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September 28, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation
In the Matter of Review of the Commission's Regulations Governing
Television Broadcasting, MM Docket No. 91-221

Dear Ms. Salas:

On Wednesday, September 27, 2000, Angela Campbell, Fernando Bohorquez, Christopher Day, Emily Roskey and Veronica Manahan of the Institute for Public Representation at Georgetown University Law Center met with Karen Edwards Onyeije of Chairman Kennard's legal staff. During the meeting, issues raised in the Petition for Reconsideration filed by the Institute for Public Representation in the above-referenced proceeding were discussed. In addition, the attached documents were distributed at the meeting which discuss several of the issues raised in the aforementioned Petition for Reconsideration.

In compliance with the Commission's rules regarding *ex parte* presentations, an original and one copy of this letter and attachments are being filed with the Commission for inclusion in the public record. Should you have any questions, please feel free to contact the undersigned.

Sincerely,

Angela J. Campbell
Christopher R. Day

Enclosures

cc: Chairman William Kennard
Karen Edwards Onyeije

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THE PROBLEMS WITH A DMA BASED DUOPOLY RULE

Presentation by the Institute for Public Representation, Georgetown University Law Center
September 27, 2000

I. GENERAL ISSUES

A. Threshold Problem with DMA Based TV Local Ownership Rule

- 1. Improper delegation of critical governmental responsibility to private company.**
- 2. Practically speaking, it is extremely difficult for public to review ratings and DMA composition formula--information is proprietary, expensive, and FCC itself does not even have it.**

B. Some DMAs artificially inflate the number of voices available to a community by including stations that cannot be considered local to the relevant viewing area.

- 1. Not all voices included in a DMA are truly local.**
- 2. This results in an overstatement of viewing options in main city in DMA through the inclusion of stations that do not reach and have no ratings in the main city.**
- 3. Large DMAs also allow small cities with two or three stations to be "subsumed" into the larger DMA. Accordingly, one owner could take over only two stations in small market within large DMA.**
- 4. End result - DMA based rule frustrates the goals of diversity, competition, and localism.**

III. EXAMPLES

IV. SOLUTIONS

- ### **A. The best solution would be a return to old Grade B Contour Standard.**

B. In the alternative, FCC can remedy the infirmities of the DMA/Voice Test in the following ways:

1. Similar to the FCC's treatment of daily newspapers in the radio/tv cross ownership rule, the Commission should only count local stations that "are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable percentage of the population." *Local Ownership Order* at ¶ 113.

- FCC can accomplish this by only counting a station as a local independent voice when the station's ratings exceed a certain percentage of the households in the DMA. *See Local Ownership Order* at ¶ 113 ("we will include all independently owned daily newspapers that are published in the DMA that have a circulation exceeding 5 percent of the households in the DMA.")

2. Partition Large DMAs that contain non-overlapping Grade B Contours.

- This would address the sprawling DMAs characterized by such anomalies as the Denver, Salt Lake City and Lexington DMAs.

3. Non-commercial educational stations should not be included in the local voice count.

4. Instead of using the eight voice test for all markets, FCC should use a sliding scale pegged to the number of TV households in the DMA.

- This would address the arbitrary results of the one size fits all policy which equates the diversity needs of New York, NY to Glendive, MT.

5. FCC should take steps to make the DMA records accessible to the public.

Albuquerque-Santa Fe, N.M., DMA

15 Broadcast Television Stations in Albuquerque/Santa Fe DMA

(Not including satellite stations)

KASA (Santa Fe)	KOFT (Farmington)	KOB (Albuquerque)
KNME (Albuquerque)	KOAT (Albuquerque)	KCHF (Santa Fe)
KRQE (Albuquerque)	KAPX (Albuquerque)	KWBQ (Santa Fe)
KNAT (Albuquerque)	KUPC (Carlsbad)	KRPV (Roswell)
KAZQ (Albuquerque)	KLUZ (Albuquerque)	KASY (Albuquerque)

12 Stations Licensed in Albuquerque/Santa Fe

KASA	KOB	KNME	KOAT
KCHF	KRQE	KAPX	KWBQ
KNAT	KAZQ	KLUZ	KASY

12 Stations with Grade B Contours Inclusive of Albuquerque/Santa Fe

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KASA	6
KOB	12
KNME	3
KOAT	15
KCHF	
KRQE	11
KAPX	
KWBQ*	2
KNAT	
KAZQ	
KLUZ	3
KASY	2

* estimated Grade B contour based on license location

5 Independent Voices with Grade B Contours Inclusive of Albuquerque/Santa Fe and a Reportable Market Share*

Raycom Media (KASA)	Hubbard Broadcasting (KOB)
Hearst-Argyle TV (KOAT)	Emmis Communications (KRQE)
Entravision (KLUZ)	

* Reportable market share defined as market share greater than 2%

Lexington, KY, DMA

13 Broadcast Television Stations in Lexington DMA

(Not including satellite stations)

WLEX (Lexington)	WKYT (Lexington)	WKSO (Somerset)
WKHA (Hazard)	WTVQ (Lexington)	WKMR (Morehead)
WKLE (Lexington)	WDKY (Danville)	WLJC (Beattyville)
WAOM (Morehead)	WYMT (Hazard)	

4 Stations Licensed in Lexington

WLEX	WKYT	WTVQ	WKLE
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5 Stations with Grade B Contours Inclusive of Lexington

