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 BY THE CBS TELEVISION NETWORK AFFILIATES ASSOCIATION IN SUPPORT OF MULTICAST CARRIAGE REQUIREMENT

Jonathan D. Blake
Jennifer A. Johnson
Amy L. Levine
Matthew DelNero
COVINGTON & BURLING
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401

Counsel for the CBS Television Network Affiliates Association

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SUMMARY

To supplement the record on the need for a multicast carriage requirement, the CBS Television Network Affiliates Association here submits ten declarations covering 62 stations in both small and large markets. Freed from the limitations of single-channel analog technology, many of these stations are already providing innovative multicast programming, much of it local, that greatly expands upon the free, over-the-air programming options currently available to viewers. Many have plans for additional offerings responsive to the needs of the communities they serve. If they have access to cable subscribers, broadcasters will have both the incentive and the resources to continue and build further on these promising early efforts. The Commission's decision on multicast carriage will strongly influence whether local broadcasters will be able to make real advances in both the quantity and quality of their programming services, not as a substitute for HDTV broadcasting, but in addition to it, and whether viewers will enjoy the benefits of these advances.

Broadcasters will use multicasting to provide:

- additional, more extensive and more localized news, sports, weather and other information;
- extended coverage of state and local government proceedings;
- in markets with growing Spanish-speaking populations, a Spanish language stream, so that these viewers receive the same local news, weather and sports coverage available to predominantly English-speaking viewers; and
- in smaller markets with limited over-the-air broadcast channels, carriage of emerging networks, such as UPN or WB, plus other complementary programming.

For these innovative digital services to have an opportunity to succeed, they must reach the 70 percent of U.S. households that subscribe to cable. Because cable operators have bottleneck control and compete with local broadcasters for advertisers, viewers and

programming, they have both the power and incentive to keep multicast programming out of the market or allow its entry only on prohibitive or discriminatory terms. Some MSOs, but far from all, have recently agreed to carry the main digital channels of large stations, though only a few have extended these arrangements to broadcasters' multicast services. Smaller stations have had considerable difficulty obtaining any cable carriage at all for their digital signals. These mixed experiences, also illustrated in the attached declarations, show that relying on negotiated retransmission consent for multicast carriage will not support the significant investment in programming and equipment upgrades that broadcasters must make to support these services. Only the assurance of a multicast carriage requirement, even if it goes into effect after the transition is completed, can stimulate the substantial, long-term investment in bold new services needed to make multicast programming a robust reality.

A multicast carriage requirement would also be faithful to the decision of both Congress and the Commission to allow broadcasters to discover and agilely respond to the public's desire for digital programming services, subject to a broad and flexible public interest mandate. Both chose not to require broadcasters to provide a minimum amount of high definition programming, but the *de facto* result if broadcasters' multicast services are denied access to cable subscribers will be a uniform gravitation toward HDTV services with little or no multicasting, to the public's detriment. Broadcasters' ability to use digital technology to serve the public good with an optimal mix of multicasting and HDTV programming thus depends on a multicast carriage requirement. By giving additional incentive to viewers to buy new digital receivers, such a requirement would also expedite the transition, thereby benefiting consumers, the cable, manufacturing and broadcast industries, other prospective spectrum users and the U.S. Treasury.

In addition, multicast programming may well be critical to the future of local broadcast service, even its main program stream. CBS-affiliated stations, particularly in smaller markets, face daunting fiscal challenges, heavy digital operating and capital costs, the elimination of network compensation, and the continuing fragmentation of their audience and revenue base due to cable's multiplication of program offerings and heavy advertising inroads. By making it possible for broadcasters to offer several program streams, a multicast carriage requirement will serve the long-established public policy goal of sustaining the overall health of free, over-the-air, broadcast services.

Apart from multicasting, because a timely conversion to digital depends upon cable carriage *during* the transition, a requirement of cable carriage of broadcasters' digital signals should not be delayed until *after* the transition. Otherwise, the transition will become stalled at a midway point where all the affected industries will hemorrhage and American consumers will suffer as a consequence. Because nearly 70 percent of homes subscribe to cable and by statute the transition will not be complete until 85 percent of a market has digital penetration, the transition will continue indefinitely unless cable subscribers have access to broadcasters' digital signals. NAB and MSTV's either/or transitional carriage proposal is moderate and limited but will provide a blueprint for facilitating and expediting the transition. If the Commission declines to adopt the either/or transitional requirement, it should adopt an anti-stripping requirement to take effect now. It would prohibit cable systems from stripping any free multicast services from broadcasters' digital signals, and, like the non-degradation principle of the current analog carriage rule, it would apply even if the digital signal were carried pursuant to a retransmission consent agreement.

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SPECIAL FACTUAL SUBMISSION BY THE CBS TELEVISION NETWORK AFFILIATES ASSOCIATION IN SUPPORT OF MULTICAST CARRIAGE REQUIREMENT

Digital technology will enable broadcasters to provide new and diverse programming services to the public. While broadcasters may use their digital spectrum to provide programming in a high definition format, they can also use the very same spectrum to deliver one high definition and one standard definition programming stream or multiple standard definition streams at lower resolution. The likelihood is that most stations will broadcast in HDTV for prime time programming and for sports and other material where a particularly vivid picture is important and may also during those times use residual capacity to provide additional programming or information. At other times of the day and for other kinds of programming, stations will offer more programming choices at lower resolution using the same amount of

spectrum. CBS affiliates and other broadcasters will use this mix of program formats, called multicasting, to provide viewers with an array of locally-oriented programming options never before available on any basis, much less for free and over the air. The availability of such offerings is not just a desirable upgrade of current service. Instead, as the old broadcaster model of a single program stream becomes outmoded and vulnerable, multicast offerings may well be critical to the future health of the public's free broadcast service.

CBS has been a leader in introducing and promoting high definition programming, even when there were very few sets available to receive it. The CBS affiliates have pushed forward as well, spending over a billion dollars to construct and activate digital facilities during a period when receivers have been rudimentary and sparsely available and when cable carriage has been exceedingly difficult to arrange. Broadcasting in digital is by no means remunerative today, but recent progress has been encouraging. By a combination of government inducement and economic self-interest, other industries are following local broadcasters' lead in implementing the transition.

The central issue of digital carriage remains. Long before the promise of digital television began to be realized, Congress knew that cable carriage of advanced television signals would be critical to the continued availability of a broadcast television service. Thus, in 1992 Congress directed the Commission to institute a proceeding to adapt the existing analog cable carriage rules to account for advanced television technology as soon as it adopted a DTV standard.[1] The Commission adopted that standard in 1996 and launched this proceeding two

[1] *See* 47 U.S.C. § 534(b)(4)(B) ("At such time as the Commission prescribes modifications of the standards for television broadcast signals [1996], the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.").

years later.[2] In the ensuing five years, digital carriage rules have not been finalized. It seems that policymakers have been waiting for the market to resolve the carriage issues, which it has not.

To help bring closure to these issues, Commissioners and other Commission officials have asked for more specific information about how broadcasters are using or intend to use their digital channels, particularly for multicasting services. They have done so because multicast carriage is one of the knottiest issues that remains unresolved in this proceeding. In this Submission, the CBS Television Network Affiliates Association ("CBS Affiliates") seeks to respond to these requests. The CBS Affiliates consists of independently owned stations affiliated with the CBS Television Network that are located in large and smaller markets and, along with the CBS O&Os, provide service to the entire country. The response the CBS Affiliates here proffers is supported by declarations from 10 broadcasters, ranging from a group owner with 28 stations to a single station owner, representing stations in the 12th largest market to the 189th largest market—62 stations in all.[3]

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[2] Even prior to this long-running proceeding, the Commission had asked for and received comments on digital carriage issues, recognizing their central importance to the transition's success.

[3] This Submission is also supported by declarations from representatives of Belo Corp., Gannett Broadcasting Co. and Liberty Corp., representing an additional 61 stations in markets ranging from Boston, Massachusetts, the 6th ranked Nielsen DMA, to Jonesboro, Arkansas, the 179th ranked DMA, which were previously submitted in this proceeding as part of the Special Factual Submission in Support of Multicast Carriage by the NBC Television Affiliates Association. *See* Special Factual Submission in Support of Multicast Carriage by the NBC Television Affiliates Association in CS Docket Nos. 98-120, 00-96 & 00-2 (Jan. 8, 2004), Exhibit C, Declaration of David J. Barrett, President, Gannett Broadcasting Co. (Jan. 7, 2004) ("Barrett Decl."); Exhibit D, Declaration of Jack Sander, President/Media Operations, Belo Corp. (Jan. 7, 2004) ("Sander Decl"); and Exhibit E, Declaration of Jim Keelor, President and Chief Operating Officer, Liberty Corp. (Jan. 7, 2004) ("Keelor Decl.").

Station by station, market by market, CBS affiliates are exploring, developing and even today implementing new digital services for the benefit of the communities they serve. They strongly believe that the success and continuation of these plans and investments depend heavily on carriage rules that are neutral as between HDTV and multicast programming.[4] It is the responsibility of broadcasters to determine what it is that their communities want and what responsive programming strategies will increase the competitive appeal of local over-the-air broadcasting. It is the responsibility of the Commission, as specified by Congress, to ensure that cable does not interpose itself between broadcasters' choices and the public, provided that cable is not unduly burdened. A neutral carriage requirement that does not favor HDTV over multicast services is not unduly burdensome and is necessary to ensure public access to broadcast television offerings.[5]

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[4] As explained in Part V, this end could be achieved either through a multicast carriage requirement or through adoption of an anti-stripping principle, which would take effect now and continue in effect after the transition.

