Exhibit A

MM Docket No. 00-167
MOTION FOR ADMINISTRATIVE STAY
PENDING APPEAL OF VIACOM INC

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

In re Matter of:	)	
Children's Television Obligations of	)	MM Docket No. 00-167
Digital Television Broadcasters	)	
	)	

DECLARATION OF MARTIN D. FRANKS, CBS

I. INTRODUCTION

1. I make this Declaration in support of a motion being filed by Viacom Inc. ("Viacom") and the Walt Disney Company ("Disney"), and NBC (collectively, the "Petitioners") for an extension, or temporary stay, of the effective date of the new rules concerning children's television adopted by the Commission in a *Report and Order* issued on November 23, 2004. The rules are the subject of petitions for reconsideration filed by Viacom, Disney, and NBC, among others, in February of this year, which are still awaiting action by the Commission.

2. The *Report and Order* adopted sweeping changes in the rules governing children's television, several of which are of particular relevance to broadcasters. First, the FCC adopted an inflexible preemption rule under which programming that is preempted more than 10 percent of the time (unless for breaking news) will not count toward meeting the Commission's license renewal "guideline" that effectively requires television stations to present at least three hours per week of educational or informational ("E/I") children's programming (the "preemption rule"). Under this inflexible rule, preempted programs will not count even if they are consistently rescheduled and broadcast in a regular alternative time period, to which viewers are directed by on-air messages and disclosures in programming guides. Second, the agency adopted a

"benchmark" for multicast broadcasting, under which extra amounts of E/I children's programming would be required to meet the guideline, in proportion to the additional amount of free video programming offered by a broadcaster on its multicast program streams (the "multicasting rule").

3. These rules would substantially impair CBS's ability to provide programming consistent with its editorial vision and the tastes of the diverse and broad audience it must please in order to stay competitive. The rules would also substantially impair CBS's ability to compete in the marketplace by burdening broadcasters with children's programming obligations that do not apply to many of its competitors. Specifically, the preemption rule would interfere with CBS's ability to present Saturday morning news programming and to honor its commitment to live sports coverage, while still meeting its obligations in connection with children's programming. The multicasting rule would place CBS at a competitive disadvantage with respect to the development and distribution of new program services.

4. Complying with the new rules would also entail serious disruption of Petitioners' existing business practices. As noted, the rules would require them to make significant changes in their program schedules, thus negatively affecting their business interests and impinging on their First Amendment rights. The rules would intrude to an unprecedented degree on CBS's editorial discretion, effectively requiring that the times at which particular programs are broadcast -- or not broadcast -- be determined with reference to government mandates, rather than by the company's best programming judgments. The distorted scheduling decisions made based on those mandates would almost certainly result in the loss of audience, and the habits changed when viewers could not find expected programming might never be restored. The Commission should not require the implementation of rules having such far-reaching effects without fully

considering the substantial legal and policy arguments that Petitioners have advanced for their elimination or amendment.

II. EXPERIENCE AND QUALIFICATIONS

5. I have been with CBS since 1988, when I joined the Company as Vice President, Washington. In 1997, I was named Senior Vice President, CBS Corporation, overseeing the company's corporate relations functions. Later, I became Executive Vice President of CBS Television and Senior Vice President of Viacom. In September 2005, I was promoted to Executive Vice President, Planning, Policy and Government Relations for the new CBS Corporation. (Last June, Viacom's Board of Directors unanimously approved the creation of two separate, publicly traded companies from the company's leading entertainment brands through a spin-off to Viacom stockholders, to be named Viacom Inc. and CBS Corporation. Among other businesses, the new CBS Corporation will include the CBS and UPN broadcast networks, and the CBS Television Stations Group).

6. I have managed a wide range of activities for CBS, including oversight of the corporation's activities in Washington, its relations with state and local governments, and its corporate philanthropy. In addition, my position has involved handling CBS's relations with multi-channel video providers and retransmission consent negotiations, overseeing the company's transition to digital television, and supervising CBS's Program Practices Department. This range of responsibilities has required me to keep abreast of the programming, marketing, and customer relations strategies of CBS's competitors, and to be generally familiar with trends and practices in the broadcast industry.

