Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	
Implementation of the Satellite Home Viewer Improvement Act of 1999	)	
	)	
Local Broadcast Signal Carriage Issues	)	CS Docket No. 00-96
	)	
Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals	)	CS Docket No. 00-2

To: The Commission

SPECIAL FACTUAL SUBMISSION IN SUPPORT OF MULTICAST CARRIAGE BY THE NBC TELEVISION AFFILIATES ASSOCIATION

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January 8, 2004

SUMMARY

The NBC Television Affiliates Association, consisting of the independently owned local television stations affiliated with the NBC Television Network, here submits the declarations of Gannett Broadcasting, the New York Times Broadcasting Group, Liberty Corporation, Hearst-Argyle Television and Belo Corp. concerning their plans for using their digital channels for multicast programming of interest to the communities that their stations serve. Representing 91 stations in markets ranging in size from Boston, Massachusetts, 6th in the country, to Jonesboro, Arkansas, 179th, these local broadcast licensees have already implemented and are developing digital multicast strategies to supplement their HDTV programming plans, including new locally-oriented weather, traffic and information services and additional programming ideas that will benefit local communities. As these declarations show, the development of this programming is real and the hopes for its popular success are substantial.

This submission demonstrates that these opportunities for additional services cannot succeed unless this multicast programming has access to the 70 percent of television viewers who subscribe to cable. Without this access, broadcasters will understandably withhold or withdraw the investments necessary to give these plans a chance for success in the marketplace. Yet, because cable operators occupy a bottleneck position in the program distribution chain and because they compete vigorously with broadcast stations for advertising revenues, for viewers and in the programming market, they continue to have both the power *and* the incentive to snuff out these multicast initiatives before they have the opportunity to compete for viewer attention. The attached declarations from members of the NBC Affiliates show, based on licensee experience with cable operators in trying to achieve multicast carriage, that these threats are far from theoretical; a carriage requirement is therefore essential.

This is exactly the situation the cable carriage principle was intended to protect against. That is why Congress directed the Commission *promptly* (after the digital technical standards were set in 1996) to adapt the analog carriage rules to suit the new world of digital television. There are differences between the old analog and the new digital environments, but the differences only strengthen the justifications for a multicast carriage rule. Broadcasting's vulnerability is greater, the public policy objectives to be served by a mandatory carriage requirement are more compelling and the burden on cable even less.

A powerful case can be made for the Commission to adopt an anti-stripping provision to take effect right now, whether cable systems are carrying broadcasters' digital signals by virtue of a mandatory carriage requirement or in accordance with retransmission consent agreements. That would be best. However, as the declarations show, even adoption of a multicast carriage requirement to go into effect at the end of the transition will promote broadcaster development of and investment in multicast services in the near term. It will establish a positive environment for the negotiation of digital retransmission consent agreements in the interim. The NBC Affiliates also strongly endorse the modest and limited digital carriage proposals advanced by NAB and MSTV for the transition period.

Finally, this submission demonstrates that broadcasters' economic viability is increasingly imperiled in a digital marketplace where their single program stream (and revenue source) must compete against hundreds of cable channels, where cable with its multiple revenue sources is making deep inroads into broadcasters' advertising base and where the added capital and operating expense of digital is further sapping their strength. In this context, multicasting may be a critical part of a new broadcast strategy to provide more locally-oriented services. The erosion of broadcaster viability in smaller markets and among smaller stations in larger markets

has been persuasively documented to the Commission in the recent past. This erosion will extend to larger stations and larger markets in the future. However, multicasting, with its promise of delivering enhanced services to the public, will, if carried, stem this tide by enabling local broadcasters to update and strengthen their historic and still indispensable role of service to the American public.

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In a recent filing in this docket, the National Cable and Telecommunications Association ("NCTA") submitted a paper by Professor Laurence Tribe, who asserted that "[t]here is no evidence that multicast programming would actually be produced; that cable operators would refuse to carry it; and that as a result television stations would either deteriorate to a substantial degree or fail altogether."[1] Professor Tribe went on to contend that "[t]here is no reason to think that requiring cable operators to carry broadcasters' multicast standard definition programming would somehow encourage the purchase of digital television sets or the use of digital set-top boxes by cable subscribers."[2] Professor Tribe is wrong on all counts.

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[1] *Ex Parte* submission of NCTA in CS Docket No. 98-120 (Nov. 24, 2003), attachment at 5.
[2] *Id.*

Broadcasters are implementing and have plans and ideas for producing important and innovative multicast programming; they have often been unable to convince cable operators to carry it; lack of cable carriage is a significant deterrent to broadcasters' investing in and developing multicast streams, which benefit both the public and broadcasters; and as a result, "the economic health of local broadcasting is in genuine jeopardy and in need of the protections afforded by must-carry."[3] Moreover, the Commission, which gave broadcasters discretion to determine the best use of their digital capacity, has explicitly found that the availability to consumers of broadcasters' multicast programming would encourage the purchase of digital sets, thereby advancing the digital transition.[4]

The NBC Television Affiliates Association's ("NBC Affiliates") membership consists of all of the independently-owned stations affiliated with the NBC Television Network, from the top markets in the country to the 210th market. As the attached declarations illustrate, the stations that comprise the NBC Affiliates have developed or are developing plans to use their digital spectrum dynamically to provide not only high definition programming in certain time periods, but also a variety of multicast streams that will allow them to offer diverse and innovative new services to their audiences. Some of these plans are tied to a multicast weather and information service, under development by NBC and the NBC Affiliates' Futures Committee, which both parties hope to launch with participation by numerous affiliates.[5] The

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[3] Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 664-65 (1994) ("*Turner I*").

[4] *See* In re Advanced Digital Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, 12827 (1997) ("*DTV Fifth Report and Order*") ("[A]llowing broadcasters flexibility as to the services they provide will allow them to offer a mix of services that can promote increased consumer acceptance of digital television, which, in turn, will increase broadcasters' profits, which, in turn, will increase incentives to proceed faster with the transition.").

[5] *See supra* Section I.B.

weather service will be primarily a local service, with national cut-ins provided by the network—a service that will include traffic and other local coverage.

Lack of a multicast carriage requirement is a major barrier to broadcasters sustaining multicast streams or launching the ideas they are developing for a multicast product. In some instances, NBC-affiliated stations are willing to take the risk of investing in the network-affiliates weather and information service, developing independently other multicast streams or maintaining existing services, even when cable carriage of these streams is uncertain. They may be willing to make this commitment in the short term in their firm belief that multicasting is essential to the health and vitality of local broadcasting. However, others, particularly smaller market stations and small stations in larger markets, are understandably reluctant to make the investments required without the assurance that multicast streams will be available to the large proportion of their viewers that are cable subscribers. The NBC Affiliates are submitting this pleading because of the importance of this issue and because Commission staff asked for additional factual information about local stations' multicast plans. The NBC Affiliates also fully support all the positions urged by NAB and MSTV in this proceeding, including their "either-or" interim digital carriage proposal, on which the Commission first sought comment in July 1998.[6]

[6] *See* Letter From Edward O. Fritts, NAB, and David L. Donovan, MSTV, to Michael K. Powell, Federal Communications Commission, in CS Docket Nos. 98-120 & 00-96 (Nov. 25, 2003); *In re* Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules, *Notice of Proposed Rule Making*, 13 FCC Rcd 15092, 15116 (1998).

I. BROADCASTERS ARE ACTIVELY EXPLORING VARIOUS IDEAS FOR PROVIDING IMPORTANT MULTICAST SERVICES TO VIEWERS

Congress and the Commission have given broadcasters the flexibility to provide different services on their digital channels, and in response, stations are developing and launching new services, including multicast programming. This is the model—relying on licensee discretion within general public interest guidelines—which has worked well in connection with the public's analog programming; and it should be effective with respect to digital services as well.

A. The Commission's Intent To Allow Broadcasters To Determine The Best Use Of Their Digital Spectrum Is Well-Established.

When the Commission determined that it would allocate broadcasters a second channel on which to provide digital broadcast service during the transition, it decided that it was in the public interest to let broadcasters decide how to use that spectrum to best serve their viewers. Rather than imposing a minimum high definition requirement on broadcasters, the Commission decided to "allow broadcasters the freedom to innovate and respond to the marketplace in developing the mix of services they will offer the public."[7] The Commission, at Congress's direction, imposed a fee on revenues from subscription services[8] but did not discourage broadcaster flexibility or impede broadcaster ingenuity in using this resource to serve their local public through free, over-the-air multicast services. It recognized that "[b]roadcasters can best stimulate consumers' interest in digital services if able to offer the most attractive

[7] *DTV Fifth Report and Order*, 12 FCC Rcd at 12826.