[5] NAB and MSTV have shown elsewhere that full digital carriage imposes half the burden of the analog carriage rule the Supreme Court upheld in the *Turner* cases and no more of a burden than an HDTV-only requirement. We summarize here: (1) cable capacity is two or three times today what it was in 1992, and (2) carriage of a full digital broadcast signal requires only 3 MHz of cable system capacity, not 6 MHz as was the case in analog. Points (1) and (2) mean that cable systems can carry both analog and digital channels in a far smaller percentage of their capacity than they used to carry just analog broadcast channels in 1992. In addition, (3) cable has recently realized that it needs and wants to carry broadcaster HDTV programming to distinguish itself from DBS, so carriage of these services does not constitute a burden. Also, (4) multicasting uses the same 6 MHz channel as HDTV programming, which the CBS Affiliates will provide for much of the broadcast day. If cable systems refuse to carry broadcaster's multicast services, broadcasters will likely revert to an all-HDTV strategy which will, in turn, mean that cable systems will have gained access to little or no new additional capacity, and the public will have been deprived of what broadcasters believe would have been the highest and best use of the digital spectrum they were given to serve the public interest.

I. BROADCASTERS HAVE A VARIETY OF INNOVATIVE PLANS FOR MULTICASTING.

CBS affiliates and other broadcasters have been unable to deliver to viewers in the analog environment additional innovative, locally-oriented programming, but digital technology now makes that possible.[6] At the same time, the market in which they compete has been rapidly evolving into a multichannel environment. Today, through digital, CBS affiliates have the ability to bring innovative programming ideas to fruition. Some stations have already begun offering multicast programming as part of their digital service. Since the programming on their main channels consists of network, syndicated and local programming that cannot easily be preempted, these stations are using the flexibility afforded by multicasting to provide greatly expanded, locally-relevant content.

Multicast services can bring citizens closer to their local government institutions. The major television networks devote considerable time to national political affairs, and local stations very effectively and extensively report local and regional news. But multicasting gives broadcasters the opportunity not previously available to cover local government proceedings and other civic events more fully and thereby provide viewers with a firsthand look at the issues before their state and local elected leaders. CBS affiliates with active plans to multicast local government events and provide extensive coverage of them include KFMB-DT in San Diego,

[6] Moreover, multicasting gives many content providers, including children's programmers, another potential outlet for their programming and would interject a needed competitive discipline to counterweight cable's bottleneck power in the marketplace. DIC Entertainment Corp., for example, which has the largest independent library of children's programming in the country, is developing a business model whereby it will partner with broadcasters to provide a twenty-four hour a day, free, over-the-air children's programming multicast stream. *See* Notice of *Ex Parte* Presentation of DIC Entertainment Corp. in CS Docket No. 98-120 (Nov. 6, 2003).

WKMG-DT in Orlando, WIBW-DT in Topeka, and WDBJ(DT) in Roanoke.[7] Liberty Corporation, licensee of CBS-affiliated KGBT-DT, Harlingen, Texas, and WTOL-DT, Toledo, Ohio, is also exploring opportunities for multicasting state legislative debates, mayoral press conferences, city council hearings, and school committee meetings.[8]

Multicasting also offers broadcasters a vehicle to deliver additional in-depth coverage of the most important local news stories and to report on other issues relevant to the local community. WKMG-DT in Orlando has a particularly innovative plan to develop a multicast service that will provide viewers with several types of local information on a single screen. In the center of the screen, viewers will see live video of local news, weather maps, radar, and rotating camera feeds from the city's traffic "hot spots."[9] Descriptions of local traffic conditions, news headlines, and weather updates will scroll along the sides of the main picture.[10] WIBW-DT plans to meet its viewers' interest in more local news content by launching a twenty-four hour a day local news, weather, and sports channel as a multicast stream.[11]

Multicasting also gives broadcasters the potential to reach traditionally underserved viewers. Many Spanish-speaking Americans are not fully served by local broadcast programming because they are not proficient in English. By multicasting a Spanish language

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[7] *See* Declaration of Ed Trimble, President and Chief Operating Officer, Midwest Television, Inc. (Jan. 12, 2004) ("Trimble Decl."), attached hereto as Exhibit A; Declaration of J. Henry Maldonado, Vice President and General Manager, WKMG-TV/DT, Orlando, Florida (Jan. 8, 2004) ("Maldonado Decl."), attached hereto as Exhibit B; Declaration of Michael DeLier, General Manager, WIBW-TV/DT, Topeka, Kansas (Jan. 8, 2004) ("DeLier Decl."), attached hereto as Exhibit C; Declaration of Robert G. Lee, President and General Manager, WDBJ(TV)(DT), Roanoke, Virginia (Jan. 8, 2004) ("Lee Decl."), attached hereto as Exhibit D.

[8] *See* Keelor Decl. ¶ 5.

[9] Maldonado Decl. ¶ 3.

[10] *See id.*

[11] *See* DeLier Decl. ¶¶ 3-4.

stream, stations could reach out to these viewers and provide them the same local news, weather, and sports coverage available to predominantly English speaking viewers. Liberty stations KGBT-DT in Harlingen, Texas, and WTOL-DT in Toledo, Ohio, and Freedom's KFDM-DT, in Beaumont, Texas, are developing plans to exploit digital multicasting for this purpose.[12] Other stations like WBOC-DT in Salisbury, Maryland, are using multicasting to bring emerging networks like UPN and WB to over-the-air audiences in small and rural markets where there are not sufficient channel allotments for a local full-power affiliate.[13]

With multicasting, stations can also deliver "hyper local" content that will benefit both local viewers and local businesses. The New York Times Broadcasting Group, licensee of four CBS affiliates, plans to offer different multicast streams aimed at specific geographic areas. Viewers in particular towns and counties within a station's coverage area will enjoy focused news coverage, and small businesses will be able to purchase advertising on a particular multicast stream targeted at their desired geographic area for less than the cost of reaching the station's entire service area.[14]

Amateur sports programming already is and will be another important part of broadcasters' efforts to use multicasting to expand local viewing options. Many stations serving areas with a significant university or college presence can use multicasting to tap an underserved

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[12] *See, e.g.*, Keelor Decl. ¶ 4; Declaration of Larry Beaulieu, General Manger of Freedom Broadcasting's KFDM-TV/DT, Beaumont, Texas ¶ 2 (Jan. 6, 2004) ("Beaulieu Decl."), attached hereto as Exhibit E; *see also* Declaration of Benjamin W. Tucker, President, Fisher Broadcasting Co. ¶ 5 (Jan. 8, 2004) ("Tucker Decl."), attached hereto as Exhibit F.

[13] *See* Declaration of Thomas H. Draper, President, Draper Communications, Inc. ¶¶ 2-3 (Jan. 12, 2004) ("Draper Decl."), attached hereto as Exhibit G; *see also* Keelor Decl. ¶ 2 (explaining Liberty's plans to use multicasting to deliver the signals of emerging networks as multicast streams).

[14] *See* Declaration of Cynthia Augustine, President, and Bob Eoff, Divisional Vice-President, of the New York Times Broadcasting Group ¶ 2 (Jan. 4, 2004) ("Augustine/Eoff Decl."), attached hereto as Exhibit H.

market for amateur sporting events. Coverage may also extend to local high school sports. Regional cable sports networks, like Fox Sports Net, serve too large a viewing area to deliver a truly local package of sports event programming. Multicasting, however, gives broadcasters the ability to respond more fully to their local communities' athletic viewing interests.

WBOC-DT, Salisbury, Maryland, for example, covers University of Maryland sporting events—the first ever local broadcast coverage of these events—on a multicast channel,[15] and WDBJ-DT in Roanoke, Virginia, multicasts local ACC basketball games not carried by the CBS Network.[16] Similarly, WKMG-DT in Orlando provides a twenty-four hour multicast channel on which it airs NCAA basketball games and golf tournaments not provided by the network.[17] For the last four years, LIN Television has multicast four different NCAA Tournament basketball games at the same time on separate multicast channels on its stations in Indianapolis and Fort Wayne during March Madness, "and local audiences have responded enthusiastically to this service."[18] There are three universities within the service area of WIBW-DT in Topeka, Kansas; however, the analog station can cover no more than a sliver of the many men's and women's college sporting events that take place every semester. The station's plans to multicast a range of these sporting events will go far beyond what can be offered in analog and will ensure that "the teams will need only to compete for points in the arena and not for airtime."[19] Similarly, KFMB-DT, whose viewing area encompasses five universities, has plans

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[15] *See* Draper Decl. ¶ 3.

[16] *See* Lee Decl. ¶ 2.

[17] *See* Maldonado Decl. ¶¶ 1-2.

[18] Declaration of Paul Karpowicz, Vice President of Television, LIN Television Corp. ¶ 4 (Jan. 8, 2004) ("Karpowicz Decl."), attached hereto as Exhibit I.

[19] DeLier Decl. ¶ 2.

for using multicasting "to provide its viewers with an unprecedented selection of competitive sports," including both collegiate and high school games.[20]

These plans represent the earliest, but already substantial, multicast innovations of broadcasters as they explore how best to take advantage of digital's potential for enhancing service to their local audiences. Further experimentation and adaptation will inevitably take place as CBS affiliates and their viewers gain experience with the new multicast services that digital technology makes possible.

II. WITHOUT THE ASSURANCE OF MULTICAST CARRIAGE, BROADCASTERS' PLANS FOR NEW AND INNOVATIVE MULTICAST SERVICES WILL FALTER.

If a broadcaster does not have access to the bulk of potential viewers in its market, it cannot justify or afford investments in multicast programming, including investments in equipment upgrades and program development. This is obvious. Cable systems provide service to an average of 67.4 percent of homes nationwide, while multicast services sent exclusively over the air would reach only 15.3 percent of the viewing public.[21]

Broadcasters cannot rely on market-negotiated carriage arrangements. In many instances, cable operators, which have bottleneck control of the video programming market, have not been willing to negotiate digital carriage deals at all.[22] Some MSOs have agreed to carry only a station's digital network feed, thereby effectively keeping multicast programming out of

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[20] Trimble Decl. ¶¶ 3-4.