7. In particular, I have had extensive correspondence and discussions with the Commission and its staff over nearly a 15 year period concerning its regulation of children's television,

including the need to afford the networks and their affiliates a degree of flexibility in preempting and rescheduling children's programs in order to accommodate live television coverage of hugely popular sports events. The FCC's new rules on children's television, which are scheduled to become effective on January 1, 2006, are among my principal current concerns, and I am thoroughly familiar with them.

III. CBS'S BUSINESS AND OPERATIONS

8. The CBS Television Network, through CBS Entertainment, CBS News, and CBS Sports, distributes a comprehensive schedule of news, information, and public affairs broadcasts, sports and entertainment programming, and feature films to more than 200 affiliates throughout the United States. CBS provides viewers with some of the nation's best entertainment, news, and sports programming. CBS News is one of the most respected news organizations, and CBS Sports covers such premier events as the NFL, NCAA Football and Basketball, the PGA Tour, and U.S. Open Tennis. CBS Entertainment develops and schedules the entertainment programming presented on the CBS Television Network. CBS Productions, CBS Entertainment's in-house production company, was recently merged into Paramount Television, creating a production entity that develops and produces primetime programming, including comedy, drama series, television movies and specials for the CBS Television Network, as well as other broadcast networks, broadcast television stations, and cable networks.

9. The CBS Television Network, like all broadcasters, primarily derives revenues from the sale of advertising time. This revenue is especially critical to CBS's operations, including the development of new programming, because unlike cable networks -- which enjoy both advertising and subscriber revenues -- CBS relies primarily on the single revenue stream of advertising.

10. In addition, CBS competes with the other broadcast networks for affiliations with independently owned broadcast television stations in markets across the country, which relationships are necessary to ensure the effective distribution of network programming and advertising to a nationwide audience. CBS competes for affiliates by offering innovative programming and depends heavily on the power and strength of its brand name to make its offerings attractive to those affiliates.

11. With the transition to digital television, CBS faces even more competition. Digital technology allows a broadcast television station to offer multiple streams, or channels, of video programming simultaneously. In addition to, or in lieu of video programming, digital television stations can use part of their allotted spectrum for datacasting. Digital television stations, therefore, can deliver virtually any type of data, audio or video -- including text, graphics, software, web pages, video-on-demand, and niche programming. Several companies are using broadcast spectrum for subscription video distribution via DTV streams. As television stations utilize their larger channel capacities enabled by digital services, CBS will compete with cable and other content providers to supply programming for delivery on these multiple digital broadcast channels.

IV. THE PREEMPTION RULE WILL CHANGE THE WAY CBS DOES BUSINESS, CAUSING MASSIVE DISRUPTION AND IRREPARABLE HARM.

The "Regularly Scheduled" Requirement

12. The proposed preemption rule is an outgrowth of the Commission's implementation of the Children's Television Act of 1990 ("CTA"), which required the FCC to consider whether a television license renewal applicant has "served the educational and informational needs of children through [its] overall programming, including programming specifically designed to serve such needs." In explicating this broad and general obligation, both the Senate and House

Reports expressly stated that their respective Committees did not intend that the Commission "interpret [the Act] as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to pass a license renewal review."[1] And Senator Inouye, one of the floor sponsors of the legislation, stressed that the "appropriate mix" between general audience programming and programming specifically designed for children is to be "left to the discretion of the broadcaster."[2] Having then been CBS's representative on the board of the National Association of Broadcasters ("NAB"), and having participated in industry discussions about the CTA at the NAB and elsewhere, I am able to state that the absence of any rigid standard in the CTA dictating how broadcasters were to discharge their obligation to serve children was a central factor in the industry's acceptance of the legislation.

13. However, in 1996 the Commission took a step away from its traditional reluctance to impose mandatory programming quotas. It did this by creating a "processing guideline" under which licensees that broadcast at least three hours per week of "core" educational/informational children's programming could have their renewal applications granted by the FCC staff. Applications not meeting this standard would be referred to the full Commission for a determination of whether the licensee had nonetheless met its obligation to serve the needs of children.

14. In practice, no television broadcaster would even consider intentionally failing to meet a quantitative programming standard that would result in its license renewal application being

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[1] House Report at 17; see also Senate Report at 23, and 136 Cong. Rec. S10122 (remarks of Sen. Inouye).

