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February 11, 1999

BY HAND DELIVERY

The Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: Permitted Ex Parte Presentation
MM Docket Nos. 91-221; 87-8; 94-150; 92-51; 87-154; 94-149 and 91-140**

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, fourteen copies of the the attached letter to Chairman William E. Kennard from Barry Diller, Chairman and Chief Executive Officer of USA Networks, Inc. ("USAi"), are being filed herewith on behalf of USAi's subsidiary, USA Broadcasting, for inclusion, in duplicate, in the record of each of the above-referenced proceedings. Also enclosed is an additional copy to be stamped as received and returned via our messenger.

Please direct any questions concerning this submission to the undersigned.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: [signature]
William S. Reyner, Jr.
Mace J. Rosenstein

Attorneys for USA Broadcasting

Enclosures

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USA NETWORKS INC

EX PARTE OR LATE FILED

BARRY DILLER
Chairman and
Chief Executive Officer

February 11, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
Washington, D.C. 20554

Dear Chairman Kennard:

I write to urge you again to relax the duopoly rule. Based on USA Broadcasting's experience converting a home-shopping station in the Miami-Ft. Lauderdale market to a full-service local programming outlet, I am convinced that the duopoly rule as now applied needlessly obstructs localism, diversity and competition, and that even modest duopoly relief would significantly promote those important public interest objectives.

As you know, in 1996 I announced a plan to convert the twelve undeveloped UHF home-shopping stations owned by USA Broadcasting (then Silver King Communications) into fully programmed, free television outlets, with significant amounts of local programming serving the stations' diverse local communities. We sometimes call this "CityVision," and we want to bring this new service to each of our communities, which include 7 of the largest 10 and 12 of the largest 22 markets.

In June 1998 USA Broadcasting converted the first of its stations: WAMI, Channel 69, in the Miami-Ft. Lauderdale market. WAMI not only brought new competition to its market, it launched with a greater commitment to localism, broadcast diversity, and employment opportunity than any station in my memory.

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The station launched with over 40 hours per week of original locally produced programming, which included the following:

- *The Times.* A nightly news show that emphasizes issues of local importance and that resists the "if-it-bleeds-it-leads" approach, *The Times* covered just one murder in its first seven months.

- *Generation ñ.* Focusing on issues uniquely of concern to the local Latino community, this program is a rare example of an English language show about this community.

- *City Desk.* Produced in collaboration with the *Miami Herald*, this program follows newspaper reporters as they investigate stories of local interest.

- *Out Loud.* A talk show devoted to local public affairs, social and cultural issues, this program received a desirable time slot nightly after *The Times.*

- *WAMI on Miami.* Seven hours per week of live, locally-produced, family friendly and educational children's programming, *WAMI on Miami* at launch was in addition to the almost four hours per week of more familiar educational programming for children.

- *Traffic Jams.* An informative morning traffic and weather program, *Traffic Jams* was designed as a significant aid to commuters.

- *Election Times.* In the weeks before the November 1998, general election, WAMI offered free political airtime not just to candidates for major offices, but to any local candidate.

More than 200 employees were hired locally for WAMI's staff and for the new local shows it aired. This group was the most diverse I have seen in the television business. More than half were minorities, many given their first opportunity to work in the television business, and others who played key roles in station management and in the development and production of our local programming. The WAMI team produced, and continues to produce, a unique and first-rate product. After just weeks on the air, WAMI was nominated for twelve regional Emmys and won seven.

I would like to replicate WAMI's launch in our other markets and, indeed, expand the amount of original local programming all of our stations would create and broadcast. This would plainly further the bedrock objectives of free local television. Unfortunately, outdated FCC ownership rules are steering us away from those objectives. In Miami, I regret to report that we have been forced to cease original production of *Generation ñ*, *City Desk* and *Out Loud*, after reluctantly concluding that, restrained by current FCC rules, we could not sustain costly local production of those programs. And we are now planning for launches in other markets with program schedules that contain fewer hours of original, locally produced programming than we attempted in launching WAMI.

To understand why, consider the perspective from the marketplace, as shaped by current FCC rules, of a television station seeking to provide significant amounts of original local programming -- especially where that station is an undeveloped, low-share "stick." Prior to June 1998, WYHS (as WAMI was called before its call letters changed) had an extremely modest technical infrastructure, just four employees, and an annual budget in the hundreds of thousands of dollars. This is typical of low-share UHF stations. To convert the station, we invested tens of millions of dollars in capital and operating expenses. That level of investment is necessary to develop a full-service facility suitable for significant local production and a local news operation, and actually to produce WAMI's 40-plus hours of original local programming.

Local programs, however, can generally generate revenue only from a single market, as compared to a program produced in Hollywood and distributed nationally, which can generate revenue across all 211 of the country's TV markets. At the same time, because advertisers generally prefer established programming to new, untested product, a new local program on a low-share UHF station is unlikely to lure advertisers away from other, stronger stations with more familiar shows. These problems are aggravated by the unique burdens that UHF stations face, including channel-position and power issues.