[21] *See National Cable & Telecommunications Assoc.*, Cable Telecom. Industry Overview 2003 Mid-Year 24 (2003) (citing cable penetration rate of U.S. television households as 67.4 percent).

[22] Arrangements for carriage of even one of a broadcaster's digital program services are by and large quite recent and by no means universal, even among affiliates of the four major networks. *See* Maldonado Decl. ¶ 3. Smaller stations have been often excluded from digital carriage entirely.

the market, even if it would better serve the viewing public.[23] Other MSOs have stated outright that they will not carry multicast programming that competes with their systems' cable channels.[24] It is impossible to provide a detailed picture of cable-broadcast negotiations because, skittish about exposing their various strategies to the glare of public or Commission attention, many cable operators have insisted on confidentiality provisions in retransmission consent agreements that prohibit disclosure of the terms or even the existence of the agreements. What is clear, however, is that many of the programming innovations described above will not be carried on cable without Commission intervention and that any decision by the Commission not to apply carriage requirements to multicast programming will violate the principle that cable carriage arrangements should be neutral in how they affect broadcasters' programming judgments.

As was the case for analog television, the decision of cable systems not to carry some or any digital broadcast program streams is entirely rational. Because of their bottleneck position in the program distribution chain, unchanged since 1992, and because they compete with local stations for local advertising dollars to a far greater extent than in 1992, cable operators have both the *power* and the *incentive* to block viewer access to broadcasters' digital services.[25] The power of cable over viewer access to signals is much stronger today than it was

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[23] *See* Declaration of Peter Martin, Executive Vice President & General Manager, Mt. Mansfield Television, Inc. ¶ 6 (Dec. 31, 2003) ("Martin Decl."), attached hereto as Exhibit J; Karpowicz Decl. ¶ 8; Sander Decl. ¶ 3; Tucker Decl. ¶ 9.

[24] *See* Barrett Decl. ¶ 7 ("[M]any 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."); Karpowicz Decl. ¶ 8; Tucker Decl. ¶ 9.

[25] *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(16), 106 Stat. 1460, 1462 (1992) (finding that "[a]s a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic

when Congress mandated, the Commission adopted and the Supreme Court upheld the analog carriage rules. Only 1%, rather than 99%, of homes are equipped to receive DTV broadcast signals off air. Even beyond when DTV-capable receivers are ubiquitous and satellite offers DTV broadcasts, cable will own access to the great majority of potential DTV viewers.[26] In some larger markets, cable operators also have their own cable news networks, and they are therefore reluctant to carry a broadcaster's competing multicast news or weather channel.[27] The choice of cable operators not to carry new broadcast services that compete with vertically integrated cable program services, that siphon viewers from favored suppliers or that enhance the offerings of a competing source of advertising is thus rational, but not in the public interest.

III. CONGRESS AND THE COMMISSION EXPRESSLY RECOGNIZED THAT FLEXIBILITY AND INNOVATION IN BROADCASTERS' USE OF DIGITAL TECHNOLOGY WOULD BEST SERVE THE PUBLIC INTEREST.

Congress could have limited broadcasters' use of their digital channels to HDTV, restricted digital carriage to HDTV, and attached the fee requirement imposed on subscription services to all digital services in excess of one programming stream. But it did *not* take any of these courses. Instead, consistent with the time-honored principles of our broadcast system and

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viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.").

[26] The fact that DBS has captured a share of the MVPD market does not change the bottleneck power of cable systems. DBS does not currently have the ability to carry local digital signals in all markets and is thus an ineffective alternative to cable in this regard. (Indeed, cable operators have touted carriage of HDTV programming as giving them a service edge over DBS, although most of them continue to refuse to carry broadcasters' multicast services.) Moreover, cable would still have an even tighter hold on the market than it had ten years ago due to the exponential growth in cable modem subscriptions and cable's ability to bundle video programming with broadband access.

[27] *See, e.g.*, Tucker Decl. ¶ 9 ("In several of Fisher's markets the major cable operators are already carrying a local cable news network. As a result, these cable operators have the incentive and ability to refuse to carry a local news multicast stream that Fisher's stations might provide.").

the appropriate role for government in programming decisions, it has been left to broadcasters' ingenuity and adaptability, under the broad obligation to be responsive to the local public's often changing needs and interests, to decide how best to use their new digital channels.

Even before it adopted its DTV standard in 1996, the Commission recognized the public interest in allowing broadcasters the flexibility to develop their digital service offerings. Thus, in the early 1990s the Commission labeled the Advisory Committee it launched and the proceedings it conducted as pertaining to "Advanced Television," not "High Definition Television." In addition, the Commission decided in 1997 not to require broadcasters to provide a minimum amount of programming in a high definition format. Instead, it anticipated that stations will take "a variety of paths: some may transmit all or mostly high resolution television programming, others a smaller amount of high resolution television, and yet others may present no HDTV, only SDTV, or SDTV and other services."[28] The Commission encouraged this flexibility because "broadcasters have incentives to discover the preferences of consumers and their service offerings accordingly."[29]

Broadcasters are relying on that flexibility to design innovative multicast programming services in addition to HDTV, and the public will be well served thereby. However, without cable carriage of these multicast services, the *de facto* result will be exactly what Congress and the Commission expressly thought it best not to impose—confining digital service to a single channel of programming, regardless of consumer preferences. Cable systems' resistance to carrying multicast program streams should not be allowed to force this result and thereby thwart broadcasters' choice of what digital services would be most responsive to viewer

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[28] *In re* Advanced Digital Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, 12826 (1997).

[29] *Id.*

needs. A scheme of carriage regulation that allowed this to happen would violate the principle of neutrality with respect to broadcaster programming choices.

Not coincidentally, allowing broadcasters to develop digital strategies that are most appealing to their viewers, including multicast program services, will also speed the transition. It will induce viewers to buy digital sets and manufacturers and retailers to improve the design and marketing of those sets. The transition has benefits in addition to providing the public with enhanced services. It will enable an early give-back of analog spectrum, make this spectrum available for public safety and other uses and generate auction revenues for the U.S. Treasury.

IV. LACK OF A MULTICAST CARRIAGE REQUIREMENT THREATENS THE LONG-TERM HEALTH OF LOCAL BROADCASTING AND CONSUMER CHOICE OF MEDIA SERVICES.

Cable carriage of broadcasters' multicast programming would indeed improve the service the public receives, but multicast carriage is also important for the continued viability of broadcast television in any form. Broadcasters' single channel limitations increasingly handicap their future ability to deliver a vital, ever responsive, over-the-air service in a multichannel market environment.[30] Accordingly, lack of multicast carriage imperils *all* of a broadcaster's services, both its main and multicast programming streams.

Local broadcasters' financial viability today is far more uncertain than it was when Congress adopted analog must carry rules more than a decade ago and found that "[a]s the proportion of households subscribing to cable television increases, proportionately more

[30] *See* Augustine/Eoff Decl. ¶¶ 7-9; Beaulieu Decl. ¶¶ 5-6; DeLier Decl. ¶¶ 12-13; Draper Decl. ¶¶ 5-7; Karpowicz Decl. ¶ 9; Keelor Decl. ¶¶ 13-14; Lee Decl. ¶¶ 8-9; Maldonado Decl. ¶¶ 7-8; Martin Decl. ¶¶ 7-8; Sander Decl. ¶ 8; Trimble Decl. ¶¶ 10-12; Tucker Decl. ¶ 10.

advertising revenues will be reallocated from broadcast to cable television systems."[31] CBS-affiliated stations today face heavy competition from cable for advertising which was almost non-existent in 1992, elimination of network compensation, the burden of financing digital construction and operations and the inexorable fragmentation of audiences due to the multiplication of program offerings.[32] Multicast streams may, therefore, provide more than just new locally-oriented programming services for viewers, both cable and non-cable; they may also bolster the future vitality of free over-the-air broadcast services, including the main program service. Congress's goal, shared and implemented by the Commission, is to empower broadcasters to grow, strengthen and continually adapt their services in a constantly changing media world. Toward that end, a multicast carriage requirement is a necessity.

Broadcasters' sole revenue stream—advertising—is being eroded by cable, and this has been particularly so in the case of local advertising.[33] Cable operators' ability to provide numerous cable programming networks on the expanding capacity of their systems puts broadcasters at a serious disadvantage, particularly because a cable system typically sells advertising on 30, 40, or even more different channels, compared to a broadcaster's single channel. It is thus not surprising that cable operators have experienced a dramatic rise in

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[31] Cable Television Consumer Protection and Competition Act of 1992 §(2)(a)(14).

[32] *See* Augustine/Eoff Decl. ¶¶ 7-9; Beaulieu Decl. ¶¶ 5-6; DeLier Decl. ¶¶ 12-13; Draper Decl. ¶¶ 5-7; Karpowicz Decl. ¶ 9; Keelor Decl. ¶¶ 13-14; Lee Decl. ¶¶ 8-9; Maldonado Decl. ¶¶ 7-8; Martin Decl. ¶¶ 7-8; Sander Decl. ¶ 8; Trimble Decl. ¶¶ 10-12; Tucker Decl. ¶ 10.