[2] Senate Report at 23; House Report at 17; 136 Cong. Rec. S10122 (remarks of Sen. Inouye).

isolated for special scrutiny by the Commission. Effectively, then, the Commission's "processing guideline" has the force of law, and meeting its requirements is enormously important to broadcast television licensees.

15. In order for E/I programming to count toward meeting the three-hour processing guideline, it must meet the Commission's definition of "core" programming. For present purposes, the significant aspects of that definition are that "core" programming must be broadcast between 7 AM and 10 PM, and must be "regularly scheduled." If a program is found not to be "regularly scheduled" -- for instance, because it has experienced too many preemptions – *none* of the episodes broadcast will count toward meeting the three-hour processing guideline, even if the preempted episodes are rescheduled for broadcast at another time. Consequently, a licensee that relies on a particular program to meet the three-hour standard will fail to meet the guideline if the program loses its "regularly scheduled" status, with all of the potential consequences for license renewal that this may entail.

16. Immediately upon the adoption of the Commission's 1996 *Report and Order* adopting the three-hour processing guideline, it was obvious that the "regularly scheduled" standard created a dilemma for the major networks and their affiliates. The networks had traditionally offered children's programming on Saturday mornings, but also often broadcast live sports events on Saturday afternoons. Since a sports event broadcast at 1 PM in the East takes place at 10 AM on the West Coast, it was clear that the broadcast of live sports would sometimes preempt children's programming, especially on stations in the Pacific and Mountain Time Zones. This in turn would threaten the "regularly scheduled" status of network children's programs on these stations, calling into question their compliance with the three-hour guideline.

The FCC Staff Rulings

17. These considerations led the networks to seek some degree of flexibility from the FCC staff in the application of the "regularly scheduled" requirement. In a letter to the Commission staff on behalf of CBS and its affiliates, I proposed an alternative that would enable CBS to preempt children's programs at levels consistent with previous practice in order to broadcast popular sports events, provided that the programs were rescheduled to a regular alternate time period in which their availability was reasonably promoted.

18. Agency staff responded to CBS (and the other networks) through a series of letter rulings that permitted our stations to count a children's program preempted for network sports toward a station's core programming obligation if the program were rescheduled within one week to a fixed "second home" of the station's choice (or, in isolated circumstances, at any time during core hours within two weeks before or after the preemption). Such preemption flexibility was conditioned on a station's efforts to inform parents and children of such scheduling changes. These efforts included, among other things, a commitment to provide publishers of program guides with the alternate date and time in advance of any core programming preemption, and to notify viewers during the previously scheduled episode, and at the time of the preemption, of the alternate date and time when the preempted show would air.

19. Data submitted to the Commission, and taken into consideration in its letter rulings and its review of the implementation of the children's television rules, demonstrated that CBS stations consistently rescheduled preempted programs to fixed second homes, and provided information about the reschedulings to viewers on-air and through information provided to program guides. The CBS data also demonstrated that ratings for programs preempted by network sports and rescheduled to a second home were consistently equivalent to or better than the ratings for the original time period, underscoring the effectiveness of the more flexible

guidelines. The data also showed that some CBS stations, particularly on the West Coast, have preempted (and rescheduled) more than 10 % of their children's programming in particular quarters, and, in some cases, in two adjacent, averaged quarters. Nevertheless, the Commission found overall the networks' preemption rates to be acceptable, and that CBS's preemptions were the lowest overall of the three networks asked to submit data (CBS, ABC and NBC).

The Preemption Rule Will Cause Massive Disruption and Irreparable Harm to CBS's Operations in Light of its Real-World Scheduling Challenges

20. The preemption rule will dramatically affect CBS's ability to design and schedule its lineup consistent with the desires and needs of its viewers. The Commission's new standard -- under which an E/I children's program would no longer be considered "regularly scheduled" if it were preempted more than 10 percent of the time in a given calendar quarter -- would leave CBS and its owned and independent affiliates with no alternative other than to make significant changes in their program schedules. Indeed, the practical consequence of the preemption rule will be to make it very difficult, if not impossible, for CBS to maintain its current line-up of Saturday sports, news, and children's programming. Given the simple fact that the number of broadcast hours in a day is finite, the current mix of this programming cannot continue to coexist under the preemption rule.