[8] *See* 47 U.S.C. § 336(e); *In re* Fees for Ancillary or Supplementary Use of the Digital Television Spectrum, *Report and Order*, 14 FCC Rcd 3259 (1998).

programs, whatever form those may take, and it is by attracting consumers to digital, away from analog, that the spectrum can be freed for additional uses."[9]

Broadcasters' digital resource can be put to a wide variety of exciting uses.[10] It can be used not only to provide high definition programming, but also to offer multiple streams of video programming in a single 6 MHz digital channel. It is altogether to be expected that it should take some time for broadcasters' ideas for using the digital spectrum to take shape. The transition has been slowed by delays in equipment issues that the Commission only recently began resolving, including a DTV tuner requirement,[11] plug and play cable compatibility for digital sets[12] and copy protection for digital content in the form of a broadcast flag.[13] Moreover, the build-out process was, as anticipated, very burdensome and challenging for individual stations, and cable carriage of digital broadcast signals languished as the Commission failed finally to resolve the issues in this proceeding that have been outstanding for nearly six years. During most of this period, though with some notable exceptions, cable operators balked at voluntarily carrying broadcasters' over-the-air digital signals until they discovered that HDTV would provide a competitive advantage over DBS. Suddenly, the cable operators who had dismissed simulcast HDTV programming and broadcasters' other early digital services as

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[9] *DTV Fifth Report and Order*, 12 FCC Rcd at 12827.

[10] *See id.* at 12817 (describing the array of services broadcasters can provide over their digital spectrum).

[11] *See In re* Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978 (2002).

[12] *See In re* Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, Second *Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20885 (2003).

[13] *See In re* Digital Broadcast Content Protection, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23550 (2003).

insufficiently innovative were touting that same programming as giving them a service edge over DBS. However, most cable operators still continue to refuse to carry broadcasters' multicast streams.

Despite these various uncertainties, broadcasters' rollout of digital services in terms of station activation and programming has been impressive. Currently, 79 percent of stations are broadcasting in digital, including 98.3 percent of network affiliates in the top 30 markets.[14] Inevitably and desirably, broadcasters' plans for use of the digital resource will continue to evolve as broadcasters seek to expand the range of digital services they offer and experiment with formats and services to determine what best suits their viewers. As explained in the next section and in the attached declarations, broadcasters have implemented and are developing ideas for digital services that will appeal to different segments of their audiences, will provide viewers with valuable and targeted information and services and will earn for stations a needed source of potential new revenue. Multicast streams will also permit stations to provide extended coverage of breaking news and other important events on multicast streams while continuing to provide regularly-scheduled programming to viewers on the main channel.

It is inevitable that broadcasters' plans for use of the digital resource will be influenced by the shape of the post-transition landscape. Implementing these plans requires a substantial investment now in equipment and facilities upgrades, as well as in acquiring and developing programming. Many stations, however, cannot afford to invest a significant portion of their limited resources in developing multicast streams absent the knowledge that such streams will reach the majority of their viewers served by cable. Lack of a multicast carriage requirement is therefore a serious impediment to broadcasters bringing their plans and ideas for

[14] *See* FCC, DTV Stations Authorized to be on the Air (Dec. 24, 2003), *at* http://www.fcc.gov/mb/video/files/dtvonairsum.html (last visited Jan. 6, 2004).

multicasting, many of which are in the formative stages today, to fruition. A decision now to allow cable systems to strip multicast services from broadcasters' digital channels would also cause stations that are already implementing multicast services to pull back from or abandon those services.

Carriage of the entirety of a broadcaster's 6 MHz digital signal requires only 3 MHz of cable system capacity—half of what is needed to carry broadcasters' current 6 MHz analog service. As a result, the burden on cable operators of carrying broadcasters' full digital signals is at most half of the analog carriage requirement upheld by the Supreme Court in the *Turner* cases. Furthermore, if the Commission were to decline to adopt a multicast carriage requirement, it could well lead to broadcasters using something approaching their full 19.4 megabits to broadcast HDTV twenty-four hours a day, instead of offering the mix of HDTV and multicast services that they determine would best serve the public. This would leave cable operators with access to little or no additional capacity, while the public and broadcasters would be deprived of the many benefits of multicast services. Moreover, this result would be contrary to Congress's and the Commission's intent that broadcasters determine the highest and best use of digital spectrum, including whether to provide multicasting, programming in high definition format or a combination of both.

B. The NBC Affiliates, NBC Owned And Operated Stations And The NBC Network Have Concrete Ideas And Plans For Multicast Services.

The NBC Affiliates and the network, working together, have considered many options for the use of stations' digital spectrum, and many are under active consideration. About one year ago, the NBC Affiliates formed a Futures Committee to work closely with the network to develop multicast programming streams that NBC owned and operated and NBC-affiliated stations could offer to their viewers. Both the network and the NBC Affiliates have placed the

highest priority on this work of the Futures Committee, in an effort to develop a model that is suitable to as many NBC-affiliated stations as possible. As a result of this cooperative effort, the network and the NBC Affiliates have decided to move forward with plans for a multicast weather channel that will provide viewers with local and national extended weather coverage, as well as local alerts (*e.g.*, AMBER and terror alerts) and traffic and travel-related information. More than 90 percent of independently-owned NBC affiliates who responded to the NBC Affiliates' recent survey on this topic have expressed an interest in providing a multicast weather channel to their viewers.[15]

The multicast weather channel will fill communities' need for local weather and traffic-related information at any time of day, and unlike the national Weather Channel cable service, will focus on the local information that is most relevant to a broadcast station's viewers. It will also provide current local traffic and travel-related information, making it an invaluable resource for viewers to consult before hitting the road or heading to the airport. Moreover, the weather service will offer viewers the latest local alerts, including AMBER alerts for missing children. These alerts would be delivered more frequently than on stations' main channels.

Other services that NBC affiliates might provide to their viewers include a local news channel, which could offer local news and extended coverage of local events, including press conferences, local government meetings, and political races.[16] Belo Corp.'s NBC affiliate

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[15] *See, e.g.*, Joint Declaration of Cynthia Augustine, President, and Bob Eoff, Divisional Vice-President, New York Times Broadcasting Group ¶ 2 (Jan. 7, 2004) ("Augustine/Eoff Declaration"), attached hereto as Exhibit A; Declaration of David J. Barrett, President and CEO, Hearst-Argyle Television, Inc. ¶ 3 (Jan. 7, 2004) ("Barrett Decl."), attached hereto as Exhibit B; Declaration of Craig Dubow of Gannett Broad. Co. ¶¶ 2-3 (Jan. 7, 2004) ("Dubow Decl."), attached hereto as Exhibit C; Declaration of Jack Sander of Belo Corp. ¶ 4 (Jan. 7, 2004) ("Sander Decl."), attached hereto as Exhibit D.

[16] *See* Barrett Decl. ¶ 5; Dubow Decl. ¶ 4; Declaration of Jim Keelor of Liberty Corp. ¶¶ 5-6 (Jan. 7, 2004) ("Keelor Decl."), attached hereto as Exhibit E.

in Boise, Idaho, for example, already offers a twenty-four hour local news service on a multicast channel,[17] and Gannett is considering offering a multicast channel that would cover local government affairs, including gavel-to-gavel coverage of city council meetings and meetings of local commissions and boards, press conferences of city officials, local elections and other local events.[18] Another possibility is a local sports and events channel, which would cover amateur sports and performances and other cultural or educational events.[19]

NBC affiliates also are pursuing multicast strategies for bringing the signals of additional over-the-air networks to viewers in small and medium-sized markets that may not have sufficient channels allocated to support full power affiliates of emerging or Spanish language networks. Liberty's stations, for example, are considering how they might distribute the signals of additional networks like UPN and WB to over-the-air audiences in smaller markets by carrying the emerging networks' signals as multicast streams on Liberty stations' digital channels.[20] In markets with a high percentage of Spanish speakers, Liberty stations might provide the signals of Spanish language broadcast networks in this manner, thereby enabling Liberty to provide many viewers with sole Spanish language service.[21]

Multicasting also permits stations to target local content to particular geographic sectors of their service areas, to the benefit of both viewers and local businesses. The New York Times Broadcasting Group has been exploring this opportunity, which would permit their stations to offer focused local news coverage to viewers in particular towns and counties and

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[17] *See* Sander Decl. ¶ 3.