[33] *See* Kathleen Anderson, *Cablers Wage War for Ad Dollars: Industry Economics Making Ops Competitive with Local Stations*, Hollywood Reporter, Dec. 8, 2003. Cable operators have gained further economic advantage via "cable interconnects," which permit an advertiser to buy a spot that will air on multiple cable systems in a market. Also, Comcast, the nation's largest cable operator, has formed its own advertising sales division with the goal of building advertising by providing marketing agencies with local, regional and national advertising solutions.

advertising revenue to the detriment of local broadcasters or that the trend will continue. Comcast, for example, expects to double its advertising revenue in the next four to five years.[34]

A market without multicast carriage will be even more heavily skewed in favor of cable systems. As Ed Trimble of Midwest Television explains, "it has become economically dangerous for broadcasters to continue to offer a single-stream product."[35] The digital environment offers new opportunities for broadcasters to compete in the multichannel video programming world by providing multiple fresh new services to their viewers.[36] Multicast carriage may well be the key to a vibrant, competitive and healthy video programming market that otherwise would be dominated by an increasingly concentrated cable industry.

In addition, broadcasters have incurred heavy digital facilities and operating costs. For example, Freedom Broadcasting, licensee of five CBS affiliates, has spent approximately thirteen million dollars on facility upgrades to enable it to simulcast its stations' analog signals in high definition, and that is far from what is needed to fully equip the stations for multicast operations.[37] Digital capital and operating costs are much the same in large and small markets, making digital transition costs particularly burdensome for smaller broadcasters with much smaller revenue streams.

The economic health of broadcasters, including CBS-affiliated stations, is further undercut, in smaller markets particularly, by the loss of network compensation. For many

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[34] *See id.* (noting that "changing industry economics could boost cable operators' revenue and thereby increase competition with local broadcast stations").

[35] Trimble Decl. ¶ 4.

[36] Just as cable systems promote digital cable as providing "more choices and more control than ever," broadcasters need to be able to provide multiple programming services to consumers. *Digital Cable Benefits*, Comcast, *at* http://www.comcast.com/Benefits/CableBenefits.asp?LinkID=20 (last visited Dec. 30, 2003).

[37] *See* Beaulieu Decl. ¶ 3.

affiliates outside the largest markets, network compensation determines whether they remain profitable.[38] In fact, compensation from the network used to comprise between thirty and sixty percent of the cash flow for stations in markets below 100.[39] CBS has eliminated, or will in the near term, eliminate all network compensation, and because affiliates must make NFL, NCAA basketball and NewsPath payments to CBS, the result is that they are or will soon be in a "negative compensation" relationship with the network. Stations affiliated with the other major networks are in comparable situations—some worse, some a little better.

The CBS Affiliates point to these realities to demonstrate why a multicast strategy is needed and may well be essential for the continued viability of local broadcasting's service to the public. At stake is the longstanding legislative goal of providing a "fair, efficient, and equitable" distribution of free over-the-air television services first embraced in the Communications Act of 1934 and reiterated most pertinently when Congress directed the Commission to adopt analog and digital must-carry requirements in 1992.[40] Also at stake is the effectiveness of broadcasting as an alternative to cable. Without a vibrant broadcast multichannel programming service, it is unlikely that consumers can credibly threaten to turn off their cable if prices rise too steeply or service falls short. Without a vibrant broadcast service in the digital age, any member of the public who wanted to access quality news programs or children's television services would be required to subscribe to a pay television service. By providing for viewer access to new broadcast services, a multicast carriage requirement would help protect this vital public interest served by free, over-the-air broadcasting.

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[38] *See, e.g.*, Beaulieu Decl. ¶ 4.

[39] *See* Tucker Decl. ¶ 4.

[40] *See* Communications Act of 1934, Pub. L. No. 73-416, § 307(b), 48 Stat. 1064 (1934); Cable Television Consumer Protection and Competition Act of 1992 § 2(a)(9).

V. CABLE CARRIAGE *DURING* THE TRANSITION IS ALSO NECESSARY.

Up to this point, this Submission has focused on the need for the digital carriage requirement to embrace broadcasters' multicasting services. Until recently, the Commission was largely considering this issue in terms of a post-transition requirement. But there is crucial need for cable carriage of broadcasters' digital signals *during* the digital transition.[41] By statute, the digital transition will not be achieved until 85% of the viewers in each market are able to receive the digital signals of their local broadcast stations.[42] Because nearly 70% of homes subscribe to cable service, this threshold *cannot* be met until cable systems are carrying these digital signals. Until recently, most cable systems rebuffed broadcaster efforts to attain carriage of even one stream of digital programming, and many have shown no interest in carrying the digital network feed of smaller stations.[43] A transitional cable carriage requirement is thus essential to bringing the digital transition to a timely and successful conclusion.

The either/or transitional carriage proposal recently submitted by NAB and MSTV provides an appropriate and limited framework for achieving this goal.[44] Their plan balances the concerns of cable systems that their carriage obligations not increase in absolute terms over the carriage requirements upheld by the Supreme Court in the *Turner* cases with the public interest in ensuring that viewers can access via cable all of the local broadcast services that they could receive over the air. For the past five years, a host of interrelated digital carriage

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[41] Some sort of interim carriage obligation will facilitate and expedite the transition because it will give the public additional incentives to buy digital sets. Multicast carriage will further this goal as well.

[42] *See* 47 U.S.C. § 309(j)(14).

[43] The WB network, for example, has announced its intention to present its network line-up in HDTV but is being stymied by cable's refusal to carry any of its digital offerings.

[44] *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).

issues, including transitional carriage, has languished. This delay has resulted in, among other things, public confusion about the digital transition and marketplace uncertainty for broadcasters, cable operators, equipment manufacturers, retailers and programmers. It was to avoid these consequences that Congress directed the Commission immediately to initiate a rulemaking to adapt its analog carriage rules to digital. This is why the Commission should promptly adopt the either/or transitional carriage proposal and the other positions advanced by NAB and MSTV with regard to digital carriage. These steps, which carry out Congress's mandate to adapt the existing rules to the new technology, will enable the Commission to reach its goal of a digital transition "that will transform television as we now know it."[45] They will also speed the analog spectrum give-back, the availability of the returned spectrum for other uses, the raising of revenues from auctioning this spectrum, the introduction and proliferation of digital sets and the time when cable can cut in half the capacity needed to carry broadcast signals.

At the very least, the Commission should promptly adopt an anti-stripping principle that would preclude, during the transition and beyond, cable operators from going into broadcasters' digital signals and deleting from them any free multicast program material. An anti-stripping principle would be the natural counterpart in digital to the prohibition in the analog rules against cable operators' degrading broadcasters' signals to make competing cable services appear superior, for example. As a consequence of the anti-degradation principle for analog, broadcasters do not have to negotiate to protect the integrity of their analog signals. This requirement applies whether carriage is via must carry or retransmission consent. The anti-stripping principle for digital should operate in the same fashion. It should not be within cable's

[45] FCC, FCC Strategic Goals—Digital Television (DTV), *at* http://www.fcc.gov/dtv/ (last visited Jan. 12, 2004).

power to block broadcasters' judgments about how best to serve their public by stripping free content from a broadcaster's signal.

Though far less effective than an anti-stripping principle that took effect now, a multicast carriage requirement that went into effect only post-transition would promote the public interest benefits outlined above. This is so because it would establish principles for after the transition that will inform broadcasters' and cable operators' digital planning and investments in the meantime.[46] Also, a post-transition multicast carriage requirement would provide a helpful and needed framework for cable/broadcaster negotiations over cable carriage of multicast services in the interim.

* * *

This Submission shows how broadcasters' digital plans, including multicasting, would uniquely benefit the public; how many cable operators are balking at carrying broadcasters' digital services, including especially multicast services; why a cable carriage obligation is essential (preferably in the form of an anti-stripping principle that would take effect now) and the likelihood that broadcasting's future vitality will depend on the success of its multicasting services. Furthermore, the Commission should adopt the important carriage principles, in addition to multicast carriage, advocated by NAB, MSTV and other local broadcasters.

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[46] Cable systems have a long history of rebuffing broadcast carriage requests on the ground that they would require termination of existing cable services, which is disruptive of subscriber viewing patterns. By adopting a multicast carriage requirement now to go into effect later, the Commission would give guidance to cable operators that this will not be an excuse for preventing broadcaster access to their subscribers in the future.

Respectfully submitted,

CBS TELEVISION NETWORK
AFFILIATES ASSOCIATION

Jonathan D. Blake
Jennifer A. Johnson
Amy L. Levine
Matthew DelNero
COVINGTON & BURLING
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401
202.662.6000 (phone)
202.662.6291 (fax)

January 13, 2004

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

DECLARATION OF ED TRIMBLE,
PRESIDENT AND CHIEF OPERATING OFFICER,
MIDWEST TELEVISION, INC.

1. My name is Ed Trimble. I am the President and Chief Operating Officer of Midwest Television Inc, licensee of KFMB-TV/DT (NTSC Ch. 8/DTV Ch. 55), the CBS affiliate in San Diego, California. I have served in this position for eight years, and prior to this position, I was Vice President of Gaylord Broadcasting Company.

I

2. KFMB looks forward to reaching a broader and more diverse audience thanks to the opportunities afforded by our digital spectrum. For the first time since KFMB began broadcasting in 1949, we have additional programming streams with which to serve the viewers of San Diego. Seizing upon this opportunity, KFMB is actively planning new local programming services for one or more multicast channels.

3. San Diego is home to five universities, each with accomplished athletic programs and teams in a range of sports, including baseball, basketball, football, soccer, golf, volleyball, swimming, gymnastics, and lacrosse. CBS is able to air a relatively small number of these games, despite viewer demand for seeing more local

athletic talent on the air. By regularly multicasting amateur sporting events, KFMB will be able to provide its viewers with an unprecedented selection of competitive sports. Although fans will surely maintain strong feelings about which school has the better athletics program, our multicast plans will ensure better opportunity for them to watch teams from San Diego's many talented universities.

4. KFMB has also heard from high school athletics fans about games of importance to the local community. Lacrosse is a popular sport among area high school students, and there is interest in our community in seeing these games televised. KFMB would like to air lacrosse tournaments and other key local games on its multicast channels, thus providing friends, family, alumni, and other interested community members with a greater opportunity to see their high school athletes in action.