21. In operation, the 10 percent rule would, at most, allow two episodes of a program to be preempted in each thirteen-week quarter. But during the first quarter of 2005, which includes the NCAA Basketball Championships, sports programming on the CBS Television Network began before 1 PM Eastern Time (and therefore before 10 AM Pacific Time) on three Saturday mornings. And during the Fourth Quarter of this year, during the college football and basketball seasons, sports will air during this time period on five occasions. The problems created by live sporting events are particularly troubling for affiliates in the Pacific Time Zone.

22. For example, CBS carries live college football games on Saturdays in the fall. A college football game that has a 1 p.m. EST kickoff will be carried live on the West Coast at 10 a.m. PST. Accordingly, this will preempt, in this example, two hours of core children's programming, which a hypothetical West Coast affiliate might regularly air from 9 a.m. to 12 p.m. PST. In order to ensure compliance with the preemption rule, meet its E/I mandate, and carry live sports programming, the affiliate would need to move the children's programming back in the schedule, to air from 7 a.m. to 10 a.m. However, many affiliates air CBS's Saturday morning news programming and/or their own local news broadcasts between 7 a.m. and 9 a.m. Thus, if children's television were placed in that time slot on a permanent basis, as might be necessary to ensure compliance with the preemption rule, those stations would be forced to eliminate network and local Saturday morning news programming that is of great value to viewers and serves the public interest.

23. However, even moving children's television earlier, to the 7 a.m. to 10 a.m. time slot, and dropping news programming would not be enough to protect stations from violating the rules while preserving their ability consistently to air live sports in certain time zones. CBS airs college basketball on Saturdays, which often has a start time of 12 p.m. EST. This means that live coverage in the Pacific Time Zone would *still* result in preemption of children's programming beginning at 9 a.m. PST. Indeed, for any live sporting event with a start time earlier than 1 p.m. EST, there is no way to avoid preempting some portion of children's programming scheduled between 9 a.m. and 12 p.m. on the West Coast.

24. Thus, in order to keep children's programming on Saturday mornings, the time slot that CBS and its owned stations believe is most appropriate for reaching the target audience, the preemption rule could require either the elimination of Saturday morning news programming or

a reduced commitment to live sports coverage on broadcast television. These are not outcomes the Commission should take lightly. Americans value the free, live sports coverage they have come to expect from the broadcast networks. And the loss of news programming, particularly local news programming, is contrary to the public interest in both informative television, and the Commission's interest in promoting localism.

25. One possible way of meeting the strictures of the preemption rule, while still maintaining the current level of sports coverage, would be for stations to reduce or eliminate Saturday morning news programming. Were stations to adopt this expedient, the harm to CBS's broadcast business would be irreparable. Viewers accustomed to watching CBS network or local news programming in the affected time periods would migrate to other broadcast or cable networks for news, decreasing CBS's viewership and thereby harming advertising revenues. And viewing habits, once changed, may be very difficult to reestablish. This loss of news viewers would have negative ripple effects for other programming, which is promoted during news broadcasts, as well. Moreover, the reputation of CBS and its stations as leading deliverers of news -- which is critical to their overall branding -- would be harmed by the elimination of weekend news programs. CBS's goodwill would also be harmed, as previously loyal news viewers would become alienated and dissatisfied, as CBS would no longer be capable of fully serving the news and information needs of local communities.

26. A second alternative for ensuring compliance with the preemption rule would be to maintain existing Saturday news programming and instead to alter CBS's customary sports coverage. This possibility is wholly unworkable. As an initial matter, it is simply unrealistic to suggest that networks begin weekend sports programming later in the day. The scheduling of sports events on the networks is typically governed by multi-year contracts; in any case, it is

mistaken to suppose that the networks can dictate to sports leagues when their games should be played. It is equally implausible to imagine that either the leagues or the public would accept anything other than live coverage of these events.

