox) and one independent would end up with **30** over-the-air services (i.e., the six existing services and the 24 services which would result from six multi-channel operations each providing four services).

16. This increased efficiency of spectrum use would be coupled with a dramatic increase in diversity of program choice, another primary goal of the Commission. And that diversity would

be provided in a competitive environment: broadcasters would -- as they do now -- compete with other video providers to offer programs as inexpensively as possible to the video consumer, thereby driving down the cost of such services to the public. At the same time it assures continuity of broadcast service which will, in turn, continue to provide programming material for cable carriage. Obviously, preservation of the over-the-air broadcast industry is in the interest of the entire video industry (including cable) as much as it is in the interest of the viewing public.

17. Of course, a number of ancillary details in the proposal would have to be resolved. For example, Press suggests that each broadcaster's authorization would be deemed to include, indivisibly, both 6 MHz channels. Thus, a broadcaster wishing to assign its license would have to assign **both** channels (i.e., **all** of its program delivery mechanisms). It could not simply cherrypick whatever aspects of its license it might deem desirable and unload the rest.

18. With respect to cable carriage, Press proposes that any mandatory carriage of broadcast signals which might be imposed by Congress or the Commission be limited as follows: a cable system would not be required to retransmit the digitally compressed services **unless** the system utilizes such compression technology in its own service offerings. In this way cable operators would not be forced to increase their facilities to accommodate the newly-available over-the-air services. Stated another way, the number of cable channels already dedicated to

carriage of over-the-air signals would not be increased as a result of the proposal.

19. These and other details can and should be considered in detail later. The important point here is to consider the broad outlines of the proposal and to begin the necessary proceeding(s) to bring the proposal to realization as soon as possible.

## Conclusion

20. In seeking to address the overwhelmingly important question of the future of over-the-air, free-to-the-public video services, the Commission must act with wisdom and with vision. It is simply not enough to try to patch together a high-tech ATV service as a substitute for the existing system: the problems of the existing system extend far beyond the quality of the video signal it is able to deliver. Rather, the Commission must recognize that existing broadcast television suffers not from any technical inferiority, but from a competitive inferiority arising from the fact that it is a single-channel source in a multi-channel environment.

21. With that recognition, the Commission can and should proceed to correct that situation with available digital compression technology. As discussed above, such a correction can be truly complementary to the Commission's plans for ATV. But, also as discussed above, such a correction can go well beyond the ATV technical approach and can adjust the underlying competitive environment. In that way it is likely to be more successful than a Commission-mandated universal conversion to ATV

in assuring the availability of free over-the-air television into the next century.

22. Press firmly believes that this proposal provides a sound plan for the preservation, and the enhancement, of a fully competitive television broadcast industry. The Commission is well aware of the importance which the Commission, the Congress and the Courts have placed on the availability of free broadcast services to the public. And the broadcast industry has the experience and expertise to continue to provide service which warrants that high regard. By adopting Press' proposal, the Commission will demonstrate that it has the vision necessary to recognize the serious, if subtle, problems which currently threaten the television industry and to correct them in the public interest. The American viewing public deserves nothing less.

Respectfully submitted,

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