[18] *See* Dubow Decl. ¶ 7.

[19] *See id.* ¶ 4.

[20] *See* Keelor Decl. ¶ 3.

[21] *See id.* ¶ 4.

would enable small businesses to reach their desired advertising base more economically.[22] Thus, as the declarations demonstrate, multicasting has powerful potential to enable broadcasters to bring new and innovative services to local audiences, and NBC affiliates are eager to seize upon this opportunity.

* * *

These examples of multicast programming that NBC affiliates already are providing to local audiences or are looking into offering in the future will promote localism and serve the public interest by increasing the amount and diversity of locally-oriented programming available to viewers. The NBC Affiliates acknowledge that all broadcaster programming, whether analog or digital, is subject to public interest obligations. These obligations should be applied reasonably and flexibly in the digital environment, so as to allow broadcaster innovation, and they should not be applied on a programming stream by programming stream basis. While the NBC Affiliates are not in a position to speak for the industry on particular proposals for defining these public interest responsibilities, they also do not oppose Commission efforts to adapt broadcasters' existing public interest responsibilities to the new digital environment.

II. CABLE CARRIAGE IS NECESSARY IF BROADCASTERS ARE TO HAVE A REALISTIC OPPORTUNITY TO BRING NEW MULTICAST SERVICES TO THE AMERICAN PUBLIC

The vast majority of U.S. households—nearly 70 percent—receive video programming services, including the signals of their local broadcast stations, via cable.[23] Cable

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[22] *See* Augustine/Eoff Decl. ¶ 2.

[23] *See* National Cable & Telecommunications Association, Cable & Telecommunications Industry Overview 2003 Mid-Year 24 (2003) (citing cable penetration rate of U.S. television households as 67.4 percent); *In re* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Ninth Annual Report*, 17 FCC Rcd 26901, 26911 (2002) ("*Ninth Annual Report*"). The advent of DBS since 1992 does not change this analysis. Although DBS has captured a share of the MVPD market, it does not carry local digital signals,

operators thus have bottleneck control over the provision of multichannel video programming in this country. At lower levels of cable penetration, Congress found this to be the case in 1992, and it based the analog must carry rules on these and related findings about the market power of cable operators.[24] The Supreme Court upheld these analog requirements against various constitutional challenges from the cable industry because it found that "the economic health of local broadcasting is in genuine jeopardy and in need of the protections afforded by must-carry."[25]

The case for carriage requirements in the digital world is even more compelling than in the analog environment. The burden on cable systems is significantly less, because it takes half the capacity to carry a broadcaster's full digital signal as it takes to carry the broadcaster's analog signal. Moreover, the health of many broadcasters today is more precarious than it was a decade ago, due to a combination of financial pressures, including the costs of the digital transition and the inroads made by cable programming and advertising.[26] Because cable systems have financial interests in their own programming and in selling advertising locally—both in competition with local broadcasters—they have strong incentives, as well as the ability, to deny the public access to broadcasters' competitive, unaffiliated digital programming,

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which makes it an ineffective competitor to cable in this regard. Moreover, even if DBS providers were carrying broadcasters' digital signals, the exponential growth in cable modem subscriptions and cable's ability to bundle video programming with broadband access gives cable operators in some respects an even tighter hold on the market than they had ten years ago.

[24] *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(3).

[25] Turner Broad. Sys., Inc. v. FCC, 520 U.S. 180, 195 (1997) ("*Turner II*") (quoting *Turner I*) (internal quotations omitted).

[26] Apropos of MSTV's and NAB's efforts to provide some form of cable carriage for digital signals during the transition, digital carriage is much more essential today than was the case for analog carriage in the early 1990s, in part because digital set penetration is less than one percent, while analog set penetration a decade ago was nearly universal.

including multicast services. These concerns are more than theoretical. As Hearst-Argyle Television explains, "Some of these cable companies have been remarkably candid in stating they will not carry multicast programming that is, or may be, competitive with cable programs they offer."[27] Finally, a carriage requirement will help bring the transition to a close, as the availability of compelling digital programming, including multicasting, to 70 percent of U.S. households will enhance consumer acceptance of DTV and help reach the 85 percent penetration threshold needed to end the transition.[28]

The market—which is skewed by cable's bottleneck position and anti-competitive incentives—does not solve the problem of non-carriage of broadcasters' multicast programming. The reality is that many broadcasters have had great difficulty negotiating for carriage of even part of their digital signals by cable operators.[29] In those instances where stations have successfully inked carriage deals, cable operators usually have refused to carry broadcasters' multicast streams or have left it within their discretion to accept or reject multicast streams at will, effectively allowing them to pick from among programming within a broadcaster's digital signal.[30] Others have stated outright "that they will not carry specific kinds of multicast programming," including programming that competes with the cable channels in an operator's lineup.[31] And documenting the extent to which cable operators have refused to carry stations'

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[27] Augustine/Eoff Decl. ¶ 6; Barrett Decl. ¶ 7.

[28] Reaching the 85 percent threshold in a timely manner is also a reason for requiring multicast carriage *during* the transition.

[29] *See* Augustine/Eoff Decl. ¶ 5; Barrett Decl. ¶ 7; Dubow Decl. ¶ 9; Sander Decl. ¶ 7.

[30] *See* Barrett Decl. ¶ 7.

[31] Barrett Decl. ¶ 7. Because a cable operator has every incentive to reject any multicast programming that would compete with its affiliated cable networks or jeopardize its advertising revenue, a multicast carriage requirement should apply during the transition as an anti-stripping

multicast streams is thwarted by confidentiality provisions that cable operators increasingly insist on in retransmission consent agreements, some of which prohibit disclosure of even the existence of the agreement, much less the terms.

There are some exceptions. For example, the retransmission consent agreements between Time Warner and CBS and Time Warner and ABC for carriage of the digital signals of the networks' owned and operated stations provide for carriage of multicast video programming streams and do not include a confidentiality provision. Independently-owned stations affiliated with those networks may opt into the agreements. However, there is not a similar agreement between Time Warner and NBC. Moreover, Time Warner systems serve only about 11 percent of American homes. The fact that Time Warner is willing to enter into such agreements raises the question of why other cable operators are not. Time Warner's willingness to retransmit broadcasters' free video programming streams demonstrates that multicast carriage is feasible, does not overly burden cable systems and may be desirable in terms of service to the public and advancing the transition.

For broadcasters that are not yet multicasting, retransmission consent agreements that provide for multicast carriage would establish a powerful incentive to implement their plans for multicasting. Because the FCC's must carry rules (even if they took effect at the close of the transition) serve as a baseline for retransmission consent agreements, prompt Commission action requiring carriage of all of a broadcaster's free programming services is essential.[32]

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protection. The purpose is to prevent anti-competitive, virtual confiscation of broadcast capacity.

[32] The impact of must carry rules on retransmission consent negotiations is another reason why it is in the public interest for an anti-stripping requirement to apply during the transition.

III. HEALTHY MULTICAST OFFERINGS WILL HELP ENSURE A VIBRANT, COMPETITIVE, FREE OVER-THE-AIR BROADCAST SERVICE

Multicasting will enable broadcasters to maintain a healthy and competitive free, over-the-air service in a multichannel world, and they need cable carriage of their multiple programming streams to develop DTV as a vibrant service.[33] Today, the end of the transition is a distant light at the end of a long tunnel. In such a situation, the Commission should rely on those with vested interests in the success of the service—and no other entity has a more vested interest than incumbent broadcasters, who are committing their time, effort and resources to broadcast digital signals. As the attached declarations illustrate, multicasting requires added investments and operational costs. If broadcasters did not believe that multicasting could be critical to ensuring a vibrant and competitive broadcast service, they would not be developing plans for multicasting services. However, once broadcasters launch multicast streams, there is no reason to think that they will survive non-carriage better than any other program service.

In today's multichannel world, the channel capacity of cable systems continues to increase,[34] and the proportion of that capacity devoted to carriage of digital *cable* programming has also continued to increase.[35] At the same time, there are an increasing number of cable networks, as well as multiple channels in which cable operators have a financial interest.[36] Broadcasters, who in the analog world could offer only a single programming stream, can use

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[33] *See* Augustine/Eoff Decl. ¶ 6; Dubow Decl. ¶ 11; Keelor Decl. ¶ 14; Sander Decl. ¶ 9; *see also Turner II*, 520 U.S. at 195, 208 (explaining that "stations dropped or denied carriage [by cable systems] would be at a 'serious risk of financial difficulty'" and as a result "would either deteriorate to a substantial degree or fail altogether") (quoting *Turner I*, 512 U.S. at 667).