5. KFMB also believes that giving local viewers greater opportunities to connect with their local government institutions serves the public interest. To this end, we plan to multicast city council hearings, school committee meetings, mayoral press conferences, and other civic events. Multicasting such local government events will allow KFMB to bring viewers closer to the institutions that often have the greatest impact on their daily lives. This type of coverage is particularly important in an election year, when the electorate does not have as much access to local candidates as it does to candidates for national office.

6. KFMB also intends to use multicast streams to provide viewers with more in-depth local news, weather, and traffic reporting. Under the space constraints of a single analog channel, KFMB has previously been unable to cover all the local interest stories brought to our attention. Multicasting will alleviate some of these

limitations, providing us with additional outlets to further our mission as a local news leader in San Diego.

7. These plans represent only preliminary ideas for use of KFMB's digital spectrum. Niche programming that has not previously fit within the economic model of a single analog channel will find a welcome home on KFMB's multicast streams. Localism has always been KFMB's greatest asset, and multicasting will intensify our drive to deliver locally-relevant programming to the people of San Diego.

II

8. Because cable systems have bottleneck control over the market for the delivery of video programming services, cable carriage of KFMB's multicast programming is essential to making new local services a reality for our station's viewers. In the San Diego market, cable systems provide service to 84.2 percent of our viewers. Taking into account DBS subscribers, multicast programming that is distributed solely over the air to viewers in San Diego reaches only 9.7 percent of the public. Accordingly, over-the-air viewership alone of KFMB's multicast programming cannot support a costly investment in innovative multicast services.

9. Given the considerable investment called for by its multicast plans, KFMB cannot rely on negotiated retransmission consent agreements for carriage of its multicast programming. The station needs long-term assurances that its multicast offerings will reach the homes of local viewers. There is, of course, no guarantee that

cable subscribers would watch our multicast services. But without cable carriage, KFMB will not have the opportunity to compete fairly with cable programming.

III

10. Because they can sell advertising on multiple cable channels, cable systems offer advertisers the opportunity to target narrowly the diverse preferences of viewers. Broadcasters, which can offer advertisers placement in just a single video stream, are thus at a disadvantage vis-a-vis cable systems. Indeed, cable advertising revenues in San Diego are growing at double the rate experienced by broadcasters.

11. With an increasing pool of channels competing for viewership, it has become economically dangerous for broadcasters to continue to offer a single-stream product. KFMB and other broadcasters need the opportunity to compete on a level playing field with cable. Multicasting provides KFMB with an alternative means of reaching the local population, enabling it to spread high and rising costs and supplement the weakening local advertising revenue stream that is its sole source of economic support. It will also be able to tailor more narrowly its program offerings to attract more viewers from among a diverse population.

12. Other challenges facing KFMB include (i) erosion of our 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 an analog station); and (iii) the expected loss of network compensation by the fall of 2005. Additional programming streams for KFMB could significantly alleviate these financial pressures and enhance the

vitality of our over-the-air broadcast service. Such multicast programming will not survive, however, if nearly 85 percent of KFMB's potential audience cannot receive our digital programming services.

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

Executed: January 8, 2004

Ed Trimble

EXHIBIT B

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 J. HENRY MALDONADO,
VICE PRESIDENT AND GENERAL MANAGER,
WKMG-TV/DT, ORLANDO, FLORIDA

1. My name is J. Henry Maldonado. I am the Vice President and General Manager of WKMG-TV/DT (NTSC Ch. 6/DTV Ch. 58), the CBS affiliate in Orlando, Florida, licensed to Post-Newsweek Stations Orlando, Inc. Prior to my current position, I was the Vice President for Audience Development for Post-Newsweek Stations, before which I served for five years as Vice President of Programming and Promotion at WDIV-TV (Ch. 4, NBC) in Detroit, Michigan and was in the Programming and Promotions department of WDIV.

I

2. WKMG is using its digital spectrum to provide new and exciting programming services to the viewers of Orlando. In addition to simulcasting its analog channel in HDTV format, the station multicasts a standard definition channel twenty-four hours a day. WKMG uses its second channel to provide a number of services geared to our local audience. These uses include coverage of special events such as NCAA basketball games and golf tournaments not provided by the network on its main feed.

When the United States launched its attack on Iraq in April 2003, WKMG provided the network's breaking news coverage on its main digital channel while offering the network-preempted NCAA basketball games on its multicast channel. When not covering other events, the second channel provides information about local weather conditions through live Doppler Radar. These uses represent only the earliest stages of WKMG's plans for its digital spectrum.

3. WKMG has plans to develop its multicast channel into an innovative multipurpose outlet that will provide viewers with many types of information of local interest. In a large portion of the center of the screen, viewers will see live video of local news, weather maps, radar and rotating camera feeds from Orlando's traffic "hot spots." Along the sides of this main picture, the station will broadcast news headlines, weather and temperature updates, and descriptions of traffic conditions. WKMG will be able to offer the latest local alerts, including homeland security updates and AMBER alerts for missing children on its multicast channel with greater frequency than on its main digital channel.

4. WKMG's multicast channel will also serve as an outlet for continuous, live coverage of events of interest to the local community. Examples include press conferences, amateur sporting events, city council and school committee meetings, local elections and debates, and noteworthy trials. In the past, the station has been aware of these important events and their interest to the local community. The addition of a multicast outlet gives the station the resources it needs to better serve Orlando's local interests while continuing to provide regularly-scheduled programming on its main channel.

II

5. Cable carriage of WKMG's multicast programming is essential to making these local services a reality for our station's viewers. Cable systems have bottleneck control over the video programming market, reaching on average 74 percent of the viewers in our market. Multicast programming that is distributed solely over the air to viewers in Orlando reaches only 10 percent of the public, which is insufficient to sustain the services outlined above. WKMG cannot afford to invest in innovative multicast services without assurances of access to cable viewers. There is, of course, no guarantee that cable subscribers would watch our multicast services. But without cable carriage, WKMG will not have the opportunity to compete with cable programming.

6. WKMG cannot rely on negotiated retransmission consent agreements for carriage of its multicast programming. For example, one MSO serving WKMG's local market has agreed to carry only one of WKMG's multicast channels. This gives WKMG little incentive to expand its current plan to launch additional multicast streams, even if additional digital channels would better serve WKMG's viewers. Moreover, what seems to be the best use of WKMG's digital spectrum at this early stage in the transition may not ultimately prove to be the best way for WKMG to serve the public.

III

7. WKMG has found that intense competition for advertising revenue is a primary threat to its vitality as an over-the-air broadcaster. Cable operators have a plethora of channels and programming at their disposal and thus benefit significantly from the ability to provide multiple outlets to advertisers wishing to reach a diverse audience. WKMG asks only that it be given the chance to compete on a more level

playing field with cable operators. With an additional means of reaching the local population, WKMG will be able to spread 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 WKMG.

8. Other challenges facing WKMG include (i) erosion of our 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 an analog station); and (iii) loss of network compensation. Additional programming streams for WKMG could help alleviate these financial pressures and enhance the vitality of our over-the-air broadcast service. Such multicast streams will not survive, however, if 74 percent of WKMG's potential audience is unreachable.

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

Executed: January 8, 2004

J. Henry Maldonado

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 MICHAEL DELIER,
GENERAL MANAGER,
WIBW-TV/DT, TOPEKA, KANSAS

1. My name is Michael De Lier. I am the General Manager of WIBW-TV/DT (NTSC Ch. 13/DTV Ch. 44), the CBS affiliate in Topeka, Kansas, licensed to Gray MidAmerica TV Licensee Corp. I have served in this role for three years, prior to which I was the General Manager of KGWN-TV in Cheyenne, Wyoming.

I

2. Multicasting offers WIBW a means to deliver a wealth of new local content to its viewers. While WIBW has long been a leader in providing locally-oriented programming to the people of Topeka, we believe that multicasting is the technological breakthrough that can bring our most ambitious local programming plans to fruition.

3. Viewers in Topeka have a hunger for local sports that is not satisfied by current cable or over-the-air programming. WIBW's plans for its digital spectrum could fulfill that interest. Our viewers are fans of the many talented teams in the area, which hail from three major universities located within the station's viewing

area: Washburn University in Topeka, the University of Kansas in Lawrence, and Kansas State University in Manhattan. CBS can provide only a relatively small fraction of these games, but WIBW will be able to use its multicast spectrum to offer many other games of interest to our viewers. Although fans will surely maintain strong feelings about which school has the better athletics program, our multicast plans will ensure better opportunity for them to see talented teams from all three universities. And the teams will need only to compete for points in the arena, not for airtime.

4. We believe there is also a place on our digital spectrum for high school sports. Viewers overwhelmingly praised our decision to produce and air the Shrine Bowl, Kansas's state high school football all-star game last summer. This experience demonstrates the considerable demand in the community for high school sports. Multicasting could allow WIBW to provide such games on a regular basis, giving our viewers even more opportunities to see local athletic talent in action.

5. Our experience tells us that viewers also like to see local students compete in the academic arena. In conjunction with Washburn University, WIBW's analog channel has for the last 27 years aired the annual High Q academic competition, in which high school quiz bowl teams are invited to compete in a televised, single-elimination tournament. In order to showcase this valuable local program, we preempt the popular syndicated program "Everybody Loves Raymond" on Friday afternoons to air the tournament. This year, WIBW will air the final competition in prime time. With our multicast channel, WIBW would not be limited to televising just one of these competitions each year. Viewers would have the opportunity to see more students compete and on a wider range of subjects. Just like High Q, other academic competition

programs would include professional quality production and would help satisfy viewer demand for exciting, locally-oriented programming.