27. In addition to the sheer impracticability of adjusting sports coverage, any effort to do so in order to satisfy the preemption rule would irreparably harm CBS. First, sports programming serves as a primary vehicle for CBS to market and drive viewers to its *other* programming, including valuable prime time shows, and to promote its brand in general. Without the ability to effectively promote its prime time lineup and other shows during live sporting events, ratings for those shows would likely decline. A drop in ratings would, in turn, reduce the revenues that CBS is able to earn through the sale of advertising on those programs. Second, given that NCAA football has aired on free, broadcast television since the late 1940s, and its availability has been eagerly anticipated by the television audience ever since, loyal sports viewers would be disappointed and upset (to understate the likely reaction) if CBS were to air children's television in the place of football. This would harm CBS's relationship with its viewers. Third, CBS's corporate goodwill would be harmed by the loss of prestige associated with carrying a robust schedule of major national (as well as local) sporting events.

28. Moreover, any constraint on broadcasters' ability to schedule live sports events as they see fit would complicate their negotiations with rights holders, and do nothing to discourage the further migration of major sports events from free television to subscription services. It would be ironic if Commission regulations reflecting rigid notions about the *only* way in which the child audience can be properly served were to make it more difficult for broadcasters to provide a category of programming that is among the most wanted from free television by the public at large, including children -- a rich menu of live sports coverage.

29. A third possible response to the preemption rule -- scheduling children's programs at times other than weekend mornings -- is similarly unworkable, and would cause disruption and irreparable harm to broadcasters. CBS's children's programming has been aired on Saturday morning in part because we believe that is the best time to reach our intended child audience, consistent with the other demands of a network schedule serving a broad national audience of all ages. Rescheduling children's programs to another time period -- say weekday afternoons, when the intended audience may be home from school -- would not only be an illogical move away from the time period CBS deems optimal for reaching children, but would be highly disruptive of the schedules of CBS's affiliates, and therefore completely impractical.

30. Between 2 and 3 PM on weekday afternoons, the CBS Television Network features the classic daytime drama, *As the World Turns*. Daytime network programming then concludes, and most network affiliates offer syndicated fare -- including such highly popular programs as *Dr. Phil* and *The People's Court* -- leading into the local stations' all-important local evening newscasts. Maintaining and building adult audiences leading into those local newscasts is critical, since local news is the largest source of local advertising revenue for most network-affiliated stations. The avoidance of programs that will interrupt audience flow in this vital time period is an even more compelling necessity given that the time between the conclusion of network programming and the beginning of local news is short (indeed, it could not accommodate a full schedule of children's programs). For example, the weekday early newscast on WCBS-TV, CBS's owned station in New York, begins at 5 PM, and the early newscast on KYW-TV, our owned station in Philadelphia, begins at 4 PM.

31. Therefore, it is unrealistic to view the late afternoon time period as an alternative for the presentation of children's programming by network affiliates. The interjection of children's fare

in the middle of programming directed to adults would inevitably disrupt the audience flow from program to program, thus having a negative impact on the efforts of those stations to build audiences for their critical local news broadcasts.

32. Whatever broadcasters' ultimate response to the possible alternatives for ensuring compliance with the preemption rule, the inevitable effect of the government constraints imposed on free over-the-air broadcasters by the rule would be to disadvantage them vis-à-vis their multichannel competitors. The market for delivery of television programming to the home is highly competitive. The principal arenas of competition include the development and acquisition of popular programming, the promotion of that programming, and the consequent ability to sell advertising at profitable rates. CBS competes for audience, programming, and advertising revenues with other broadcast networks, independent television stations, basic cable program services, cable operators, direct broadcast satellite television services ("DBS"), videocassettes, DVDs and other media, including print and the Internet.

33. Whether CBS and its local stations were forced to eliminate news programming, compromise their coverage of live sports, or move children's programming from its traditional home, they would be deprived of their editorial discretion, and CBS would be put at a competitive disadvantage in relation to other content providers that do not labor under similar regulations. In today's highly competitive market for the delivery of television programming, any artificial constraint on the competitiveness of free over-the-air broadcasting threatens irreparable harm to the CBS Television Network and its local stations.

V. THE MULTICASTING RULE THREATENS MASSIVE DISRUPTION AND IRREPARABLE HARM TO CBS

34. By threatening to stifle the development of embryonic digital television program services and burdening broadcasters -- but not their competitors -- with additional E/I obligations, the

multicasting rule would cause significant disruption and threaten irreparable harm to CBS.