[34] *See Ninth Annual Report*, 17 FCC Rcd 26913 & Table 3 (showing that approximately two-thirds of cable systems have a capacity of at least 750 MHz).

[35] *See id.*

[36] *See id.* at 26914. For example, Time Warner's CNN now offers CNN, CNN Espanol, CNN Headline News, CNN International and CNN fn, and its HBO now provides seven different services. *See id.* Table C-5.

multicasting to compete more effectively in this changing environment. A cable carriage requirement will, therefore, contribute to the health not only of multicast streams, but also of broadcasters' main digital service.

Local broadcasters, particularly those in smaller markets and small stations in larger markets, face increasing challenges from multichannel video programming providers with revenue streams that include subscriber fees, advertising sales and fees for other services they can bundle with video programming service, such as high-speed Internet access and telephony.[37] These stations face "the substantial and disproportionate burden that the costs of the digital transition—which are not appreciably less for smaller market stations than for large market stations—place on [them] with this limited revenue potential," as well as "restricted revenue opportunities . . . due to the modest amount of total advertising dollars available in these markets."[38] The cost of purchasing the transmitters and other equipment needed to broadcast a digital signal are the same in smaller markets as they are in larger markets; however, the financial impact on stations in smaller markets is proportionally far greater and therefore more of a hardship. As cable continues to make inroads into the advertising market[39] and stations

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[37] *See* Augustine/Eoff Decl. ¶ 6; Dubow Decl. ¶¶ 10-11; Keelor Decl. ¶¶ 13-14; Sander Decl. ¶¶ 8-9; *see also* Theresa J. Ottina, The Declining Financial Position of Television Stations in Medium and Small Markets 10 (Dec. 2002), submitted as Attachment C to Comments of the National Association of Broadcasters in MB Docket No. 02-277 & MM Docket Nos. 01-235, 01-317 & 00-244, at 48-49 (Jan. 2, 2003) ("From the data presented in this report, it is clear that many television stations today in smaller markets are struggling to achieve profitability. The results of this study demonstrate a clear and consistent decline in the financial position of many smaller broadcasters over time.").

[38] Reply Comments of the National Association of Broadcasters in MB Docket No. 02-277 & MM Docket Nos. 01-235, 01-317 & 00-244, at 48-49 (Feb. 3, 2003).

[39] Trends confirm that increasingly consolidated cable operators are making troubling inroads into the local advertising market—a critical source of support for free, over-the-air television. *See* Trends in MSO Consolidation Adverse to Free TV, attached hereto as Exhibit F (illustrating that cable's share of local advertising sales have steadily increased since the mid-1990s); *see also*

continue to bear the capital and operating expense of broadcasting two signals,[40] these pressures will be felt increasingly even in larger markets. Thus, in markets 51-175, the fourth-ranked station went from an average revenue gain in 1997 of $2.4 million to an average loss of $2.7 million in 2001. Financial constraints led to forty-two stations canceling their local news over the four-year period ending in 2002, and more have canceled since then.[41] As the Augustine/Eoff and Dubow declarations make clear, these trends will begin to spread to medium-sized markets.[42]

The Commission's goal ought to be a strong, vibrant and competitive free, over-the-air television service, not a service that is barely surviving by the time the digital transition

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Comments of Granite Broad. Corp. in MB Docket No. 02-277 & MM Docket Nos. 01-235, 01-317 & 00-244, at 9 (Jan. 2, 2003) (explaining the negative impact of "cable interconnects," which allow an advertiser to buy a spot that will air on multiple cable systems in a market, thereby allowing the advertiser to reach an entire market or markets "with one contact, one tape, and one invoice" on the broadcast advertising market).

[40] *See, e.g.*, Comments of Coalition Broadcasters LIN Television Corp., Raycom Media, Inc., Waterman Broad. Corp., and Montclair Communications, Inc. in MB Docket No. 02-277 & MM Docket Nos. 01-235, 01-317 & 00-244, at 6 n.10 (Jan. 2, 2003) ("The initial costs for inaugurating so-called 'pass-through' digital service may average about $2 million per station. But the burden of fully transitioning to digital is much higher because: (i) the costs for subsequent stages to convert to digital completely may be another $6 million per station; (ii) these costs are not appreciably less for smaller market stations, where they devour a substantial share of station revenues and can eliminate profitability; (iii) lending costs for these expenditures can be high; (iv) these figures do not include the higher operating costs of broadcasting in digital; and (v) at present there is virtually no additional revenue generated by DTV."); Joint Comments of Alaska Broad. Co., Quincy Newspapers, Inc. and Grant Communications, Inc. in MB Docket No. 02-277 & MM Docket Nos. 01-235, 01-317 & 00-244, at 5 (Jan. 2, 2003).

[41] When Topeka, Kansas, station KTVA-TV decided to cease providing local newscasts, it stated that the decision "was the result of ad declines, the increasing expenses of digital conversion, as well as network costs, including contributions for ABC's Monday Night Football and reduction in network compensation." Dan Trigoboff, *The News Not Out of Topeka*, Broad. & Cable, Apr. 22, 2002, at 12; *see also* Comments of the National Association of Broadcasters in MB Docket No. 02-277 & MM Docket Nos. 01-235, 01-317 & 00-244, at 76 (Jan. 2, 2003) (discussing a Smith Geiger study "demonstrat[ing] the likelihood that a number of smaller market stations may eliminate their local news operations").

[42] *See* Augustine/Eoff Decl. ¶¶ 6-8; Dubow Decl. ¶¶ 10-11.

draws to a close. Multicasting, accompanied by a carriage requirement, can help level the playing field and assist broadcasters in attaining the vitality that will enable them to provide superior local service to the public. Multicasting enables broadcasters to spread the costs of providing local news, local sports, government affairs, local traffic service, community coverage and the weather service described in Part I over more revenue streams.[43] These services may attract more viewers, and therefore more advertising support, at great benefit to the public.[44]

Ensuring the availability of multicast programming through a cable carriage requirement serves the public interest, and lack of a requirement will weaken the vitality of free, over-the-air broadcast service.[45] Cable carriage preserves the public's free, over-the-air broadcast television service, which is an important governmental interest identified in the *Turner* cases. And a multicast carriage requirement supports not only the viability of multicast streams, but also the health of the main station, as multicast streams bring in viewers and advertising revenue in an environment where broadcasters face competition from larger and larger cable systems typically providing more than one hundred cable channels to viewers. Moreover, in the face of vertical integration and increasing consolidation in the cable industry, a multicast carriage requirement serves the additional important government interests of promoting the widespread dissemination of information from a multiplicity of sources and promoting fair competition in the market for television programming. Multicast carriage also promotes and expedites the

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[43] *See* Augustine/Eoff Decl. ¶ 6; Dubow Decl. ¶ 11; Keelor Decl. ¶ 13; Sander Decl. ¶ 8.

[44] When the Commission adopted the DTV standard more than seven years ago, it permitted broadcasters to use their digital spectrum to provide fee-based, ancillary and supplementary services because it "recognize[d] the benefit of permitting broadcasters the opportunity to develop additional revenue streams from innovative digital services. This will help broadcast television to remain a strong presence in the video programming market that will, in turn, help support a free programming service." *DTV Fifth Report and Order*, 12 FCC Rcd at 12820-21.

[45] *See* Augustine/Eoff Decl. ¶ 8; Dubow Decl. ¶ 10; Keelor Decl. ¶¶ 13-14; Sander Decl. ¶¶ 8-9.

digital transition by enhancing viewing and boosting sales of digital sets. Finally, a multicast carriage requirement imposes no greater burden on cable operators than carrying a broadcaster's HDTV signal and is half the burden of the existing analog carriage requirement. For these reasons, the Commission should move quickly to adopt multicast carriage rules for all broadcast programming.

* * *

The NBC affiliates fully and vigorously support all of the other positions urged by NAB and MSTV on the various digital carriage issues, including the either/or transitional carriage proposal they submitted on November 25, 2003.[46] The Commission should move quickly to end the uncertainty broadcasters, the public and others have faced for the last six years by promptly adopting must carry rules and including in them a multicast carriage requirement.

