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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 30, 2001

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

EX PARTE OR LATE FILED

Re: The WB Television Network
Notice of *Ex Parte* Presentation
Reallocation and Service Rules for the 698-746
MHz Spectrum Band (Television Channels 52-59)
GN Docket No. 01-74

Dear Ms. Salas:

On behalf of The WB Television Network ("The WB"), submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules are an original and one copy of this notice regarding a permitted oral *ex parte* presentation in the above-referenced proceeding. On August 29, 2001, representatives of AOL Time Warner Inc. and The WB met with members of the staff of the FCC's Wireless Telecommunications Bureau to address certain matters pertaining to the FCC's treatment of pending proposals for new NTSC stations to operate on channels 52-58. The discussion focused on The WB's position as summarized in the attached outline and detailed in The WB's comments filed in this proceeding.

Attending the meeting on behalf of AOL Time Warner Inc. were Steven N. Teplitz, Vice President, Communications Policy and Regulatory Affairs, and Robert L. Pettit, Esquire. The undersigned attended the meeting on behalf of The WB.

The following FCC personnel were in attendance: Thomas Sugrue, Chief Wireless Telecommunications Bureau; David Furth, Senior Counsel, Wireless Telecommunications Bureau; Paul D'Ari, Chief, Policy and Rules Branch, Wireless Telecommunications Bureau; and Leon Jackler, Wireless Telecommunications Bureau.

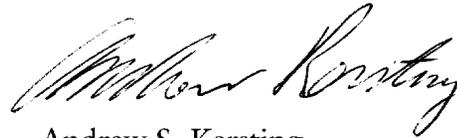
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Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP



Andrew S. Kersting
Counsel for
The WB Television Network

Enclosure

cc (w/ encl.): Mr. Thomas Sugrue (FCC) (by hand)
Mr. David Furth (FCC) (by hand)
Mr. Paul D'Ari (FCC) (by hand)
Mr. Leon Jackler (FCC) (by hand)

THE CHANNEL 52-59 RULEMAKING AND PENDING NTSC PROPOSALS

The FCC should grant pending NTSC proposals for Channels 52-58 during the pendency of the Channel 52-59 rulemaking proceeding. This matter is of significant concern to The WB Television Network (“The WB”) as it strives to enhance its nationwide distribution and become a more formidable competitor to the major television networks.

OVERVIEW

Making available new television stations would advance the public interest without any corresponding public interest harm.

- Granting the additional NTSC proposals on Channels 52-58 would serve the public interest by providing an opportunity to bring a new network service to a substantial number of people in the proposed service areas, as well as foster enhanced competition among national networks.
- Due to the significant incumbency in the lower 700 MHz spectrum band (266 potential authorized stations) the pending NTSC proposals for Channels 52-58 would have, at most, a marginal impact upon the implementation of new wireless services in that spectrum band and the ability to clear that band prior to the end of the transition period.
- The budget compromise reached earlier this year between the White House and Congress strongly suggests that the auction for the lower 700 MHz spectrum band will not be held until 2006, which is near the scheduled end of the transition period.
- The Commission has made clear that any grants of these NTSC proposals would be conditioned upon the outcome of this proceeding. Thus, there is no reason for further delay.

Introduction

- The WB was launched on January 11, 1995 with 48 affiliated stations nationwide. By the end of the 1999-2000 broadcast year, The WB had 68 primary full-power affiliates. In contrast, NBC and CBS have over 200 network affiliates, ABC has nearly 200, and Fox has approximately 170 affiliates.
- The shortage of available stations with which to affiliate is a significant impediment to The WB’s effort to enter the major network group. The pending NTSC proposals, especially those for Channels 52-58, present a critical opportunity for The WB address this problem.

1996 – Present: A Tortured History

The subject NTSC proposals have been on file with the Commission since July 1996.

- Existing ATV “Freeze”
- Await Conclusion of DTV Proceeding
- Community Broadcasters Protection Act -- Afforded Eligible LPTV Stations Class A Primary Status
- Resulting Class A and DTV maximization applications have effectively precluded many pending NTSC proposals
- Many NTSC applications and rulemaking petitions were amended to specify Channels 52-59 (outside the core) in order to avoid Class A conflicts

Channel 52-59 NPRM

- While the Commission expressly froze further grants on Channel 59, the NPRM did *not* direct the staff to refrain from granting pending proposals for Channels 52-58. Instead, the Commission made clear that any grant on Channels 52-58 would be subject to the outcome of the NPRM.
- Nonetheless, it appears that there is an informal freeze on pending NTSC proposals for Channels 52-58 during the pendency of the rulemaking proceeding, apparently on the basis that additional NTSC stations would impede the development of new wireless services and hamper the ability to clear the lower 700 MHz band prior to the end of the transition period.

The Informal Freeze Is Contrary to the Public Interest and Lacks a Factual Basis

The public interest benefits of immediately granting the pending proposals in order to bring new broadcast services to a substantial number of viewers and facilitate increased competition among national broadcast networks outweighs any marginal impact on the eventual provision of new wireless services.

- The Commission correctly anticipated that the pending NTSC proposals will have, at most, a marginal impact on the proposed new wireless services and the ability to clear the lower 700 MHz band prior to the end of the transition period. *See NPRM* at ¶24 (“ . . . [G]iven the significant number of analog and DTV incumbents that already exist on this band, *the impact on the provision of new services may be marginal.*”).
- The lower 700 MHz band is significantly more congested than Channels 60-69 (upper 700 MHz band). Due to the significant number of DTV assignments in the lower 700 MHz band (165 versus 20 in the upper 700 MHz band), it will be much more difficult

to clear and far more difficult for new services to operate in this band prior to the end of the transition period. *NPRM* at ¶26.

- The Mass Media Bureau has indicated that less than half (50%) of the 57 pending requests for new NTSC stations can be granted due to the unavailability of channels in many markets (*i.e.*, conflict with DTV and Class A stations). Assuming, *arguendo*, that even half of the pending NTSC proposals can be granted (*i.e.*, 28 proposals), the number of new NTSC stations pales in comparison to the number of authorized NTSC stations and potential DTV stations (collectively, 266) in the lower 700 MHz band. See *NPRM* at ¶¶23, 25-26. Thus, granting these NTSC proposals would have a negligible impact on the ability to offer new wireless services.
- The budget compromise reached in May 2001 between the White House and Congress would delay the auction for the upper and lower 700 MHz bands until 2004 and 2006, respectively (the current deadline for lower 700 MHz band auction is September 30, 2002). Therefore, the auction for the lower 700 MHz band is not likely to be held until near the scheduled end of the transition period.
- Thus, any interest in expediting the clearing of the lower 700 MHz band by refusing to grant the pending NTSC proposals is misplaced because no new service licenses will be issued in this band until near the end of the transition period.