6. Because of its location in the capital city of Kansas, WIBW has considerable access to state and local government institutions. Even subject to the considerable constraints of a single analog channel, WIBW has often been the sole provider of comprehensive local government information to the viewers of Topeka. For example, we were the only channel to originate and provide full coverage of the final 2002 gubernatorial debate and Topeka mayoral debate. With a multicast outlet or outlets, WIBW will be able to intensify its commitment to connecting its local audience with the institutions that have the greatest impact on their daily lives. As part of this effort, we plan to multicast state legislative debates, mayoral press conferences, city council hearings, school committee meetings, and other civic events.

7. WIBW has long been a local news leader, providing viewers with twenty-two hours of local news per week, both on our analog and simulcast digital channel. However, we have found that just one outlet for local news is not enough to satisfy the interests of our viewers. To that end, WIBW has partnered with Cox Cable and KAKE-TV(TV)(DT) (NTSC Ch. 10/DTV Ch. 21), the ABC affiliate in Wichita, to provide a twenty-four hour a day local cable news, weather, and sports channel. We also deliver three local newscasts each day to thirteen radio stations in the region. Based on the success and lessons learned in these ventures, WIBW intends to launch its own local news network on a multicast channel. Unlike our national competitors, including CNN, FoxNews, and the Weather Channel, WIBW's service will emphasize the local information that is most relevant to our viewers.

8. WIBW's digital spectrum could also bring additional network service to the viewers of Topeka. WIBW is in discussions to affiliate with emerging television networks and to provide their signals as a multicast stream of WIBW-DT. Viewers in Topeka are not currently served by the emerging networks with whom WIBW is negotiating and will benefit from access to these additional broadcast outlets.

II

9. Although WIBW earns less revenue than stations in larger markets, it must make as significant and sizeable an investment in digital equipment and programming as larger stations to make the plans for its digital spectrum a reality. A critical component to that decision is cable carriage of WIBW's multicast programming. Cable systems have bottleneck control over the video programming market, providing service to 66.4 percent of the viewers in our market. Multicast programming that is distributed solely over the air to viewers in Topeka reaches only 15.4 percent of the public, which is insufficient to sustain our planned multicast services. WIBW cannot afford to invest in innovative multicast services without assurances of access to cable viewers. There is, of course, no guarantee that cable subscribers would watch our multicast services. But without cable carriage, WIBW will not have the opportunity to compete with cable programming.

10. WIBW cannot rely on negotiated retransmission consent agreements for carriage of its multicast programming. Some cable operators have already told us that they will carry only our primary digital channel. This gives WIBW little incentive to expand beyond its primary digital channel to launch one or more

multicast streams, even if additional digital channels would better serve WIBW's viewers.

11. As a small-market broadcaster, WIBW's resources to invest in new equipment and programming are limited. A system capable of statistical multiplexing costs the same in New York City as it does in Topeka. Yet we are willing to take a chance and make the significant investment required to provide innovative programming and services to our viewers if we are assured of access to them. Adoption of a multicast carriage requirement by the Commission will provide WIBW the flexibility it needs to continue investing in and developing innovative multicast services for the people of Topeka.

III

12. In the multichannel environment in which we operate, WIBW has found that intense competition for advertising revenue is a primary threat to its viability as an over-the-air broadcaster. Cable operators have a plethora of channels and programming at their disposal and thus benefit significantly from the ability to provide multiple outlets to advertisers wishing to reach a diverse audience. WIBW asks only that it be given the chance to compete on a more level playing field with cable operators. With additional ways to reach the local population, WIBW 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 WIBW.

13. Other challenges facing WIBW include (i) loss of network compensation in 2005; (ii) erosion of our 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 (iii) costly investment in digital capital and digital operating costs (in addition to the expense of operating an analog station). Additional multicast programming outlet or outlets for WIBW could significantly alleviate these financial pressures and enhance the vitality of our over-the-air broadcast service. Such outlets will not survive, however, if over 66 percent of WIBW's potential audience is unreachable.

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

Executed: January 8, 2004

Michael De Lier

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 ROBERT G. LEE,
PRESIDENT AND GENERAL MANAGER,
WDBJ(TV)(DT), ROANOKE, VIRGINIA

1. My name is Robert G. Lee. I am the President and General Manager of WDBJ Television, Inc., licensee of WDBJ(TV)(DT) (NTSC Ch. 7/DTV Ch. 18), the CBS affiliate in Roanoke, Virginia. I have served in that capacity for fourteen years. Prior to my current position, I was general manager of network-affiliated television stations in Chattanooga, Tennessee, and in Columbus, Georgia.

I

2. On both its simulcast and multicast channels, WDBJ(DT) is using its digital spectrum to bring new and innovative programming to viewers in central and southwest Virginia. WDBJ(DT) launched in 2002 as the area's only full-power, full-service digital channel. On the station's main DTV channel, WDBJ(DT) telecasts every possible HDTV program and simulcasts its analog programming, upconverting standard definition programming to 1080i high definition format. The station intends to air movies and special programming in high definition format at certain times when the network is not providing high definition programming. In addition to its primary DTV

programming, WDBJ(DT) provides additional programming and services to its viewers by multicasting a standard definition channel twenty-four hours a day. WDBJ(DT) is experimenting with providing a diverse array of locally-oriented programming on this stream. For example, the station airs ACC basketball games that are of interest to its viewers on the secondary program stream while telecasting CBS Sports basketball coverage on the primary stream. When not multicasting other programming, WDBJ(DT) uses this stream to repurpose its most recent local newscast and is broadening the non-simulcast programming content on the secondary stream. On a tertiary level, and using a mere sliver of digital spectrum, WDBJ(DT) is also multicasting local weather conditions and forecasts on an additional multicast channel, providing locally-zoned updates at sixty second intervals and enhancing those reports with graphical representations.

3. Reflecting the station's commitment to and planning in the digital arena, WDBJ(DT) has made a significant and sizeable investment in the most sophisticated statistical multiplexing and encoding equipment on the market. Thanks to this pioneering technology, WDBJ(DT) can at times borrow from its standard definition channels and its headroom to ensure continuous high definition service on its main digital channel while also multicasting additional programming streams. Responding to viewer interest, the station has aired as many as four basketball games simultaneously on its digital multicast channels, in addition to broadcasting the game on its analog channel. It has also featured continuing news coverage on the secondary digital stream after regular programming resumed on the primary digital stream and the analog channel.

4. These uses represent only the earliest stages of WDBJ(DT)'s plans for its digital spectrum. The unprecedented opportunities presented by multicasting will

allow us to provide continuous, live coverage of events of interest to the local community. Examples include press conferences, cultural performances, city council and school committee meetings, local elections and debates, and noteworthy trials. Because of the capacity limits inherent in a single analog broadcast outlet, the station has, until now, sometimes been unable to provide in-depth coverage of these local events or has been compelled to delay such broadcasts to late-night hours. Yet with additional multicast outlets, the station is already seeing dramatic improvement in its capacity to better serve local interests by providing extended coverage of events appealing to our viewers.

5. WDBJ(DT)'s early-adopter digital viewers have provided a great deal of positive feedback and encouragement for the station's continued innovation in DTV. By providing new and exciting services—both in high definition format on our main channel and with our multicast streams—WDBJ(DT) is helping to stimulate consumer sales of digital tuners in our viewing area. Attempting to accelerate the digital transition, the station has fostered two-way communication with viewers owning digital receivers and HDTV sets. We send regular e-mail updates about our high definition and multicast services to those customers who have told us that they can receive our digital signal.

II

6. Cable carriage of WDBJ(DT)'s multicast programming is essential to the continued development of these local services for our station's viewers. Cable systems have bottleneck control over the video programming market, providing service to 61.5 percent of the viewers in our market. Multicast programming that is distributed

solely over the air to viewers in our area reaches only 13.4 percent of the public, which is insufficient to sustain the level of services outlined above.

7. To justify our current and future levels of investment in multicast programming, WDBJ needs assurance of continued access to cable viewers. If WDBJ is to remain flexible in its service offerings, it cannot rely on retransmission consent agreements for carriage of its multicast channels. Without a guarantee of cable carriage, WDBJ will not have the opportunity to compete with cable programming. Moreover, what seems to be the best use of WDBJ's digital spectrum at this early stage in the transition may not ultimately prove to be the best way for WDBJ to serve the public.

III

8. As an over-the-air broadcaster, WDBJ's only outlet in the analog environment is its analog channel. Cable operators, on the other hand, have a plethora of channels and programming at their disposal. With the ability to offer advertisers spots on multiple and diverse channels targeted to particular audiences, cable operators have benefited significantly in competing against broadcasters for advertising revenue. WDBJ asks only that it be given the chance to compete on a more level playing field with cable operators. Digital technology gives WDBJ the opportunity to use multiple programming streams to meet the needs of its viewers. With this additional means of reaching the local population, WDBJ will also 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 WDBJ's economic health as an over-the-air broadcaster.

9. Other challenges facing WDBJ include (i) erosion of our 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 an analog station); and (iii) the loss of network compensation. Additional programming streams for WDBJ could significantly alleviate these financial pressures and enhance the vitality of our over-the-air broadcast service. Such multicast streams will not survive, however, if nearly 62 percent of WDBJ's potential audience remains unreachable.

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

Executed: January 8, 2004

Robert G. Lee

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 LARRY BEAULIEU,
GENERAL MANAGER,
KFDM-TV/DT, BEAUMONT, TEXAS

1. My name is Larry Beaulieu, and I am the General Manager of KFDM-TV/DT (NTSC Ch. 6/DTV Ch. 21), the CBS affiliate in Beaumont, Texas, licensed to Freedom Broadcasting of Texas, Inc. I have worked for KFDM for twenty-nine years and have served as the station's General Manager for the past twenty years. Freedom Communications, Inc. ("Freedom") owns eight full power broadcast stations in markets ranging from the 38th ranked Nielsen DMA to the 140th DMA. I am familiar with the plans these stations have for use of their multicast spectrum. I also serve on the Board of the CBS Television Affiliates Association.