Respectfully submitted,

Jonathan D. Blake
Ellen P. Goodman
Amy L. Levine
COVINGTON & BURLING
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401
202.662.6000 (phone)
202.662.6291 (fax)

January 8, 2004

[46] *See* Letter From Edward O. Fritts, NAB, and David L. Donovan, MSTV, to Michael K. Powell, Federal Communications Commission, in CS Docket Nos. 98-120 & 00-96 (Nov. 25, 2003).

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	
	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	
	)	

To: The Commission

JOINT DECLARATION OF CYNTHIA AUGUSTINE, PRESIDENT, AND BOB EOFF, DIVISIONAL VICE-PRESIDENT, OF THE NEW YORK TIMES BROADCASTING GROUP

1. Our names are Cynthia Augustine, President of The New York Times Broadcasting Group, and Bob Eoff, Divisional Vice-President of The New York Times Broadcasting Group and President and General Manager of WREG(TV)(DT) (NTSC Ch. 3/DTV Ch. 28), the CBS affiliate in Memphis, Tennessee. Mr. Eoff also serves as Secretary and Treasurer of the CBS Network Television Affiliates Association, and Ms. Augustine is on the Board of the NBC Television Affiliates Association. We are familiar with the plans that The New York Times Broadcasting Group ("New York Times") stations have for use of their multicast spectrum. The New York Times owns eight full power broadcast stations in markets ranging from the 41st ranked Nielsen DMA to the 108th DMA.

I

2. The New York Times stations, which operate solely in mid-size markets, are particularly excited about the flexibility digital spectrum affords to bring new services to our viewers. The Commission has already heard from Walter Liss,

President of the ABC Owned Television Stations, about the interest among viewers in receiving full time multicast streams of local news, public affairs programming, and local weather information.[1] Like Mr. Liss, the New York Times has found that our viewers' thirst for news is not satisfied by the national cable news networks, because these networks do not cover the locally-relevant stories of greatest interest to the community. And the relatively limited time available for local newscasts on our main channels does not afford the opportunity to cover local stories with the depth and frequency desired by many viewers. To that end, some of our stations have partnered with Time Warner Cable to provide a twenty-four hour a day local cable news, weather, and sports channel. Based on lessons learned in this venture, we would like to expand our news offerings to our over-the-air audience by airing a local news channel as a multicast stream. Unlike our national competitors, this service will emphasize the local information that is most relevant to our viewers.

3. The New York Times's NBC affiliates also expect that they will join in providing the twenty-four hour local weather and information multicast channel being developed jointly by the NBC Television Network and the NBC Television Affiliates Association. One year ago, the NBC Television Affiliates Association organized a Futures Committee, which has worked closely and cooperatively with the NBC Television Network. Together, they have considered many promising options for use of stations' digital spectrum, including a twenty-four hour locally-oriented weather, traffic and information channel. The New York Times's NBC affiliates are excited about

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[1] *See* Letter from Walter Liss, President, ABC Owned Television Stations, to Marlene H. Dortch, Secretary, FCC, in CS Docket No. 98-120 (Nov. 20, 2003).

the potential of this venture, which will provide viewers with both local and national weather information and local traffic updates on a multicast channel.

4. Our multicast spectrum also allows New York Times stations to offer different multicast streams aimed at specific geographic zones. Our stations can thus provide "super local" news coverage directed to a particular town or county within a station's overall coverage area. In keeping with the same principle, multicasting will allow our stations to open a new advertising market to small businesses in our viewing areas. Most small businesses cannot afford to advertise on broadcast television. At the same time, they do not necessarily need to reach all of the viewers in a station's coverage area. The New York Times stations will use multicasting to create a new advertising model for small businesses, which will be able to purchase time on a specific multicast stream targeted at their desired geographic area. In directing advertisers' commercial announcements to multicast streams delivered to selected geographic areas, New York Times stations will charge local businesses only a fraction of the cost of a traditional full coverage advertisement. Thanks to multicasting, locally-oriented advertisers will no longer be forced to choose between purchasing expensive and superfluous advertising or altogether forgoing broadcast advertising in their business strategies.

II

5. Because cable programmers have bottleneck control over the video programming market, cable carriage of New York Times stations' multicast services is essential to making these local services a reality for our station's viewers. Cable systems reach on average seventy percent of households in the United States. In contrast, multicast programming that is distributed solely over the air reaches as little as fifteen

percent of our viewers, which is insufficient to justify a significant investment in new digital equipment and programming. If New York Times stations are to multicast a continuous local news channel or invest in designing competitive advertising models for small businesses, they need assurances that they will be able to reach the majority of potential viewers.

6. Many of the efforts of our stations to negotiate retransmission consent agreements that include carriage of multicast streams have been unsuccessful. This result is not surprising. Because cable systems already have the ability to transmit targeted advertisements to specific geographic regions within their franchise areas, they have a strong incentive to resist new competition from broadcasters for small business advertisers. Yet small businesses deserve access to the substantial population that regularly watches affiliated stations' programming. Without cable carriage of stations' multicast streams, competition in the market for small business advertisers will falter and these entrepreneurs will again face a monopoly seller of advertising time, namely the local cable operator.

III

7. Cable operators have multiple channels and programming at their disposal and thus benefit significantly from the ability to provide multiple outlets targeted to niche viewers to advertisers wishing to reach certain segments of a diverse audience. Not surprisingly, cable operators are therefore increasingly successful in garnering a larger share of the advertising pie. We believe that use of multicast streams to allow advertisers to target particular geographic areas within a station's service area would even the playing field and help ensure the future health and viability of over-the-air broadcast

stations like the New York Times stations. With innovative means of reaching local viewers, New York Times stations will be able to spread the high and rising costs of programming and supplement the weakening local advertising revenue stream that are their sole source of economic support.

8. Loss of network compensation and reverse compensation are other serious challenges to the New York Times stations. For example, our CBS affiliates are now required to pay CBS for the rights to transmit the network's broadcast of NCAA basketball games. For many of our stations, network compensation determines whether they remain profitable. Accordingly, new revenue streams are essential in the face of declining network compensation.

9. Other challenges facing New York Times stations include (i) erosion of our stations' over-the-air viewership by cable and DBS in part as a result of intensified competition from an ever-increasing array of cable channels and (ii) costly investment in digital capital and digital operating costs (in addition to the expense of operating analog stations). Additional programming outlets and competitive advertising models for New York Times stations could significantly alleviate these financial pressures and enhance the viability of our over-the-air broadcast service. Free over-the-air broadcast service will remain in jeopardy, however, if seventy percent of our stations' potential audiences remain unreachable.

We, Cynthia Augustine and Bob Eoff, declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge and belief.

Executed: January 7, 2004

Cynthia Augustine

Cynthia Augustine

Bob Eoff

EXHIBIT B

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

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	
	)	

To: The Commission

DECLARATION OF DAVID J. BARRETT,
PRESIDENT AND CEO,
HEARST-ARGYLE TELEVISION, INC.

1. My name is David J. Barrett. I serve as President and Chief Executive Officer for Hearst-Argyle Television, Inc., which owns or manages 27 television stations that reach 17.7% of U.S. television households. Our company owns or manages 10 NBC affiliates, 12 ABC affiliates, 2 CBS affiliates, 1 UPN affiliate, 1 WB affiliate, and 1 independent station. The market size of our stations ranges from Boston (6th ranked Nielsen DMA) to Monterey-Salinas, California (120th DMA). Hearst-Argyle owns, in terms of national coverage, the largest group of non-network owned ABC affiliated stations and the second largest group of non-network owned NBC affiliated stations.

2. We have substantially completed the digital build-out of our stations, and those stations are now focusing on determining and developing digital programming. In the short term, our ABC, NBC, and CBS network stations are providing HDTV in prime time, and we look forward to expanding the amount of HDTV programming on our other stations as more of it becomes available.

3. In addition, we look forward to the opportunity to provide multiple streams of programming to our viewers through digital multicasting. Our company, for example, is playing an active role in the development of the new joint NBC Network/Affiliates weather service for digital broadcasting. We believe this service, which could provide viewers with local and national extended weather coverage, as well as AMBER and terror alerts and traffic and travel-related information, will make a unique contribution to the choice of weather and informational programming currently available to our viewers—particularly local weather programming.

4. We are also directly involved with the ABC Television Affiliates Association and the ABC Network in the development of a new digital multicast ABC/Affiliates News Network. This service is in the developmental stage, but the emphasis in the planning process has been on local news and information. The new service will supplement both the national and local news programming available to our viewers. We believe this new digital service will greatly enhance the level of news and informational programs available to our viewers—particularly local news and information programming.

