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Before the
Federal Communications Commission
Washington, D. C. 20554

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In the Matter of	)	
Public Interest Obligations	)	**MM Docket 99-360**
of TV Broadcast Licensees	)	

NOTICE OF INQUIRY

COMMENTS OF THE MICHIGAN CONSUMER FEDERATION

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Comments of the Michigan Consumer Federation
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I. Introduction

The Michigan Consumer Federation (MCF) is Michigan's largest consumer advocacy organization, representing over 400,000 citizens. Founded in 1991, it represents consumer interests before the Michigan Legislature, the United States Congress, as well as in regulatory matters at both the state and federal level.

MCF welcomes the opportunity to comment on this Notice of Inquiry (NOI) and applauds the Federal Communications Commission (FCC) for having opened this docket. We believe it is important, at a time when the transition is being made to digital from analog, for the public interest obligations to be examined in light of the differences between the two platforms. In that light, we believe the FCC should expand its inquiry into the consumer financial and privacy issues that we believe will become of significant importance in the digital age. While much of the attention placed on digital broadcasting as centered around the potential for expanded programming, little has been said about the consumer problems that may arise. These include incentives for broadcasters to exploit the digital platform for commercial purposes in ways were not available in the analog era. In doing so, they have the ability and financial incentive to abuse consumer privacy in ways that were never possible in the analog era. Finally, we are concerned that the powerful commercial forces that are unleashed by digital broadcasting will crowd out enlightening public interest programming. We believe these concerns are of sufficient gravity to warrant an FCC examination before they become entrenched problems.

II. Consumer Concerns:

A. Financial Opportunity and Technological Feasibility Will Overly Commercialize Digital Television

The transition to digital broadcasting raises consumer implications that mirror those that have arisen on the Internet. A few short years ago, the Internet was widely regarded as the "information superhighway." Public attention centered on its potential to connect citizens with vastly improved access to educational, cultural, and political sources of knowledge. Policymakers worried that without access to this superhighway – access at schools, libraries, and our homes, we would become second class citizens.

Few commentators today refer to the Internet as the "information superhighway." Rather, the attention now focuses on "e-commerce." Financial reporters eagerly await the quarterly e-sales. Wall Street waits in anticipation of the next "dot com" public stock offering. The commercial opportunities of the Internet have quickly displaced the educational and cultural opportunities. To be sure, the Internet remains a vehicle for information gathering and dissemination, but Wall Street success of commercial Internet ventures ensures that commercial expansion will be the driving force.

Digital television provides that same mix of forces: financial incentive, commercial opportunity, and technological feasibility. We are concerned that for all the talk of the greater opportunities for enlightened, uplifting programming, presented on a clearer, sharper picture, we may end up with just more commercial "clutter." With the ability to deliver multiple subchannels, with pressure to recoup the vast financial investment in the digital infrastructure, and the ability to use interactivity to garner immediate sales from the consumer, digital television presents commercial opportunities that have never before been possible. It is not a question of whether the media giants exploit it, it's rather a matter of how soon, how much, and who will be the first to figure out how to best accomplish it.

As the advertising becomes more powerful and the messages more targeted, the incentives encourage the use of the interactivity to generate immediate sales rather than provide consumers with the prepurchase and brand identification messages they now associate with television advertising. This will be a disarming force that breaks down their natural defenses against impulse buying. Such transactions are particularly harmful to vulnerable senior citizens, children, and those who lack good consumer decision-making skills. In addition, it raises questions about cancellation of contracts, post-purchase remedies, and jurisdiction of consumer protection agencies. In short, this rampant commercialization has implications that must be thought through in a comprehensive manner if consumers are to be protected.

