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May 7, 1998

BY HAND DELIVERY
Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service
MM Docket No. 87-268

Dear Ms. Salas:

Transmitted herewith on behalf of Fant Broadcast Development, L.L.C., are an original and 11 copies of its "Corrected Petition for Reconsideration," which is being filed in response to the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 24, 1998), in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,

Andrew S. Kersting
Counsel for
Fant Broadcast Development, L.L.C.

Enclosures
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Advanced Television Systems	)	
and Their Impact Upon the Existing	)	MM Docket No. 87-268
Television Broadcast Service	)	

To: The Commission

CORRECTED PETITION FOR RECONSIDERATION

Fant Broadcast Development, L.L.C. ("Fant"), by its counsel, hereby submits a corrected version of its Petition for Reconsideration, filed April 20, 1998 ("Petition"), requesting reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 23, 1998) ("*MO&O*"), in the above-captioned proceeding.[1] In support whereof, the following is stated:

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[1] This "Corrected Petition for Reconsideration" is being filed in order to delete certain factual material which was inadvertently included in Fant's original pleading. This corrected version is intended to replace Fant's original Petition and be considered in lieu thereof.

Fant acknowledges that the Commission issued a *Public Notice*, Report No. 2273 (released May 4, 1998), in which it listed the petitions for reconsideration that had been filed in this proceeding, and stated that oppositions to these petitions must be filed within 15 days of publication of the *Public Notice* in the Federal Register. Fant respectfully submits that because: (i) its corrected petition is substantially identical to its original filing; (ii) the above-referenced *Public Notice* has not yet been published in the Federal Register; and (iii) Fant is serving those parties directly affected by its petition with a copy of this corrective pleading; that the Commission's acceptance and consideration of this corrected petition will not prejudice any party hereto nor materially delay the resolution of this proceeding.

I. The Commission Should Substitute DTV Channel 53 for the DTV Channel 51 Allotment at Jackson, Mississippi, or, Alternatively, Permit the Pending Applicants for an NTSC Channel 51 Facility at Jackson to Amend Their Respective Applications to Specify an Available Alternative Channel.

On July 22, 1996, Fant filed an application for a new television station to operate on Channel 51 at Jackson, Mississippi (File No. BPCT-960722KJ). Eight other applications were filed for the same facility. On January 30, 1998, the mutually-exclusive applicants filed a "Joint Request for Approval of Universal Settlement," which currently remains pending. Nevertheless, the Commission's *MO&O* fails to protect the pending NTSC applications for the Channel 51 facility at Jackson because the DTV Table set forth therein contains a co-channel DTV allotment for the same community.

The Commission has stated throughout this proceeding that it intends to give broadcasters the flexibility to develop alternative allotment plans where they do not result in additional interference to other stations and/or allotments. In order to accommodate the pending applications for the NTSC Channel 51 facility at Jackson, Fant respectfully requests that the Commission change the DTV allotment for Station WLBT(TV), Jackson, from Channel 51 to Channel 53. As demonstrated in the engineering materials attached to Fant's Petition,[2] the substitution of DTV Channel 53 for Channel 51 at Jackson would result in Station WLBT(TV) continuing to receive a 100% replication match, and would cause only negligible interference (less than 0.05%) to any digital or NTSC stations. Alternatively, in the event the Commission elects not to substitute DTV Channel 53 for Channel 51 at Jackson, Fant requests that the applicants for the NTSC Channel 51 facility at Jackson be permitted to amend their respective applications to specify operation either on

[2] The engineering materials attached to Fant's original Petition for Reconsideration are incorporated herein by reference. A copy of those materials is attached hereto.

Channel 53, 57 or 59. The engineering materials attached to Fant's Petition demonstrate that operation on any of these NTSC channels will not cause interference to any other DTV facility.