I

2. The stations comprising the Freedom family serve small and medium sized markets, and it is in such markets that we believe multicast programming can have a very significant impact. In several of our markets, viewers do not have access to the over-the-air signal of an emerging network, like UPN or WB. Freedom stations could bring such networks to over-the-air audiences in rural markets for free by carrying

the emerging networks' signals as multicast streams on Freedom stations' digital signals. Multicasting thus has the potential to improve dramatically television service to markets that are currently underserved.

3. In addition to improving service to underserved markets, multicasting gives Freedom a vehicle to reach underserved viewers in culturally diverse regions. For example, my station, KFDM, is located in Beaumont, Texas, the 138th ranked DMA. Approximately ten percent of residents in our market speak Spanish as their primary language, and that number is growing rapidly. This population, however, is not served by any over-the-air Spanish-language broadcast signal. Freedom could consider reaching out to Hispanic viewers in Beaumont and other markets by multicasting feeds from Spanish-language networks like Univision or Telemundo. In addition to the network feed, the multicast streams would provide local news and important information, including terror warnings and AMBER alerts for missing children, in Spanish. The Spanish-language speakers in Beaumont and other Freedom markets would thus be afforded greater access to information that affects their daily lives as residents of the community.

II

4. Cable carriage of multicast programming is essential to making these new network 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. By 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 multicasting an emerging network. Without a

multicast carriage requirement, Freedom's efforts to further local interests and reach out to underserved populations may falter.

III

5. The digital transition has already demanded significant investment from our stations. Overall, Freedom has spent thirteen million dollars on facilities upgrades to enable the simulcast of our stations' analog signals in high definition format. Moreover, our stations in small and medium-sized markets do not have the same financial resources as larger market players with which to absorb the costs of the digital transition. At the same time, Freedom stations have found that intense competition for advertising revenue is a primary threat to their 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 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. With additional means of reaching local viewers, Freedom's 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. Multicasting is therefore necessary to the future viability and health of Freedom and its stations.

6. Freedom's stations also face erosion of our over-the-air viewership by cable and DBS in part as a result of intensified competition from an ever-increasing array of cable networks. Potential loss of network compensation is another hardship Freedom could face in the future, as network compensation often determines whether a

station—particularly a small-market station—can remain profitable. Additional programming outlets for Freedom's stations could significantly alleviate these financial pressures and enhance the viability of our over-the-air broadcast services. Such outlets will not survive, however, if seventy percent of our stations' potential audiences remain unreachable.

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

Executed: January 6, 2004

Larry Beaulieu

EXHIBIT F

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

To: The Commission

DECLARATION OF BENJAMIN W. TUCKER,
PRESIDENT, FISHER BROADCASTING COMPANY

1. My name is Benjamin W. Tucker, and I am the President of Fisher Broadcasting Company. Fisher owns ten full power broadcast stations in markets in the Northwest United States ranging from the 12th ranked Nielsen DMA to the 163rd DMA, all of which are currently broadcasting digital signals. Eight of our stations are affiliated with the CBS Television Network, and two are affiliated with the ABC Television Network. I also serve on the Board of the CBS Television Network Affiliates Association, where I have responsibility for regulatory issues, and I am on its Futures Committee, which is working on digital issues cooperatively with CBS. I am also a member of the Board of Directors of the National Association of Broadcasters.

I

2. Recognizing that multicasting offers its stations the opportunity for additional contact with viewers by enabling the delivery of abundant new local content, Fisher has commenced internal discussions to look at options for providing and building business plans around multicast programming. However, Fisher's plans with respect to

multicasting will be affected by whether multicast streams will be carried by cable operators. Without a guarantee that our programming will reach cable subscribers, who are the majority of our viewers, Fisher's multicasting plans will languish.

3. Fisher has long been a leader in providing local news; however, we have found that an analog station's single outlet for local news is not enough to satisfy the interests of our viewers. Therefore, in addition to the multiple daily local newscasts broadcast by Fisher's stations, Fisher is looking into developing twenty-four hour per day local news channels in some of its markets, which it would provide as multicast streams. Unlike our national competitors, including CNN, MSNBC and FoxNews, Fisher's news channels would emphasize the local information that is most relevant to our viewers, making it a valuable free service for local audiences.

4. Local audiences often have an interest in local sports that is not satisfied by current cable or over-the-air programming. Fisher is considering plans for its digital spectrum that could help fulfill that interest. Our viewers are fans of the many talented teams in their areas, including not only professional, but also high school and college level sports. Fisher's stations can offer only a fraction of these games on their analog channels, but Fisher is considering using multicasting to provide many other games and sports coverage of interest to our viewers. This would give our stations' audiences the opportunity to see the array of talented teams at all levels in their areas.

5. Many of Fisher's stations serve smaller markets, and we believe it is there that multicasting could have the most immediate impact. The Commission has allotted a limited number of channels to some of these markets, which restricts the number of over-the-air broadcast networks available to viewers. Using multicasting,

Fisher's stations are looking into bringing the signals of emerging broadcast networks to over-the-air audiences in these markets for free by carrying the newer networks' signals as multicast streams of Fisher stations' digital signals. Multicasting thus has the potential to diversify dramatically television service to currently underserved markets.

6. In addition, Fisher is investigating ways it might use multicast streams to serve the particular interests of different audience segments in its stations' markets. The ability to use multicast streams to provide targeted programming to niche audiences would enable Fisher's stations to reach out to their culturally diverse viewers.

7. In the past, Fisher's stations have been aware of the diverse needs of the local communities they serve. However, with only one analog broadcast outlet, our stations have not been able to devote as much airtime as they would like to local events, information and services. Multicast technology is a breakthrough, and Fisher is considering how multicasting might allow our stations to better serve local interests while continuing to provide regularly-scheduled programming on their main channels.

II

8. Cable carriage of the multicast streams of Fisher's stations is essential to making these local services a reality. 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 plans I have laid out. Without a multicast carriage

requirement, Fisher's ambitious efforts to further local interests via digital technology may falter.

9. Fisher cannot rely on negotiated retransmission consent agreements for carriage of its stations' multicast programming. Multiple cable operators have already told us that they will carry only our stations' main digital feed. As gatekeepers of a bottleneck facility, they will not consider carrying additional multicast streams from our stations that might compete with their own programming services. In several of Fisher's markets the major cable operators are already carrying a local cable news network. As a result, these cable operators have the incentive and the ability to refuse to carry a local news multicast stream that Fisher's stations might provide. Lack of cable carriage for multiple streams of video programming is a substantial deterrent to Fisher's stations expanding beyond their primary digital channels to launch one or more multicast streams, even if those streams would provide desirable services to Fisher's viewers.

III

10. As broadcasters in primarily small and medium-sized markets, Fisher's stations face a number of challenges to their health and viability, including (i) the 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, which comprises between thirty and sixty percent of the cash flow for stations in markets below 100. Additional programming streams that Fisher's stations may use to find new business

opportunities and new ways to attract viewers could significantly alleviate these financial pressures and enhance the vitality of our stations' over-the-air broadcast service, including our main program stream on which our viewers rely for news, information and entertainment. This will not happen, however, if the majority of our stations' potential audiences remains unreachable because our multicast programming is not available to cable viewers.

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

Executed: January 8, 2004

Benjamin W. Tucker

EXHIBIT G

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 THOMAS H. DRAPER, PRESIDENT, DRAPER COMMUNICATIONS, INC.

1. My name is Thomas H. Draper, and I am the President of Draper Communications, Inc. ("Draper"). We own and operate WBOC-TV/DT (NTSC Ch. 16/DTV Ch. 21), the CBS affiliate in Salisbury, Maryland, the 149th ranked Nielsen DMA. I have served as Draper's President for the past twenty-three years, and I am also on the Futures Committee of the CBS Television Network Affiliates Association.

2. As a small-market broadcaster in a DMA with just one other full power commercial station, WBOC prides itself on its role as a primary provider of local news and information to the members of its community. Multicasting can have a real and significant impact in small markets that do not have enough channels or cannot sustain stand-alone stations to carry fledgling network programming. In the Salisbury DMA, there is no emerging network like UPN or WB that broadcasts over the air. WBOC is using its digital spectrum to bring more service to local communities by carrying the programming of the UPN network as a multicast stream, thereby adding diversity to the market in both network and syndicated programming.

3. As part of its UPN multicast stream, we offer the only 10 p.m. local newscast in the Salisbury market. This programming increases the availability and diversity of local news in the market and has found an audience with viewers who prefer an earlier late newscast. We also offer other programming during those periods when UPN does not provide content. This includes first ever local carriage of popular University of Maryland sports. Before WBOC began multicasting, there were no broadcast outlets in our market for local coverage of Terps sporting events, given that there are only two local commercial analog broadcasters, both of which carry network and syndicated programming for much of the broadcast day. WBOC's UPN multicast stream has allowed us to fill the gaping hole in local sports coverage in our market to the great satisfaction of our viewers. Multicasting is thus already dramatically improving local television service in our market.

4. Cable carriage of multicast programming is essential to making these new network services a reality for our stations' viewers. At this point in the transition, digital set penetration is low and therefore the number of households capable of viewing our signal over the air is quite small. Cable carriage is the only outlet WBOC has for the great new services it is providing via multicasting. Without it, viewers are unable to benefit from our enhanced program offerings and may be less likely to endorse digital technology by purchasing digital sets. Cable carriage of our multicast streams both during and after the transition is thus critical and serves the public's interest in free, over-the-air television service, as well as advancing the transition. We have been able to negotiate carriage of our UPN multicast stream on all of the cable systems in our service

area. Other broadcasters may not have such success. Without cable carriage, however, it is clear to me that multicasting efforts cannot hope to survive.

