

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Children's Television Obligations )  
of Digital Television Broadcasters )

MM Docket No. 00-167 /

To: The Commission

**COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.**

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of independent UHF television broadcast station WFMZ-TV, Channel 69, Allentown, Pennsylvania, and permittee of digital television (DTV) broadcast station WFMZ-DT, Channel 46, Allentown, through counsel, hereby responds to the FCC's *Notice of Proposed Rule Making*, FCC 00-344, released October 5, 2000 (the "NPRM"), concerning the children's educational and informational programming obligations of DTV broadcasters.

The *NPRM* proceeds from two inherently contradictory premises. The first of these is that DTV broadcasters have the flexibility to offer a wide variety of services, including "high definition" television (HDTV), multiple "standard definition" (SDTV) channels, and ancillary services, including revenue-producing video and data services ("datacasting") and subscription television, subject only to a requirement that DTV broadcasters provide at least one free, over-the-air video service to the public (e.g., ¶¶ 10, 14). This premise is unquestionably correct, and has two noteworthy consequences. First, the mix of services -- HDTV, SDTV and datacasting, free and pay -- likely will be unique to each

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television station, and second, the services themselves, and the optimal mix of services, are and will be continually evolving and in flux. The *NPRM*'s second premise is that it is necessary and possible to impose a single regulatory regime for children's programming -- currently applicable to single-channel analog television broadcasting -- on every DTV station and every digital service and mix of services. This premise is manifestly false and the impulse to follow it, as reflected in the *NPRM*, will inevitably retard the development of DTV broadcasting.

Interestingly, in the last part of the *NPRM* (Part E, "Other Steps to Improve Educational Programming," *NPRM*, ¶ 38), the FCC asks questions which, in fact, have nothing to do with digital broadcasting, e.g., to what extent do children watch educational and informational programming, particularly in comparison to other programming for children; how do stations and networks promote educational and informational programming, and how should the FCC increase public awareness of so-called "core" educational and informational programming. If the effectiveness of the FCC's existing children's television requirements is so untested, then it is certainly premature to consider imposing those requirements, lock, stock and barrel, on the developing business of DTV broadcasting.

It is a serious mistake for the FCC to treat DTV broadcasting as a mature industry as to which the effect of imposing children's programming obligations and regulations across a range of services can be estimated with some degree of confidence. It is also ironic, in view of the FCC Chairman's criticism of broadcasters for not implementing DTV services more quickly. ("What Does \$70 Billion Buy You Anyway? Rethinking Public

Interest Requirements at the Dawn of the Digital Age,” Remarks By FCC Chairman William E. Kennard, Museum of Television and Radio, New York, New York, October 10, 2000.)

The idea that the FCC should impose additional regulatory burdens on untested services in an industry that is just emerging while at the same time attempting to encourage the development of DTV broadcasting is, simply, counterintuitive.

The fact is that many stations are struggling to make the conversion to DTV broadcasting. For every major market network-affiliated station that experiences a temporarily shrinking profit margin while constructing new, duplicative DTV facilities, there is an independent or smaller-market station that must operate at a significant loss during the conversion.

For those stations, it is imperative to develop SDTV and other ancillary services that will attract viewers (subscribers) and encourage the public to buy DTV receivers. Many of these services will be niche services. MBC, for example, is developing a 24-hour local weather service. Niche services (for example, a service devoted to business and stock market news) may not be compatible with a requirement to interrupt normal programming to broadcast programs intended to meet the educational and informational needs of children.

In addition, niche and datacasting services, and even children’s programming provided by DTV stations, will in many cases be in direct competition with unregulated (or substantially less regulated) cable, satellite and Internet services. Imposition of children’s programming obligations, and regulations for children’s programming such as those proposed in the *NPRM* (e.g., prohibiting or strictly regulating interactive links to

commercial websites), that restrict DTV broadcasters' flexibility and impair their ability to provide programming and other services that can compete efficiently, will only retard the development of DTV services responsive to the public's needs and interests, slow the deployment of DTV receivers, and increase the economic risks associated with the conversion to DTV broadcasting.

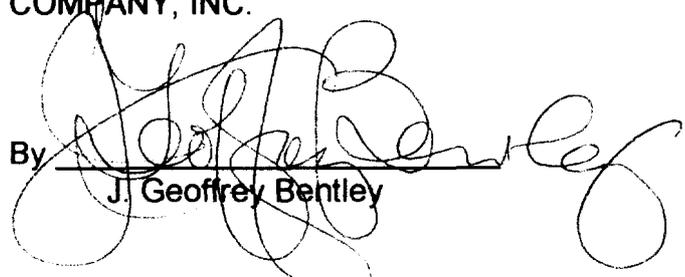
This is not to say that DTV broadcasters have no responsibility to offer programming to meet the educational and information needs of children. Congress has clearly declared (47 U.S.C. § 336(d)) that all broadcast and ancillary services provided by DTV broadcasters should serve the public interest. That broad statement, however, is neither a mandate nor a license to the FCC to engraft all of its children's programming obligations and regulations on all DTV programming and data services. Such requirements will unnecessarily limit broadcaster flexibility and likely will inhibit the development of services demanded by advertisers, consumers, content providers, users, and the viewing public, thereby delaying the development of DTV broadcasting and the transition to an all-digital environment.

The FCC's children's programming rules are an example of what some economists have called "taxation by regulation." The government, having decided that the marketplace has failed to provide a sufficient amount -- in the government's assessment -- of a particular product, adopts a regulation which has the effect of requiring an industry to produce more of the product, at a cost (i.e., a tax) borne principally by the regulated industry.

The last thing the DTV industry needs at this particular moment is a new tax. Without the adoption of any new rules, DTV stations will still provide children with educational and informational programming. If stations do nothing more than simulcast their NTSC programming on their main digital channel, children will receive at least three hours a week of "core" programming and benefit from other FCC rules intended to minimize commercial interruptions and intermingling of program and commercial matter. At this point in the transition to digital broadcasting, the broad imposition of children's programming obligations and regulations to supplemental and ancillary services puts the cart before the horse; it will slow the transition and delay if not frustrate altogether the development of DTV broadcasting to its fullest potential.

Respectfully submitted,

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