II. The Proposals Set Forth Herein Would Provide Substantial Public Interest Benefits.

In this case, either substituting an alternative DTV channel for Channel 51 at Jackson, or permitting the applicants to amend their respective NTSC applications to specify operation on any one of the available alternative NTSC channels set forth above would serve the public interest by promoting the emergence and development of new networks.[3] As far back as 1941, when the Commission adopted its Chain Broadcasting Rules,[4] a primary goal of the Commission was to remove barriers that would inhibit the development of new networks. The Commission explained that the Chain Broadcasting Rules were intended to "foster and strengthen broadcasting by opening

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[3] Fant's application for the Jackson facility was filed in tandem with a series of other applications which, together, cover many of the top 100 markets in which there are no full power television stations to primarily affiliate with The WB Television Network ("The WB"), with whom these respective applicants have existing affiliations. Although there is no commitment on the part of either the applicants or The WB to enter into an affiliation agreement, The WB has indicated a willingness to enter into an affiliation agreement with these applicants in the event they are successful in acquiring a station in their respective communities. It should be made clear, however, that the public interest benefit of promoting an emerging network will be achieved regardless of which applicant ultimately acquires the construction permit. The important element is that the NTSC allotment be preserved and that the station become operational and available for affiliation. By the same token, the public interest benefit of promoting emerging networks is served regardless of whether it is The WB or some other new network that gains a primary affiliate in a top 100 market.

[4] *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 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).

up the field to competition. An open door to networks will stimulate the old and encourage the new." *Report on Chain Broadcasting* at 88.

The successful emergence of new networks, however, depends in large part upon their ability to attract and retain local affiliates, which is the life blood of any national network. Moreover, for emerging networks, it is critical that they be afforded the opportunity to compete for affiliates as quickly as possible. Indeed, the large financial losses that confront any national network in its initial years of operation can be stemmed only by obtaining additional affiliates to carry the emerging network's programming. In many markets, however, there simply are not enough stations to provide affiliates for emerging networks in addition to those of the more established networks. Thus, the Commission should make the requested change in the DTV Table which, by permitting an additional broadcast station to serve the Jackson television market, will help promote emerging networks.

Although the Commission has noted that it is not its 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 major markets."[5] The history of the Commission's financial interest and syndication ("finsyn") rules provides a good illustration of how the Commission has remained steadfast in its commitment to the goal of nurturing new networks. In 1970, when the Commission first adopted the finsyn rule, it noted that

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[5] *See, e.g., 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 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); *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).

"[e]ncouragement of the development of additional networks to supplement or compete with existing networks is a desirable object and has long been the policy of this Commission." *Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d at 333. More than two decades later, when the Commission first relaxed and later eliminated the finsyn rule, it did so at the behest of the then-newest network entrant, Fox.[6] The FCC's goal of fostering new networks also is reflected in the Commission's relaxation of its multiple ownership rules. *See 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, 50 (1984) (relaxing restrictions on multiple ownership advances the Commission's diversity goal by providing alternatives to the three television networks).

The Commission also has crafted other 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

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[6] Pending its review of the finsyn rule, the Commission granted Fox's request for a limited waiver of the rule. *Fox Broadcasting Co.*, 5 FCC Rcd at 3211 (1990). 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." *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 8502, 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."). Similarly, in deciding to phase out the finsyn rule entirely in 1995, the Commission 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." *Evaluation of Syndication and Financial Interest Rules*, 10 FCC Rcd 12165, 12166 (1995).

because ABC's proposal "merits encouragement as a new and imaginative approach to networking." *Proposal of American Broadcasting Cos., Inc. to Establish Four New Specialized "American Radio Networks,"* 11 FCC 2d 163, 168 (1967). 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." *Id.* at 165.

As these examples illustrate, the Commission has remained steadfast in its commitment to the goal of encouraging new networks. Indeed, the Commission has consistently concluded for more than fifty years that the development of new networks -- with the accompanying diversity of viewpoint that they bring -- serves the public interest. In order for emerging networks to survive, however, it is imperative that they be afforded the opportunity to compete for additional local affiliates. The requested change in the DTV Table of Allotments will help facilitate the Commission's longstanding interest in promoting the emergence of new networks by providing an additional broadcast station with which to affiliate in the Jackson market.

WHEREFORE, in light of the foregoing, Fant Broadcast Development, L.L.C., respectfully requests that the Commission GRANT reconsideration of its *MO&O* by substituting DTV Channel 53 for Channel 51 at Jackson, Mississippi, or, alternatively, permit the applicants for the NTSC Channel 51 facility at Jackson to amend their respective pending applications to specify operation on any one of the available alternative NTSC channels set forth herein.

Respectfully submitted,

FANT BROADCAST DEVELOPMENT, L.L.C.

By: _____
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Its Counsel

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May 7, 1998

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CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 7th day of May, 1998, copies of the foregoing "Corrected Petition for Reconsideration" were hand delivered or mailed first-class, postage pre-paid, to the following:

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