5. The digital transition has demanded significant investment by Draper. Broadcasting a digital signal and providing multicast programming require a costly investment in digital capital, as well as entailing digital operating costs (in addition to the expense of providing WBOC's analog signal). These expenses are not appreciably less for smaller market stations than for large market stations, which are generally in a better position to absorb the costs of the digital transition. Using multicast streams as an additional means to reach local viewers, WBOC 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. Without multicast carriage and the access to viewers it enables, however, it is difficult for smaller market stations to justify investing in multicasting. Multicast carriage is therefore necessary to the future viability and health of our station.

6. Loss of network compensation and now negative compensation is another hardship Draper faces immediately. This is true for most CBS affiliates, or will be so in the very near future. Network compensation often determines whether many small market stations can remain profitable. Additional programming streams could significantly alleviate these financial pressures and enhance the viability of our over-the-air broadcast services. And Draper will use the revenue generated by multicast services to provide even more in-depth news to viewers in our local area.

7. The strength of the CBS Television Network, including for larger affiliates, depends on the network's national reach and therefore on the health of smaller market stations. The competitiveness and viability of stations like WBOC are therefore critical to ensuring the continued strength of free, over-the-air broadcast networks.

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

Executed: January 12, 2004

Thomas H. Draper

Thomas H. Draper

EXHIBIT H

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 I

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

DECLARATION OF PAUL KARPOWICZ,
VICE PRESIDENT, TELEVISION,
LIN TELEVISION CORPORATION

1. My name is Paul Karpowicz, and I am the Vice President of Television at LIN Television Corp. LIN owns and operates 28 full power broadcast stations in small and medium sized markets in the United States ranging from the 25th ranked Nielsen DMA to the 190th DMA, and five of our stations are affiliated with the CBS Television Network. I also serve on the Board of the CBS Television Network Affiliates Association.

I

2. Recognizing that multicasting offers its stations the opportunity to provide additional services to viewers by enabling the delivery of abundant new local content, LIN has begun providing multicast programming in some markets and is actively exploring options for providing multicast programming in others. The multicast services that LIN's stations have provided to date have been well received, and we are excited about using multicasting to deliver compelling locally-oriented content to our viewers in the future. However, without assurances that multicast programming will reach cable

subscribers, who are the large majority of our viewers, LIN's multicasting plans will languish.

3. The Weather Channel cable network has been a success because audiences crave information about the weather. However, a significant drawback of a national weather service is that it can devote only limited time to describing the local conditions that are most relevant to the majority of viewers. LIN is taking advantage of the flexibility of digital technology by providing a local weather service twenty-four hours per day as a multicast stream on its stations in Indianapolis and Fort Wayne. Unlike its primary national competitor, LIN's local weather channel emphasizes the information that is of most immediate concern to our viewers. LIN also uses its stations' multicasting capabilities to deliver the local weather service to cable headends.

4. The annual NCAA collegiate basketball championship, or March Madness, is always popular with viewers, and nowhere is that more true than in Indiana. However, in analog, CBS can offer just one game at a time. For the last four years, LIN has taken advantage of its ability to multicast in Indianapolis and Fort Wayne by using the stations' digital capacity to multicast four different games on separate multicast channels, and local audiences have responded enthusiastically to this service.

5. Many of LIN's stations serve smaller markets with a limited number of full power broadcast stations, which restricts the number of over-the-air broadcast networks available to viewers. Using multicasting, LIN's Fort Wayne station is implementing plans to bring the programming of the UPN Television Network to local viewers by carrying a UPN station as a multicast stream, and other LIN stations are looking into using multicasting to bring the signals of emerging broadcast networks to

over-the-air audiences for free. Multicasting thus has the potential to diversify dramatically television service to currently underserved markets.

6. LIN's stations have always been attuned to the diverse needs of the local communities they serve. However, with only a single analog program stream, our stations have not been able to devote as much airtime as they would like to providing local information and services and covering local events. Multicast technology represents a breakthrough, particularly for stations outside of the largest markets, and LIN is actively considering other ways in which multicasting might allow our stations to better serve local interests while continuing to provide regularly-scheduled programming on their main channels.

II

7. Cable carriage of the multicast streams of LIN's stations is essential to making these local services a reality. 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 stations' over-the-air digital signals makes it difficult to justify the expense and effort associated with many of the plans and ideas described above. Without a multicast carriage requirement, LIN's efforts to use digital technology to further local interests may falter.

8. LIN's stations cannot rely on negotiated retransmission consent agreements for carriage of their multicast programming. Several cable operators have already told us that they will carry only our stations' main digital feed. As gatekeepers of

a bottleneck facility, they will not consider carrying additional multicast streams from our stations that might compete with their own programming services. Lack of cable carriage for multiple streams of video programming is a substantial deterrent to our stations expanding beyond their primary digital channels to launch one or more multicast streams, even if those streams would provide valuable services to our viewers.

III

9. As broadcasters in primarily smaller and medium-sized markets, LIN's stations face a number of challenges to their health and viability, including (i) the 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 broadcasting analog signals); and (iii) loss of network compensation, which comprises a significant portion of stations' cash flow, particularly for smaller-market stations. Additional programming streams that LIN's stations could use to increase the diversity of their programming and attract additional viewers could significantly alleviate these financial pressures and enhance the vitality of our stations' over-the-air broadcast service, including our stations' main program streams that viewers turn to for news, information and entertainment. This will not happen, however, if the majority of our stations' potential audiences remains unreachable because our multicast programming is not available to cable viewers.

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

Executed: January 8, 2004

Paul Karpowicz

EXHIBIT J

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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

To: The Commission

DECLARATION OF PETER MARTIN,
EXECUTIVE VICE PRESIDENT & GENERAL MANAGER,
MT. MANSFIELD TELEVISION, INC.

1. My name is Peter Martin. I am the Executive Vice President and General Manager of Mt. Mansfield Television, Inc., licensee of WCAX-TV/DT (NTSC Ch. 3/DTV Ch. 53), the CBS affiliate in the Burlington, Vermont/Plattsburgh, New York Nielsen Designated Market Area.

2. WCAX-DT, like all the stations licensed to Burlington and Plattsburgh, will not launch its digital signal until at least 2006 due to complications and delays, despite the best efforts of all broadcasters in the market. The delays relate both to obtaining the Vermont state land use approval required for use of the only suitable site, Mt. Mansfield, for stations' DTV facilities, as well as completing protracted negotiations with the site's owner, the University of Vermont. The situation is further complicated by the complexities of coordinating frequencies with the Canadian government for stations' digital operations in this area. But WCAX already knows that its plans with respect to providing multicast programming will be affected by whether it will be carried by cable operators.

I

3. The delays in constructing digital transmission facilities notwithstanding, WCAX has converted its studio facilities to digital: master control, production control, audio, news cameras and editing are all digital. All that remains is installation, at the front end, of receivers to receive the network's HDTV signal and, at the backend, the encoders and associated equipment for transmission to the transmitter. The new facilities are designed to be, with substantial upgrades, multicast capable. WCAX is also in discussions with Adelphia Cable, which is far and away the dominant MSO in Vermont, about providing a direct HDTV feed to its subscribers and, perhaps, other cable companies utilizing Adelphia's wholesale headend and fiber facilities beginning in 2004, well before the station will have its over-the-air transmission facilities completed on Mt. Mansfield. One issue in those discussions is whether Adelphia would be willing to retransmit WCAX's entire DTV signal.

4. Cable systems, which serve about fifty-six percent of the viewers in our market, have bottleneck control over the video programming market. Our market also has one of the highest DBS penetrations in the country: Nielsen currently estimates it to be just over thirty percent and there is anecdotal evidence that it is actually higher. Multicast programming that is distributed solely over the air to our station's viewers would reach just fifteen percent of our audience, which is insufficient to launch, much less sustain, those services. Even with WCAX-DT's existing digital transmission facilities, originating digital programming other than a simulcast of the station's analog signal will require significant expenditures for encoders, master control facility upgrades and production or acquisition of program material. As a broadcaster in a small market with limited resources, WCAX-DT is not able to make such investments if it does not

have assurance that its multicast programming will be accessible to the bulk of its viewers—and that means cable carriage.

5. WCAX-DT is in the early stages of formulating its digital strategy. If multicasting is to be a part of that strategy, WCAX-DT will need to make extensive capital investments and a commitment to substantial ongoing operational expenses. The critical threshold factor will be the audience we can serve with our complete digital signal. WCAX-DT cannot afford to invest in innovative multicast services without assurances of access to cable viewers: without cable carriage, we will not have the opportunity to provide innovative new services to our viewing public and new competition to cable programming.

6. WCAX-DT has not been able as yet to negotiate retransmission consent agreements for carriage of any multicast streams the station might offer. Unless this changes, WCAX-DT's ability to provide multicast services to our cable viewers will be severely constrained or blocked, even if additional digital channels would better serve them.

III

7. As a small market station, WCAX-DT faces numerous challenges to its viability as a broadcaster, including (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 channels; (ii) costly investment in digital capital and digital operating costs (in addition to the expense of operating analog stations); and (iii) the loss of network compensation.

8. Other stations in WCAX-DT's DMA are in financially precarious positions. For example, the ABC affiliate in our DMA recently terminated its local news service and the local Fox affiliate has never been able to provide local news. It appears that both stations meet at least one of the Commission's criteria for "failing stations." Their ability to provide multicast programming that will reach the majority of viewers in the Burlington-Plattsburgh DMA may be critical to their survival. For WCAX, the additional programming outlets afforded by multicasting could significantly alleviate the financial pressures we face and support the continued vitality of our over-the-air broadcast services. This will not occur, however, if eighty-five percent of our stations' potential audiences remain unreachable.

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

Executed: 31 December 2003

Peter Martin