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September 17, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

ORIGINAL

Ms. Magalie Roman Salas
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
WRITTEN EX PARTE PRESENTATION

Dear Ms. Salas:

The Dispatch Broadcast Group ("Dispatch"), on behalf of its affiliated stations WBNS-TV, NTSC Channel 10, Columbus, Ohio (permittee of WBNS-DT, Channel 21) and WTHR-TV, NTSC Channel 13, Indianapolis, Indiana (permittee of WTHR-DT, Channel 46), hereby submits an original and a copy of the following written ex parte presentation in the above-referenced proceeding.¹ Dispatch hereby requests that the Commission reconsider its requirement regarding the minimum number of hours that a licensed DTV facility must operate during the early phase of the transition to DTV. Specifically, for the next six months or until such time as DTV sets are determined to be available for retail sale in sufficient supply and High Definition programming is available from its affiliated networks, Dispatch requests that the Commission require DTV permittees/licenseses to operate their DTV stations in accordance with the Commission's policy set forth in Section 73.1740(a)(2) -- the rule that

¹ These materials are submitted pursuant to section 1.1206(b) of the Commission's rules 47 C.F.R. § 1.1206(b).

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specifies the minimum operating schedule for new NTSC television stations.

Dispatch is committed to providing free DTV service to viewers in Indianapolis and Columbus as soon as practicable. To that end, despite having a May 1, 2002, DTV construction deadline in Columbus (in Nielsen Market No. 35), WBNS filed its application for a DTV construction permit on February 20, 1998. On May 29, 1998, the Commission granted WBNS's DTV construction permit application. FCC Permit No. BPCDT-980220KG. Similarly, WTHR (an NBC affiliate in market 25) filed its DTV construction permit on February 18, 1998, which was also granted on May 29, 1998. FCC Permit No. BPCDT-980218KE. Following these grants, Dispatch spent a total of approximately \$5 million to construct initial DTV facilities for WBNS and WTHR. Dispatch is fully prepared to commence operating both WBNS-DT and WTHR-DT and to promote the availability of DTV service throughout the Columbus and Indianapolis viewing areas.

Before commencing DTV operations at both stations, however, Dispatch recognizes that Section 73.624(b) of the Commission's rules requires that once a DTV permittee/licensee commences operations, its DTV station must operate during the same hours it operates its NTSC station.² While recognizing that such a policy will some day encourage the purchase of DTV sets by consumers by ensuring the availability of free DTV programming, Dispatch submits that such a day is not yet here. Simply put, there are currently no DTV sets available for retail sale in the Columbus and Indianapolis markets and very few (if any) such sets available in the entire country. Moreover, the prospect for significant availability of DTV sets for retail sale in the Columbus or Indianapolis markets is a minimum of six to twelve months away.

Dispatch recently broadcast the Ohio State-West Virginia football game in full High Definition Television on WBNS. See "Dispatch fires up HDTV football," *Broadcasting & Cable*, August 31, 1998, at 50. In preparing for the broadcast, Dispatch uncovered a number of sobering facts about today's DTV

² Dispatch notes that the Commission explicitly rejected a request to reduce the required minimum hours for DTV operations for technical reasons in the Fifth Report Reconsideration Report & Order. Advanced Television Systems, FCC 98-23, MM Docket No. 87-268, ¶ 32 (released February 23, 1998).

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market. First, despite intensive efforts to find even a few DTV sets that it planned to locate in various public places throughout its market to publicize and promote the availability of DTV service, Dispatch learned that there are virtually no DTV sets available for retail sale to consumers anywhere in the country, much less Columbus, Ohio. Second, when DTV sets reach the retail market, they will likely not be made available in the Columbus or Indianapolis markets for some time. Consistent with the Commission's accelerated DTV build-out schedule, Dispatch understands that DTV set manufacturers intend to focus their initial deliveries and marketing efforts in the top-10 markets.

Third, there is virtually no high definition programming available for broadcast. As a CBS affiliate, WBNS expects to receive some high definition programming sometime later this fall. However, WBNS understands that the network will initially offer somewhere between 2-4 hours of prime time DTV programming to its affiliates. Fourth, while Dispatch is pleased with the DTV channel assignments and coverage potential for both WBNS-DT and WTHR-DT, the cost of running these DTV facilities full-time (given their UHF DTV power levels) is approximately \$10,000-\$12,000/month for WBNS and \$12,000-\$15,000 for WTHR.

Although Dispatch is certainly prepared to incur the costs to provide maximum coverage to Columbus and Indianapolis area viewers, it submits that it is senseless to incur these monthly costs now when there are no DTV viewers because there are no DTV sets available in either market. As noted above, Dispatch is prepared to broadcast and aggressively promote high definition television in both Columbus and Indianapolis. These plans include broadcasting in high definition for free and promoting its availability using DTV sets placed in as many publicly accessible locations as possible throughout each market.³ Dispatch believes that such efforts represent one of the best ways to encourage and develop demand for high definition television among consumers.

Dispatch's DTV promotion plans are limited, however, by DTV set availability and are a far cry from operating its DTV stations on the same basis as its NTSC stations (which both

³ For example, Dispatch plans to broadcast the upcoming Notre Dame-Purdue football game in full 1080i high definition television in the Indianapolis market.

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operate 24 hours per day, 7 days a week). While such a requirement may ultimately be necessary to build momentum in the transition to DTV, Dispatch submits that such a requirement is currently premature and will discourage early construction and operation of DTV facilities as well as HDTV experimentation and promotion in the early phases of the transition to DTV.

Dispatch submits that there is little risk to the Commission's ultimate goal of encouraging a rapid transition to DTV from the policy change proposed herein. After having made the significant capital investment to construct their DTV stations, permittees/licensees will have every incentive to operate their stations full-time once the market develops. The Commission recognized these very same market forces when it rejected a simulcasting requirement for DTV stations in the early part of the transition to DTV, "[b]ecause the DTV channels represent valuable resources with large opportunity costs, we believe licensees will have economic incentives to provide programming and services that will attract consumers to DTV."⁴ The only question is whether the Commission will immediately require those stations to operate as if the market for DTV has already developed -- a requirement that will, conversely, delay the transition to DTV by discouraging broadcasters from operating their DTV stations and promoting the service to the public until they are required by the rules to commence DTV operations.

For the foregoing reasons, Dispatch submits that the instant request is in the public interest. Please direct any questions regarding this proposal to the undersigned.

Sincerely,


Thomas P. Van Wazer

⁴ Advanced Television Systems, Fifth Report & Order, 12 FCC Rcd. 12809, 12834, ¶ 55 (1997).