5. In addition, we are exploring other digital program options. Multicasting offers further opportunities for our stations to provide local content, including local news, public affairs, political debates, sports, and other local programming not now available to our viewers. The ability to further utilize the resources, both talent and facilities, that our local stations now have for covering local news, public, political, education, entertainment, and sporting events will be greatly enhanced by the transition to digital. We believe the potential exists for broadcast stations to use their multicast capability to take "localism" to a new level.

6. And, of course, the opportunities are considerable for new broadcast networks—both national and regional—to be formed to provide specialized digital programming not now available.

7. Because cable provides service to about 70 percent of the homes in our stations' viewing areas, our multicasting plans, however promising they may be, will not be viewed in those cable homes unless carried by cable systems. To date, and with the exception of Time Warner and various smaller cable companies, our stations have had limited success in negotiating cable retransmission consent agreements that include carriage of digital multicasting. Many of the larger cable companies have either refused outright to retransmit our multicast programming or insist on approving the kinds of multicast streams they will carry. In the latter case, we have been told by some cable companies that they will not carry specific kinds of multicast programming. This development marks a dramatic shift in the relationship our stations have had with local cable companies. Unlike our previous experience in negotiating retransmission consent agreements for analog carriage, many cable companies are now designating themselves as the arbiter of what specific broadcast programs, in the digital context, they will or will not carry. Some of these cable companies have been remarkably candid in stating they will not carry multicast programming that is, or may be, competitive with cable programs they offer. Since our local stations compete head-to-head with cable in the sale of advertising (both national and local) with local cable companies, we fail to see how the position now being taken by these cable companies can be squared with the public interest.

8. We are troubled by this new development because in the absence of a digital mandatory carriage requirement, (all free bits and non-stripping) viewers will be deprived of access to the multicast programming our stations may offer as well as the multicast streams of

other television stations. Without cable carriage and the critical mass of potential viewers it brings, stations may be forced to make the difficult decision not to invest in multicast services, and the development of digital multicast programming will be stopped before it begins. The result will be impairment of the full development of the digital broadcast spectrum, thereby depriving our viewers of the widest possible diversity and choice of broadcast television programming options.

I, David J. Barrett, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Jan. 7, 2004

Date

David J. Barrett

EXHIBIT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120

To: The Commission

DECLARATION OF CRAIG DUBOW,
PRESIDENT, GANNETT BROADCASTING COMPANY

1. My name is Craig Dubow. I am the President of Gannett Broadcasting Company. Gannett owns 22 full power broadcast stations in markets ranging from Bangor, Maine (# 158) to Washington, D.C. (#9) and affiliated with the ABC, CBS and NBC television networks. Gannett is a member of the NBC Television Affiliates Association, and the Association's current chairman, Roger Ogden, is Gannett's Senior Vice President for Broadcast, as well as President and General Manager of KUSA-TV/DT, the NBC affiliate in Denver.

I

2. Through our involvement with the NBC Television Affiliates Association, Gannett is fully aware of the many options being considered for use of stations' digital spectrum. In particular, the NBC Television Network and the Association have decided to proceed with plans for a weather channel, which will provide viewers with local and national extended weather coverage, as well as alerts (e.g., AMBER and terror alerts) and traffic and travel-related information.

3. The NBC weather channel will fill communities' need for a local source of weather and traffic-related information at any time of day. Unlike the national Weather Channel provided on many cable systems, our weather service will emphasize the local information that is most relevant to a broadcast station's viewers. It will also provide an ongoing source of local traffic and travel-related information, making it an invaluable resource for viewers to consult before hitting the road or heading to the airport. And our weather service will provide viewers with the latest local alerts, including AMBER alerts for missing children.

4. The Association and NBC are also exploring other multicast programming they might provide to local viewers. Possibilities include an affiliate 24/7 local news channel to complement the local newscasts on stations' main feeds. In addition to providing local news, this channel would offer extended coverage of local events, including press conferences, local government meetings, and political races. Another possibility is a local sports and events channel, which would offer coverage of amateur sports and performances and other cultural or educational events.

5. Gannett's NBC-affiliated stations will be enthusiastic supporters of the weather channel concept. Gannett's ABC-affiliated stations will seek to participate vigorously in the ABC news channel initiative. Gannett's CBS-affiliated stations will, through the CBS Television Affiliates Association, seek to develop multicast plans with their network partner.

II

6. In an effort to provide greater public interest benefits to the communities it serves, Gannett, like most broadcasters, is also actively exploring ways to

provide additional services on its stations' digital channels, apart from the programming being developed or to be developed in partnership with their respective networks. Of course, Gannett's stations will use these channels for HDTV programming. But when HDTV programming is not being presented, or when technological advancements permit greater compression of the signal, multicasting additional digital services will allow our stations to offer a broad and healthy array of other broadcast options for viewers.

7. As mentioned above, some examples include a 24/7 local news channel and a local sports and events channel. One idea that particularly interests Gannett is a local government channel, devoted to coverage of local government affairs. Such a channel might provide gavel-to-gavel coverage of city council meetings and meetings of local commissions and boards, as well as covering press conferences of city officials, local elections and other local events. The programming on public, educational and governmental (PEG) channels provided on some cable systems is typically controlled by incumbent local government officials. The content provided on PEG channels therefore tends to skew in favor of elected officials already in office. In any event, a broadcaster-provided local government channel would provide competition to cable PEG channels. In markets where cable systems are not required to provide PEG channels, a broadcaster's local government channel would serve as the sole programming source dedicated to providing information about local government to viewers.

8. The local government channel might not be confined to governmental affairs. It could cover local news stories, elections, school events and civic activities. Like other stations, Gannett stations have large investments in equipment and human capital that could provide material for a local government channel. The single

programming stream in the analog environment limits their ability to put more of this information on the air. Gannett stations could also use the local government channel (or other multicast channels) to provide extended coverage of breaking news, local elections and other important events while continuing to provide regularly-scheduled programming on their main channels.

III

9. Cable carriage of Gannett stations' multicast programming streams is essential to providing these additional public/community benefits to our stations' viewers. Cable systems have bottleneck control over the video programming market, reaching on average 70 percent of households in this country. Increasingly, due to clustering, one cable MSO controls most of the subscribers in Gannett markets. (For example, Time Warner Cable in Tampa (WTSP-TV), Comcast in Atlanta (WXIA-TV), and Cox in Phoenix (KPNX-TV); see attached list of Gannett TV markets.) Since many MSO's have their own local news channels, they are unlikely to carry a Gannett station's competitive 24/7 local news multicast stream. And cable operators have demonstrated an unwillingness to carry voluntarily broadcasters' multicast programming generally. Distribution of Gannett multicast programming solely to our over-the-air viewers in our markets (usually 20% of the public, the remaining viewers receiving their video programming via cable and satellite) is not sustainable. Moreover, the uncertainty regarding multicast carriage inhibits the creation of a viable economic model for such services. Consequently, investment in innovative multicast services would be reckless without access to cable viewers. Therefore, the majority of Gannett stations' viewers will

not receive multicast programming in the absence of a carriage requirement. Simply stated, without cable carriage, we will not have the opportunity to compete.

10. I believe and my company believes that several trends, now being felt especially in smaller markets and by smaller stations, threaten the health of local broadcasting. Stations in small and medium-sized markets suffer from various financial pressures, including (i) erosion of their over-the-air viewership by cable and DBS; (ii) investment in digital capital and digital operating costs (in addition to the expense of operating an analog station); (iii) cable inroads into local advertising and (iv) loss of network compensation.

11. Absent multicast services, Gannett's stations, like other broadcasters, will be increasingly unable to compete effectively in the competitive, multichannel world. Nationwide, it is reported that fourth-ranked stations in markets 51-175 have gone from averaging a profit of $2.4 million in 1997 to averaging a loss of $2.8 million in 2001. Forty-two stations canceled their local news over the four-year period ending in 2002, and more have canceled since then. To remain viable and vibrant and to continue our core local news service in a multichannel digital world, local broadcasters must develop supplemental revenue streams. Multicasting presents the most compelling vehicle for achieving this result.