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
WLEX	9
WKYT	16
WTVQ	11
WKLE	
WDKY	5

4 Independent Voices with Grade B Contours Inclusive of Lexington and a Reportable Market Share*

Evening Post Publishing (WLEX)
Media General (WTVQ)

Gray Communications (WKYT)
Sinclair Broadcast Group (WDKY)

* Reportable market share defined as market share greater than 2%

Denver, CO, DMA

17 Broadcast Television Stations in Denver DMA

(Not including satellite stations)

KWGN (Denver)	KREG (Glenwood Springs)	KCNC (Denver)
KRMA (Denver)	KMGH (Denver)	KUSA (Denver)
KFNR (Rawlins)	KBDI (Broomfield)	KTVJ (Boulder)
KTVD (Denver)	KSBS (Steamboat Springs)	KDEN (Longmont)
KDVR (Denver)	KRMT (Denver)	KCEC (Denver)
KPXC (Denver)	KWHD (Castle Rock)	

10 Stations Licensed in Denver

KWGN	KCNC	KRMA	KMGH	KUSA
KTVD	KDVR	KRMT	KCEC	KPXC

15 Stations with Grade B Contours Inclusive of Denver

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KWGN	6
KCNC	11
KRMA	3
KMGH	10
KUSA	12
KBDI	2
KTVJ	
KTVD	5
KDEN	
KDVR	7
KRMT	
KCEC	2
KWHD	
KPXC	1

7 Independent Voices with Grade B Contours Inclusive of Denver and a Reportable Market Share*

Tribune Broadcasting (KWGN)	CBS TV Stations (KCNC)
McGraw-Hill Broadcasting (KMGH)	Gannett Broadcasting (KUSA)
NewsWeb Corp. (KTVD)	Fox Television (KDVR)
Rocky Mtn. Public Broadcasting (KRMA)	

* Reportable market share defined as market share greater than 2%

Phoenix, AZ, DMA

15 Television Broadcast Stations in the Phoenix DMA

(Not including satellite stations)

KNAZ (Flagstaff)	KTVK (Phoenix)	KPHO (Phoenix)
KMOH (Kingman)	KUSK (Precott)	KAET (Phoenix)
KSAZ (Phoenix)	KPNX (Mesa)	KBPX (Flagstaff)
KASW (Phoenix)	KNXV (Phoenix)	KPAZ (Phoenix)
KTVW (Phoenix)	KUTP (Phoenix)	KPPX (Tolleson)

8 Television Stations Licensed in Phoenix

KTVK	KPHO	KAET	KSAZ
KNXV	KPAZ	KTVW	KUTP

11 Television Stations with Grade B Contours Inclusive of Phoenix

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KTVK	13
KPHO	8
KAET	5
KSAZ	10
KPNX	11
KASW	5
KNXV	7
KPAZ	
KTVW	3
KUTP	5
KPPX	2

8 Independent Voices with Grade B Contours Inclusive of Phoenix and a Reportable Market Share*

Belo Corp. (KTVK, KASW)	Gannett Broadcasting (KPNX)
Fox Television (KSAZ)	Meredith Broadcasting (KPHO)
Scripps Howard Broadcasting (KNXV)	Arizona State University (KAET)
Chris-Craft Industries (KUTP)	Univision (KTVW)

* Reportable market share defined as market share greater than 2%

Salt Lake City, UT, DMA

22 Broadcast Television Stations in Salt Lake City DMA

(Not including satellite stations)

KUTV (Salt Lake City)	KJWY (Jackson, WY)	KBJN (Ely, NV)
KCSG (Cedar City)	KTVX (Salt Lake City)	KSL (Salt Lake City)
KBNY (Ely, NV)	KBCJ (Vernal)	KUED (Salt Lake City)
KULC (Ogden)	KENV (Elko, NV)	KBYU (Provo)
KBEO (Jackson, WY)	KSTU (Salt Lake City)	KUPX (Provo)
KGWR (Rock Springs, WY)	KJZZ (Salt Lake City)	KUWB (Ogden)
KUEW (St. George)	KUES (Richfield)	KAZG (Ogden)
KTMW (Salt Lake City)		

7 Stations Licensed in Salt Lake City

KUTV	KTVX	KSL	KUED
KSTU	KJZZ	KTMW	

12 Stations with Grade B Contours Inclusive of Salt Lake City

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KUTV	10
KTVX	12
KSL	12
KUED	4
KULC	
KBYU	4
KSTU	12
KJZZ	7
KUPX	2
KTMW	
KAZG	
KUWB	3

8 Independent Voices with Grade B Contours Inclusive of Salt Lake City and a Reportable Market Share*

CBS TV Stations (KUTV)	Chris-Craft Industries (KTVX)
Bonneville International Corp. (KSL)	Fox Television (KSTU)
Larry H. Miller Broadcasting (KJZZ)	Acme Communications (KUWB)
University of Utah (KUED)	Brigham Young University (KBYU)

* Reportable Market share defined as market share greater than 2%

Sources:

Broadcasting & Cable Yearbook 2000, (Donald V. West et al., eds., Reed Elsevier, Inc. 2000).

Investing in Television 2000, (BIA Research, Inc., 3d ed. 2000).

Television and Cable Factbook vol. 68 (Albert Warren, ed.) 2000.