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ALAN W. FRANK
PRESIDENT

April 11, 2002

Federal Communications Commission
Office of Secretary

The Honorable Michael Powell
Chairman
Federal Communications Commission
The Portals
445 12th Street, S. W.
Washington, DC 20054

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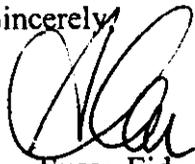
Dear Chairman Powell,

Along with my colleagues, I want to personally thank you again for our meeting Monday evening, April 7. As usual, your candor was appreciated, but we really appreciated the time you gave us to have a dialogue with you on retention of the 35% cap and the NASA petition.

We are taking very seriously the points you raised. But I would like to ask that you and your staff again look at the materials we submitted in defense of the cap. I've enclosed a summary that lists the breadth of our materials. I would hope that a further examination of the facts we have submitted into the record might add some clarity to our discussion and help to further the case for retention.

Again, Mr. Chairman, thank you for your courtesy. My colleagues and I look forward to continuing this dialogue. We recognize that we all have the same goal, to insure the vitality of our communication system, especially the free locally-based over-the-air broadcasting system that is so uniquely American in its design and success.

Sincerely,



- cc: Susan Eid
- Marsha McBride
- John Rogavin
- David Barrett
- Andy Fisher
- John Lansing
- Jack Sander
- Jonathan Blake
- Jennifer Johnson
- Wade Hargrove

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**LIST OF FACTUAL AND ECONOMIC SUBMISSIONS
BY NAB AND NASA**

Early Submission (December 9, 2002)

- Analysis of FCC's Media Ownership Working Group Study "The Measurement of Local Television News and Public Affairs Programs" demonstrating that it used flawed data and methodology.
- Analysis of FCC data set using corrected methodology demonstrating that affiliates outperform O&Os in awards for quality of news and public affairs programming, that there is no difference between the quantity of news and public affairs programming for affiliates and O&Os of ABC, CBS and NBC, and that any differences between Fox affiliates and O&Os are due to factors other than network ownership.

Comments (January 2, 2003)

- Economic study by Professors Marius Schwartz and Daniel Vincent finding that:
 - the 35% national TV ownership rule serves the public interest and, in particular, localism, because the programming decisions of non-network owned affiliates are more closely attuned to the interests of local viewers than those of O&Os,
 - the 35% cap limits the ability of networks to control programming on local stations,
 - broadcasting remains a significant force in the video marketplace, despite the growth of cable and DBS, and
 - the debate about the 35% cap is not simply about the division of profits between networks and affiliates and impacts the programming available to viewers.
- Results of NAB/NASA joint survey of ABC, CBS, and NBC affiliates, with 201 stations responding to the survey, corroborating findings of Schwartz and Vincent study.
 - Provides extensive data about preemptions by network affiliates, including average hours per year of preemptions over a 10 year period and demonstrating a reduction in preemptions since the cap was raised to 35%.
 - Data regarding the reasons affiliates preempt network programming.

- Data regarding the pressure affiliates experience from the networks not to preempt and regarding the increase in such pressure in recent years.
- Appendix listing nearly 1,000 illustrative preemptions by affiliates.
- Evidence provided by survey respondents who had previously worked for O&Os demonstrating that O&O station managers have less freedom to preempt network programming than affiliate station managers.
- Specific examples of the networks making programming judgments at odds with the needs and tastes of local audiences and affiliates taking action (whether by preemptions or otherwise) in response to such judgments.
- Data concerning the frequency with which network program content is discussed during affiliate board meetings and the participation of network executives in such meetings.
- Specific examples of the valuable input that affiliates have given to the networks concerning the content of network programming and the influence that such input can have on network programming decisions.
- Information regarding the degree to which network ownership adversely impacts access by charitable organizations such as the Muscular Dystrophy Association to broadcast television for purposes of fundraising.
- Data and analysis on networks' ownership and control of network programming.
- Data and analysis of the national broadcast television advertising market, demonstrating the effect the 35% cap has on competition in the advertising market.
- Statistics on the networks' increased ownership of broadcast stations.
- Information regarding the networks' and their parent companies' holdings in domestic cable networks.
- Specific examples of increased network encroachment and stiffer restrictions on affiliate discretion as demonstrated in the network affiliation agreements and otherwise.
- Data regarding the degree to which network programming delays or preempts local affiliate programming.
- Data demonstrating that broadcast networks dominate the 100 top-rated prime-time programs to the virtual exclusion of even the most popular cable programs – in November 2002 broadcast television accounted for 99 of the top 100 prime-

- Evidence of distribution of largest (non-network) TV groups in cities around the country, while the networks reside only in New York and Los Angeles.
- Specific examples of affiliates' contributions to innovation in broadcast service.
- Specific examples of increased pressure from networks not to preempt programming, as borne out by the data submitted by both the networks and NAB/NASA.
- Additional evidence that independent affiliates surpass O&Os in the quality of local news and public affairs programming, as demonstrated by an analysis of the prestigious Dupont and Peabody Awards.
- Evidence illustrating that Fox should not be included in the analysis of quantity of local news programming, including data on local news aired by Fox O&Os versus affiliates, data showing the preponderance of UHF stations among Fox affiliates and VHF stations among Fox O&Os, and a demonstration that the quantity of local news aired by Fox stations is tied to the type of station (VHF vs. UHF) rather than network ownership.