I, Craig Dubow, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: January 7, 2004

Craig Dubow

#67780 v. 2

GANNETT TELEVISION STATION MARKETS

DMA	CALL SIGN	NETWORK AFFILIATION
Atlanta	WXIA-TV	NBC
Bangor	WLBZ-TV	NBC
Buffalo	WGRZ-TV	NBC
Cleveland	WKYC-TV	NBC
Columbia	WLTX(TV)	CBS
Denver	KUSA-TV	NBC
Flagstaff	KNAZ-TV	NBC
Grand Rapids	WZZM-TV	ABC
Greensboro	WFMY-TV	CBS
Jacksonville	WTLV(TV)	NBC
Kingman	KMOH-TV	NBC
Knoxville	WBIR-TV	NBC
Little Rock	KTHV(TV)	CBS
Macon	WMAZ-TV	CBS
Minneapolis	KARE(TV)	NBC
Orange Park	WJXX-TV	ABC
Phoenix (Mesa)	KPNX(TV)	NBC
Portland	WCSH-TV	NBC
Sacramento	KXTV-TV	ABC
St. Louis	KSDK(TV)	NBC
St. Petersburg/Tampa	WTSP(TV)	CBS
Washington	WUSA(TV)	CBS

#67881

EXHIBIT D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	

To: The Commission

DECLARATION OF JACK SANDER,
PRESIDENT/MEDIA OPERATIONS, BELO CORP.

1. My name is Jack Sander. I am the President/Media Operations for Belo Corp. Belo owns nineteen full power broadcast stations in markets ranging from the 7th ranked Nielsen DMA to the 123rd DMA and programs an additional full power station pursuant to a local marketing agreement. Combined, these stations reach 13.8 percent of U.S. television households. From 2000 to 2002, I was Chairman-President of the NBC Television Affiliates Association. I also serve on the Futures Committee of the NBC Television Affiliates Association.

I

2. For decades, a hallmark of Belo Corp. has been its commitment to providing high-quality news and information to local audiences. Belo stations pride themselves on their top-rated local news broadcasts and on serving their viewers by delivering journalism that has produced scores of national awards. In addition, Belo has leveraged its local television assets to create regional and local cable news channels in Texas, Arizona, Virginia, North Carolina, Louisiana and the Northwest.

3. Belo stations are using their digital spectrum to provide new and exciting programming services to the viewers in their respective markets. All Belo-owned stations but one are simulcasting their analog signal in 1080i high definition format on their primary digital channels.[1] In addition, several Belo stations are also multicasting standard definition channels to provide a number of services geared to local audiences. For example, KTVB-TV/DT (NTSC Ch. 7/DTV Ch. 26), Belo's NBC affiliate in Boise, Idaho, originates and transmits a twenty-four hour local news service on a multicast channel, while KGW-TV/DT (NTSC Ch. 8/DTV Ch. 46), Belo's NBC affiliate in Portland, Oregon, uses a multicast stream to provide high definition example programs twenty-four hours a day to encourage consumer adoption of digital technology. Other Belo stations are offering local weather information on multicast channels.

4. Belo's stations are considering additional options for providing multicast services to their viewers in the future. They might include the local weather and information channel being developed jointly by the NBC Television Affiliates Association and the NBC Television Network and the local news channel under consideration by the ABC Television Affiliates Association and the ABC Television Network.

II

5. Cable carriage of Belo stations' multicast programming is essential to making these and other local services a reality for the communities we serve. Our

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[1] KSKN-TV/DT (NTSC Ch. 22/DTV Ch. 36), the UPN affiliate in Spokane, Washington, is the only Belo station not yet transmitting a digital service. Belo anticipates that KSKN will receive FCC authorization to provide such a service as early as mid-January 2004.

offerings will still have to gain acceptance in the local marketplace, but without cable carriage they will have no chance to succeed. Equipping Belo stations to provide multicast programming to viewers will require extensive capital investment by Belo. To be able to originate digital programming other than a simulcast of stations' analog signals will require significant and expensive facility upgrades for each multicast stream. Belo is far more likely to make such a substantial investment in equipment upgrades if it knows that its multicast programming will reach the bulk of local viewers in its markets.

6. Cable systems serve as gatekeepers to the video programming market, providing service to on average 70 percent of the viewers in our markets. Accounting for households that subscribe to DBS, multicast programming that is distributed solely over the air to our stations' viewers can reach as little as 15 percent of the local public, which is insufficient to sustain the services discussed above. Belo is unwilling to invest substantial incremental resources in innovative multicast services without assurances of access to cable viewers, and without cable carriage, Belo's multicast programming will not reach enough viewers to be competitive with cable programming.

7. Belo has had limited success relying on negotiated retransmission consent agreements for carriage of its stations' multicast programming. Without such agreements, stations have little incentive to expand their current multicasting operations, even if additional digital channels would better serve their viewers. Moreover, what seems to be the best use of Belo stations' digital spectrum at this early stage in the transition may not ultimately prove to be the best way to serve the public. A multicast carriage requirement would give Belo stations the flexibility needed to meet the needs of

their local viewers most effectively by allowing them to tailor their digital offerings to local viewers' fluid interests.

III

8. Belo has found that intense competition from cable systems for local viewership and advertising revenue is a growing threat to its stations' vitality as over-the-air broadcasters. Cable operators have multiple channels and programming at their disposal and thus benefit significantly from the ability to provide multiple outlets to viewers and advertisers wishing to reach a diverse audience. Cable operators are increasingly successful in garnering a significant share of the advertising pie. With the additional means of reaching local viewers that multicast streams allow, Belo stations will be able to provide new and unique local news and informational programming, spread high and rising costs of programming, and supplement the advertising revenue stream that is its primary source of economic support. These benefits of multicasting cannot be realized if 70 percent of our stations' potential audiences remain unreachable.

I, Jack Sander, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: January 7, 2004

Jack Sander

EXHIBIT E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	
	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	
	)	

To: The Commission

DECLARATION OF JIM KEELOR,
PRESIDENT AND CHIEF OPERATING OFFICER,
LIBERTY CORPORATION

1. My name is Jim Keelor. I am President and Chief Operating Officer of Liberty Corporation. Liberty owns fifteen full power broadcast stations in markets ranging from the 50th ranked Nielsen DMA to the 179th DMA. I have served in this position since 1992. Prior to that, I served as Vice President of Operations for Cosmos Broadcasting and as the General Manager of WDSU(TV) in New Orleans, Louisiana, and WAVE(TV) in Louisville, Kentucky.

I

2. Liberty Corporation, on a regularly scheduled basis, seeks out the opinions of viewers and business leaders in the markets we serve to get feedback on the service that our stations provide to their communities now and to determine how best to serve our viewers in the future. As one element of ascertainment meetings, telephone research and focus groups, stations will be encouraged to explain to participants the exciting potential of digital broadcast service, and particularly multicasting, to give a more prominent voice to local interests. We will also ask participants for their ideas as to

the types of digital programming that might serve those interests at the local level. Based on this information, and other research, Liberty is poised to make dynamic use of its digital spectrum to satisfy the local interests of its viewers.

3. Liberty has a significant presence in small and rural markets, and we believe it is there that multicasting could have the most immediate impact. For viewers in some of these markets, like Jonesboro, Arkansas, and Biloxi, Mississippi, the Liberty station is one of only two free over-the-air services available. Using multicasting, we could bring additional networks, like UPN or WB, to over-the-air audiences in these rural markets for free by carrying the emerging networks' signals as multicast streams on Liberty stations' digital signals. Multicasting thus has the potential to diversify dramatically television service to currently underserved markets.

4. In addition, multicasting gives Liberty a vehicle to reach underserved *viewers* in culturally diverse regions. Liberty is looking into multicasting Spanish language streams in markets like Lufkin and Tyler, Texas, where viewers currently cannot access such services via any over-the-air station. We envision working with Spanish language broadcast networks to ensure the success of this venture. In markets where viewers are already served by a Spanish language over-the-air station, Liberty is considering using multicast programming to reach out to its culturally diverse audiences in other ways. For example, in Harlingen, Texas—where eighty percent of the population is of Hispanic background—we might provide language training, employment updates, and immigration information on multicast channels.

5. In all of our markets, multicasting gives Liberty the ability to deliver locally relevant programming twenty-four hours a day. While it is relatively easy

for Americans to learn about the legislative agenda of Congress or the President, most viewers have little access to the inner workings of their local government institutions. To bring citizens closer to their elected leaders, Liberty stations have ideas about multicasting state legislative debates, mayoral press conferences, city council hearings, and school committee meetings—events that significantly impact the daily lives of local citizens. For example, when the South Carolina legislature debated whether the Confederate flag should continue to fly above the state capitol building, Liberty station WIS could have aired the entire debate on a multicast digital channel. During the period leading up to elections, Liberty stations might multicast local debates and candidate interviews to ensure that viewers have as much opportunity to learn about their potential future community leaders as they have for the national candidates.