B. Over-commercialization Will Lead to Abuse of Privacy

The opportunity to collect viewing and purchasing data on consumers for resale has become a growing concern on the Internet. This same opportunity will be available in the digital television age. Consumer protection and privacy advocates became alarmed last year when Doubleclick, a seller of Interet advertising, announced a merger with Abacus, a company maintaining databases on consumer buying habits. Unfortunately, Wall Street – recognizing the powerful commercial opportunities of such a marriage – loved the notion. In the wake of public outcry – including a threatened lawsuit by the Attorney General of Michigan – Doubleclick/Abacus voluntarily put on hold plans to "profile" individual computer users for the purpose of selling targeted advertising. Yet there are still no privacy protections in place on the Internet, even with the growing concern that the needs of the e-commerce industry are quickly shredding any last vestiges of Internet privacy.

Why should we not anticipate that the same forces will use the opportunities and technological feasibility of interactive digital platforms to carry out the same invasions of privacy? Let us not lose sight of the fact that television viewers do not – at least for now – see themselves as being targets for privacy invasion. We watch what we want to watch, and no one but us knows what that would be. Are the American people aware that what they watch – or don't watch – and what they buy over an intereactive television system may put them in a database to be profiled and sold to advertisers? We don't think they are aware of it, nor do we think they should be subjected to it either. And that's why we think the Commission should take leadership early on in the digital era to protect consumers from this powerful and far-reaching means of data collection. If they can collect it, they will. If they can exploit it for commercial gain, they will. And once the personal information is in the stream of commerce, it will be abused.

C. Over-commercialization Will Threaten Diversity and Public Needs Programming

The commercial forces that will drive digital television will desire to exploit the commercial possibilities to maximize financial gain. There is nothing inherently evil with that notion. However, the history of free use of the broadcast spectrum has always required broadcasters to temper that drive by meeting public interest obligations – a quid pro quo with the viewing public. But we need to negotiate that "deal" now.

We fear, that without Commission action, the increased programming capacity, coupled with the opportunity to sell more commercial advertising, will provide a powerful incentive to disregard or degrade public interest programming obligations. We are particularly concerned that voluntary standards will be insufficient to overcome the desires of CEOs of media conglomerates to maximize the financial opportunities. After all, in a competitive marketplace, with Wall Street analysts demanding greater profits and stock valuations, how does a station manager justify broadcasting time for programs that may be uplifting, educational, or which enhance civic discourse – but are economically less profitable than, let's say, Seinfeld reruns?

We aren't convinced that the standards have worked well in the analogy age and are concerned that the commercial pressures inherent in the digital age will make it worse. We would point to the example of Channel 62, WWJ in Detroit. This is a CBS "owned and operated" station yet it provides no daily local news. We find it reprehensible that the network of Edward R. Murrow and Walter Cronkite provides no news programming in a major market like Detroit and southeastern Michigan. Obviously, CBS has made a decision that news programming would be less commercially viable than other alternatives. If this station was a new, independent "startup," there may be some grudging acceptance of this stance. But CBS has both deep pockets and the expertise to deliver local news. And if CBS can operate without local news, yet still assert that it is meeting its "public interest obligations," we question the adequacy of the standards. If CBS can do this in a major market, what faith should be public have that it won't be repeated elsewhere and often?

III. Conclusion

Digital broadcasting is rolling out slowly. Broadcasters in major markets have started the transition, but it remains to be seen how soon the public will embrace it, given the enormous cost of this new home appliance. However, this slow roll out gives the Commission time to respond before the digital genie is out of the bottle. Once digital broadcasters get in to full gear, exploiting the vast commercial opportunities inherent in the technology, they will become a powerful political and economic force against any suggested reforms.

Consequently, we believe it is better to establish ground rules sooner rather than later. Making decisions about the standards for public interest obligations may be difficult now, but they may become impossible later. Having an open and honest discussion about collection of personal data now is better than trying to regulate it after a Wall Street darling has invested billions in the infrastructure to exploit that data. Deciding rules and regulatory jurisdiction for sales made in homes over interactive systems will be easier now than after the practices become entrenched.

This Notice of Inquiry was an excellent first step by the Commission. We hope that the scope will now be expanded to include broader consumer protection and privacy issues, with the goal of establishing a formal rulemaking process.