Reply Comments of Tower of Babel, LLC regarding the applications of Comcast Corporation, Time Warner Cable, Inc., Charter Communications, Inc., and Spinco to assign and transfer control of FCC licenses and other authorizations

Since Tower of Babel, LLC (DBA Crossings TV) filed comments in this proceeding; there have been extensive discussion regarding access to distribution by independent networks and the extent to which the Federal Communications Commission (FCC) might impose conditions accordingly. Crossings TV's experience and that of its CEO, Frank Washington have bearing on this subject that is instructive. As set forth in its initial comments in this proceeding, Crossings TV is an award winning, small, independent provider of in-language, mostly Asian in nature, information and entertainment. Frank Washington has devoted much of his career to media access,[1] including conceiving the Minority Ownership Tax Certificate while a consultant in the Carter White House[2] and as the Legal Assistant to FCC Chairman Charles Ferris. He also has had involvement in the creation of cable networks beyond Crossings.[3]

Crossings TV is now in six markets[4] but started in one, Sacramento. Crossings TV sees its business as what economists call a multiple-sided market. The classic broadcast TV or radio station operates in a two-sided market, meaning it targets its viewing/listening audience and advertisers. As a cable program provider, Crossings operates in a three-sided market, meaning that, in addition to its viewing audience and advertisers, it also must be mindful of its cable carriers, Comcast and Time Warner Cable.[5] Crossings TV's strategy for achieving carriage has been focused on creating a symbiotic relationship with cable operators by cross-promoting not only the basic cable service, but also each operator's Asian language premium services. Using this approach, and continuing to develop unique, quality programing, Crossings TV has built the case with its cable carriers as to why additional markets should be added. In this regard, Crossings TV has gained launches in Comcast markets by working with Comcast regional programming and marketing teams to build mutually beneficial marketing plans that help Comcast meet the needs of its customers in that market. It has been in Comcast's self-interest to determine the quality of Crossings TV's service to the audience they share.

Thus, the process for receiving additional markets has been one of self-validation, i.e., Crossings TV showing that its programming and community engagement brings viewers to Crossings TV and Comcast alike, thereby motivating Comcast to add more markets for Crossings TV. Very simply, Comcast will almost invariably provide carriage where it is valued by its customers and

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[1] Author while at Yale Law School of student note: Towards Community Ownership of Cable Television, 83 Yale L.J. 8 (1974).
[2] See "NAB Has Its Own Idea for Boosting Minority Ownership", Broadcasting, September 5, 1977.
[3] While at Times Mirror, later purchased by the Tribune Company, he was intimately involved during the early 1980s in creation of a movie channel, Spotlight, and a shopping channel.
[4] New York City, Sacramento, Seattle, Chicago, San Francisco, and Fresno.
[5] Increasingly, an argument can be made that Crossings and similar program providers operate, taking into account the Internet, in a four-sided market.

positively affects its return on investment. These are the same dynamics which would make Comcast open to carrying other new services.

Crossings TV is somewhat unique (both as an Asian language cable programmer and more generally as an independent programmer) in that it varies its programming in each of its markets by language and, to the greatest extent possible, local programming based on specific market demographics.[6] Having first gone on the air in 2006, it has taken Crossings TV eight years to reach its current status. While the recession undoubtedly retarded its growth, access to capital and creation of the necessary infrastructure have played important parts in the rate of growth. If Crossings TV can be called successful in achieving distribution it is because it has done the hard work of finding an audience and successfully serving all portions of its multiple-sided market.

The days when someone could conceive an idea for a cable channel, throw it up against the marketplace and meet with any sort of likely success are long gone.[7] Most, if not all the obvious niches have been occupied. Granting someone access to cable carriage without the capital, programming and marketing to make it successful, is very likely a pipeline to nowhere, if not a pure pipedream. Indeed, Crossings TV would very likely have been overwhelmed from an operational and certainly a capital perspective, had it been given all six markets ab initio.

Given Frank Washington's background in fostering access to the media, he and Crossings TV are most understanding of and sympathetic to the aspirations of those seeking cable carriage. At the same time, Crossings TV and he are skeptical of attempts to use the regulatory review process as a way to achieve this by extracting mandatory carriage or expanded distribution. First, experience demonstrates that this approach invariably rewards the better lobbyists, not necessarily the most worthy programmer or the public interest. Second, Comcast and other cable carriers necessarily make judgments about carriage everyday based on quality of programming and overall nature of the service provided; these carriers are in a much better, marketplace-based position to make these judgments than the FCC. And the FCC already has rules in place to address instances of alleged bias or favoritism, based on the facts in those cases. Third, Crossings TV is a strong example of how an independent cable network can be created through marketplace means. Giving others a free pass to distribution by regulatory fiat is a disincentive to those not so blessed. More importantly from the FCC's perspective, it does not necessarily result in a successful service and, indeed, avoiding the stress testing of the marketplace crucible, may have just the opposite outcome – shutting out other worthy programmers that are better positioned to succeed based on the strength of their content, management, appeal to viewers, and other factors.

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[6] In some respects, Crossings TV's approach is closer to an amalgamation of locally focused independent television stations with some network features, than that of the usual cable network, which transmits homogenous programming across its entire network.

[7] Starting a successful cable channel has never been a slam-dunk. Even in cable's heyday, the early 1980s, Times Mirror, which had cable distribution, the capital and the marketing savvy, closed down its shopping channel as a failure and sold its lesser competitive movie channel to Showtime.