35. CBS has been a leader in the development of digital technology. CBS was the first network to offer prime time programming in High Definition ("HD"). On average, CBS now broadcasts 34 hours per week of original HD programming -- more than any other broadcast network, and more original HD programming per week than any cable or satellite network. One hundred and eighty-nine of CBS's owned and affiliated stations are currently broadcasting in digital, covering approximately 99 percent of the nation.

36. By making possible the broadcast of multiple program streams, digital television offers free over-the-air broadcasters new opportunities to compete with their multichannel rivals through the development of innovative program services with specialized appeal. Multicasting is ideally suited to niche programming comparable to the specialized programming choices currently available on cable or DBS.

37. The multicasting rule creates a substantial impediment to the development and deployment of multicast channels by substantially increasing broadcasters' costs. In part because of the high costs of developing multicast programming -- and the general costs of the conversion to digital broadcasting -- it is unknown whether the provision of additional free programming will be profitable. The cost of producing or acquiring E/I children's programming is considerable as well.

38. The multicasting rule would clearly impose significant costs on broadcasters desiring to explore the creation of new programming platforms. For example, a business news or cooking channel is less likely to be launched, or indeed to survive, if it must include children's programming in its schedule. The presence of children's programs would be inconsistent with and disruptive of the overall programming goals of such services, and interruption of the

intended programming in favor of children's fare would likely drive potential adult viewers away. The multicasting rule would thus inevitably cut away at the advertising and viewer base for specialized program streams. These concerns are not ameliorated by the fact that a broadcaster contemplating a multicast experiment could present the extra children's programs required by the rule on another one of its other programming platforms, thus increasing its burdens and shrinking its editorial discretion on *that* platform.

39. These disincentives would be in addition to the extra costs of the new children's programming. Leaving aside the added license fees that would have to be paid in order to make additional runs of the programs also broadcast on the licensee's main channel, it is clear that some unique programming would be necessary to satisfy the rule, which specifies that at least 50 percent of the additional programming not be repeated on the broadcaster's other program streams during the same week.

40. Because the rule would impose these onerous obligations on CBS in deploying new content channels, it acts as a barrier to entry and places the company at a competitive disadvantage in relation to traditional multichannel video programming providers such as cable and DBS, as well as other sources of entertainment such as videocassettes, DVDs, print media and the Internet.

41. Further, the multicasting rule places CBS at a competitive disadvantage vis-à-vis those seeking to provide programming for broadcasters' additional channel capacity that are not subject to the multicasting rule, namely non-video programming content providers. Because the content of CBS's offerings will be constrained by the multicasting rule, its programming will be less desirable to a local television station than content not similarly regulated, which it can transmit without triggering additional children's obligations. For example, CBS is competing

with data programmers, such as iBlast, to provide multicasting content to affiliates. These data providers are not subject to the multicasting rule, since they do not supply video programming. Thus, affiliates likely would choose to contract with those content suppliers, since doing so would not impose on them the costs associated with airing additional children's programs. Moreover, CBS's resulting inability to bundle multicasting programming with its traditional broadcast programming damages its ability to retain existing or attract new affiliates, impairing its affiliate relationships and overall network.

42. In sum, CBS's ability to launch and market additional channels to affiliates deciding how to use additional channel capacity will be severely constrained by onerous rules that will not burden cable providers or providers of non-video content. This will delay and, in some cases, preclude the deployment of these additional channels, irreparably harming not just CBS, but the public's interest in rapid deployment of digital television, and the promise of broadcast programming diversity that this digital medium offers.

VI. CONCLUSION

43. The preemption rule and multicasting rule will impose substantial economic and non-economic losses on CBS. These losses cannot easily be quantified and are unrecoverable. Not only will CBS have to spend substantial sums to ensure compliance, but the rules will cause major disruption to CBS's business practices, and produce a loss of revenue and goodwill, customer frustration and confusion, and compelled editorial changes that will damage CBS's place in the market and overall brand value.

FURTHER THE DECLARANT SAITH NOT

Pursuant to Section 1.16 of the Commission's rules, I, Martin D. Franks, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Martin D. Franks

Martin D. Franks

EXECUTED ON SEPTEMBER 26 2005