Meanwhile, over the last decade there has been an explosion of competition from other entertainment and information sources that continues to drain viewers and revenue from free, local television. Under the circumstances, it is easy to understand the powerful incentive for marginal stations to function as passive repeaters of national programming, including paid programming or ancient syndicated product, rather than attempt to make more significant contributions to their local communities. The ultimate result for the public: a steady erosion of the ability of our free over-the-air television system to truly serve the purposes of localism, diversity, opportunity and competition.

The FCC's ownership rules have not only failed to prevent that erosion; they have contributed to it. While broadcasting's main competitor, cable, can support its programming through a second revenue stream and can spread its costs of programming over multiple commonly owned channels, broadcasting can do neither. I am not arguing that broadcasters should begin charging subscription fees. But if the FCC wants to preserve our only *free* and *local* video programming service, it is well beyond time that the FCC stop forbidding broadcasters from taking advantage of the efficiencies of common local ownership.

From our experience, it is clear that common ownership and other now-forbidden business arrangements would allow us and other broadcasters to produce far more high quality, innovative, original local and public interest programming than is economically rational under current FCC rules. Integration of two stations' operations, for example, would permit substantial savings in capital outlays through the sharing of production facilities and equipment, vehicles, computers and other items. Much of the huge capital outlay associated with construction of WAMI's local production facilities could have been eliminated had we been able to utilize the capital plant of a stronger, commonly owned station, and similar cost savings could have been realized through the integration of administrative, sales, talent and other personnel. At the same time, pairing with a stronger station would provide a tremendously important promotional and sales platform for the new and untested local programming that is offered by a station like WAMI. Our analysis indicates that, overall, combination or other now-forbidden business arrangements with another, stronger station in Miami could have resulted in capital and operating cost savings on an order of magnitude approaching 50 percent -- savings which could be allocated to the production and promotion of more high quality local programming, which could reduce the amount of advertising revenue needed to break even or show a profit, and which could allow unknown local programs to be given more time on the air to demonstrate their viability. Based on our experience, these savings and associated public interest benefits can be obtained by marginal stations only pursuant to transactions that are now forbidden by FCC rules because, unless stronger broadcasters can obtain what is now defined as an attributable interest, they are disinclined to help a new entrant become a competitor.

As a way to ameliorate this situation, USA has proposed an exemption from the duopoly rule that would permit the common ownership of attributable interests in two television stations in the top-50 DMA markets where at least one of the stations has less than a 5 percent audience share. The stations eligible for such a presumptive exemption, by definition, are contributing very little, if anything, to diversity in their markets. And given the economic reality such stations face in today's television marketplace, they cannot be expected to provide significant amounts of local or other public interest programming in the future. An undeveloped station exemption, however, would dramatically increase the likelihood that such stations would contribute to localism, diversity, opportunity and competition. Certainly as applied to marginal stations, relaxation must be seen as having a diversity-enhancing effect.

In connection with adoption of such an exemption, we would strongly urge the Commission not to implement a "remaining voices" test. Such a test is likely to foreclose in all but a handful of markets the very combinations it would theoretically make possible. A "remaining voices" test, moreover, is unnecessary in combination with a duopoly exemption for low-share stations since such stations do not now and, given powerful industry trends, can't be expected to make meaningful contributions to localism or diversity in their markets.

I recognize that the Commission has historically relied on its structural ownership restrictions as a partial surrogate for enforcement of broadcasters' public interest programming obligations. But the ownership rules are deterring and diminishing the provision of public interest programming. I recently served on the President's Advisory Committee on the Public Interest Obligations of Digital Broadcasters, whose report rightly reaffirmed the public interest duties of free television broadcasting as it enters the digital era. But the government cannot continue to ask broadcasters to provide significant amounts of public interest programming while simultaneously forbidding them from doing so in an economically feasible way.

I recognize as well that the Commission has relied on its ownership rules to promote increased ownership of television stations by minorities and women but that recent court decisions have invalidated some of those measures. Like you, I would like to see new ideas and initiatives that result in increased diversity in the ranks of broadcast owners. But as we pursue that goal, I implore you to seize the opportunity to correct the ways in which FCC local ownership rules are frustrating the closely related goals of diversity of programming and increased employment opportunity.

I urge you and your colleagues to resolve the pending ownership proceeding in a manner that recognizes the realities of today's television marketplace, the huge entry barriers that confront an undeveloped station with no meaningful market share, and the ways in which FCC rules are compounding the difficulties and discouraging localism and other public interest objectives. If the Commission's objective is to promote a vital free and local broadcast service that is responsive to local viewers' needs, interests and concerns, then its regulatory scheme must stop providing disincentives for broadcasters to develop, produce and air truly local shows and other programming that serves the public interest. USA believes -- based on hard experience, not just theory -- that the efficiencies that can result from common ownership of local television stations and from other now-forbidden local business arrangements would create powerful incentives to produce significant amounts of original local programming and otherwise promote the public interest. Relaxation of the duopoly restriction along the lines that we have proposed, in a manner that would apply equally and fairly to all broadcasters on a going forward basis, would not diminish localism, diversity, opportunity and competition. Relaxation, indeed, is necessary to promote those objectives.

Sincerely,

Barry Diller

CC: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
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