6. The multicasting plans Liberty is considering could also enhance the quality and quantity of its local news. Liberty stations are looking into using their digital spectrum to provide "wall to wall" traffic coverage during the morning and evening rush hours, as well as regular weather and temperature updates. Liberty's stations might also provide continuous local coverage of inclement weather or other local emergencies on their multicast streams.

7. Liberty is also exploring how its digital spectrum could personally enrich the lives of its viewers. Education and worker training would be a key part of this strategy. KPLC-TV has spoken with the large petrochemical industry in Lake Charles, Louisiana, about the possibility of airing community and worker safety training on a multicast digital channel. In Lufkin, Texas, a community suffering from the loss of 500 jobs after a major business closing, Liberty station KTRE(TV) could use its digital

spectrum to offer resume workshops and connect furloughed workers with potential employers. Liberty has also received positive responses from local colleges that might be interested in providing telecourses over multicast channels, thereby enabling them to reach residents who otherwise would not have access to their adult education services.

8. Children's programming is also a significant part of Liberty's ideas for multicasting. With new outlets at its disposal, Liberty stations are researching providing more educational programming, which would address topics including literacy, math, music, the visual arts, and healthy eating. This programming could be tailored to children's schedules, with services for particularly young children aired during the morning and early afternoon and programming targeted to school-age children running in the late afternoon and early evening.

9. Multicast spectrum could also provide a virtual meeting place for community organizations and civic-minded citizens. In our post-September 11 world, Americans are increasingly aware of the need to give back to local communities. There are many worthy organizations looking for volunteers, and many altruistic individuals looking to help. Liberty stations might in the future use multicast capacity to match up local organizations with these enthusiastic volunteers.

10. The additional outlets that multicasting allows also create opportunities for local residents to be heard and seen by their communities. During the recent FCC localism hearing in North Carolina, several local musicians complained that they could not get airtime on the radio in their respective communities. Liberty is looking at the possibility of giving local talent a voice, providing unsigned and independent label artists with a place to showcase their talents. Similarly, we have heard

from viewers who would like to see their high school sports teams on the air. Liberty may be able to provide interested teams a place on our multicast channels, allowing friends, family, and alumni a chance to see their local team in action even if they cannot attend each game.

11. In the past, Liberty stations have been aware of the many needs of the local communities they serve. However, with only one analog broadcast outlet (much of which is dedicated to network and syndicated programming that Liberty stations cannot easily preempt), Liberty stations have until now been unable to provide as much airtime as they would like for local events and services. The addition of multicast streams is a breakthrough, giving our stations the resources they need to better serve local interests while continuing to provide regularly-scheduled programming on their main channels.

II

12. Cable carriage of Liberty's multicast programming is essential to making these local services a reality for our stations' viewers. Cable systems have bottleneck control over the video programming market, providing service to on average close to 70 percent of our viewers. In contrast, multicast programming distributed over the air will in many markets reach just fifteen percent of our viewers. The audience penetration of our over-the-air digital signal makes it exceptionally difficult to justify the expense and effort associated with most of the above-described plans. Without a multicast carriage requirement, Liberty's ambitious efforts to further local interests may falter.

III

13. Liberty has found that intense competition for advertising revenue is a primary threat to its stations' viability as over-the-air broadcasters. Cable operators have multiple channels and programming at their disposal and thus benefit significantly from the ability to provide advertisers with programming outlets that are targeted to particular segments of a diverse audience. Not surprisingly, cable operators are therefore increasingly successful in garnering a larger share of a shrinking advertising pie. With additional means of reaching local viewers, Liberty's stations will be able to spread the high and rising costs of programming and supplement the weakening local advertising revenue stream that is its sole source of economic support. Multicasting is therefore necessary to the future viability and health of Liberty and its stations.

14. Other challenges facing Liberty include (i) erosion of our stations' over-the-air viewership by cable and DBS in part as a result of intensified competition from an ever-increasing array of cable channels; (ii) costly investment in digital capital and digital operating costs (in addition to the expense of operating analog stations); and (iii) loss of network compensation. Additional programming outlets for Liberty's stations could significantly alleviate these financial pressures and enhance the vitality of our over-the-air broadcast services. Such outlets will not survive, however, if seventy percent of our stations' potential audiences remain unreachable.

I, Jim Keelor, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: January 7, 2004

Jim Keelor

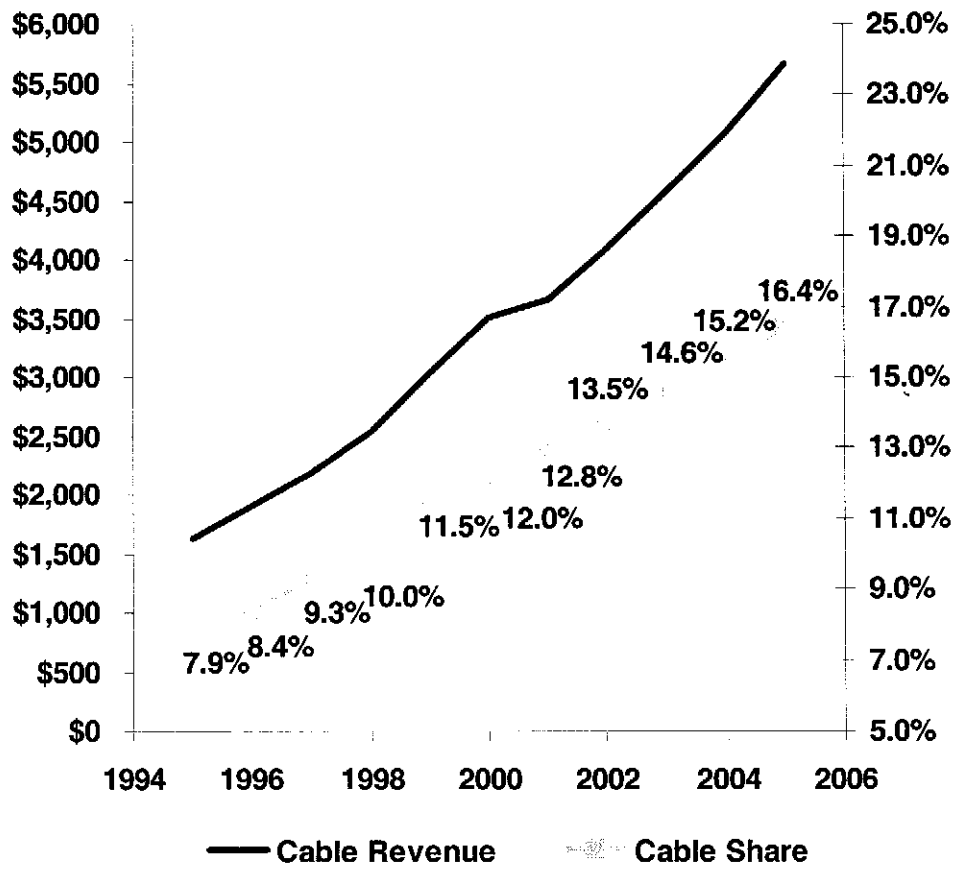
EXHIBIT F

Trends in MSO Consolidation Adverse to Free TV

Local Cable Consolidation

DMA #	Market	Lead MSO	% Control by #1
1	New York	Cablevision	52%
2	Los Angeles	Adelphia	40%
3	Chicago	Comcast	93%
4	Philadelphia	Comcast	84%
5	San Francisco	Comcast	95%
6	Boston	Comcast	76%
7	Dallas	Comcast	63%
8	Washington	Comcast	60%
9	Atlanta	Comcast	62%
10	Detroit	Comcast	78%
11	Houston	Time Warner	73%
12	Seattle	Comcast	86%
13	Minneapolis	Comcast	39%
14	Tampa	Time Warner	76%
15	Miami	Comcast	73%
16	Phoenix	Cox	69%
17	Cleveland	Adelphia	42%
18	Denver	Comcast	93%
19	Sacramento	Comcast	82%
20	Orlando	Time Warner	80%

Local Sales Competition From MSO's



Source: Veronis Suhler & Associates via Broadcasting & Cable 6/17/02