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April 17, 2005

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Notice in MB Docket No. 03-15

Dear Ms. Dortch:

On April 14, 2006, Jennifer A. Johnson and the undersigned, counsel to New York Times Management Services ("NYTMS"), met with the following members of the Media Bureau: Donna C. Gregg, Chief and Roy J. Stewart, Deborah E. Klein, William H. Johnson, Barbara Kreisman, Eloise Gore, Keith Larson, and Nazifa Sawez. The parties discussed issues raised in the FCC Form 385 and Request for Preservation of Maximized Service of NYTMS station WHNT(TV), Huntsville, Alabama, and the attached outline was distributed.

Please direct any questions concerning this information to the undersigned.

Sincerely,



Matthew S. DelNero
Counsel to NYTMS

cc: Donna C. Gregg
Roy J. Stewart
Deborah E. Klein
William H. Johnson
Barbara Kreisman
Eloise Gore
Keith Larson
Nazifa Sawez

WHNT-DT, Huntsville, Alabama (CBS Affiliate)

WHNT Has Led the Huntsville Market in DTV Buildout and Promotion

- In 2001, well before WHNT's May 2002 construction deadline and before any other station in the market, WHNT commenced DTV operation
- Like its analog service, WHNT-DT delivers more than 32 hours of local news
- First station in market to broadcast and promote HDTV programming
- Certified maximized operation in its Pre-Election Certification Form
- Commenced maximized operation in May 2005, serving 1.35 million viewers

Existing DTV Service to Nearly 350,000 Viewers is in Jeopardy

- In Round One, WHNT sought to elect its only in-core channel, ch. 19
 - Conflicts with two stations, WGCL and WCLP, were quickly resolved
 - 1.3% to DTV ch. 18 of WDBB (only 0.07% within DMA)
 - 6.1% to unbuilt DTV ch. 20 of WYLE (demanded "six figures" for its consent)
- FCC indicated it could not grant WHNT's Round One tentative designation (maximized)
- Uncertainty as to tentative designation is problematic – ch. 19 is only feasible option
- Choosing lesser of two evils, specified replication facilities in R2 Conflict Decision Form
- Concurrently filed "Request for Preservation of Maximized Service" on ch. 19
 - Necessary to avoid loss of existing DTV service to **nearly 350,000 viewers** on Feb. 17, 2009
 - This represents **more than 25 percent** of WHNT's existing service area

Preservation of WHNT's Maximized Service Area Would Fulfill Important DTV Policies

- Out-of-core stations are "afforded a high priority" in returning to in-core channel
- Channel election process seeks to protect existing service and respect investments
- In resolving conflicts, FCC will be favorably disposed towards "early adopters"
- Commission and Congress recognize value of maximization

Adoption of WHNT's Request Would Not Materially Impact Access to Other DTV Service

- WDBB, Satellite of WB Affiliate WTTO
 - Interference within Birmingham DMA is only 0.07 percent and overall is only 1.3 percent, well below the FCC's longstanding *de minimis* interference tolerance
 - All of those viewers are served by WTTO
 - Licensee refused to negotiate
- WYLE
 - No DTV facility constructed
 - 5th extension request creates significant doubt as to its resources to *ever* construct
 - Other channels are available for WYLE – incl. channels 7, 29 and 46
 - Licensee demands “six figure” sum in exchange for cooperation

To Protect the Viewing Public from Loss of Service, WHNT Asks the Commission to:

- Provide WHNT a tentative designation on ch. 19 pursuant to its Round Two Conflict Decision Form
- Protect WHNT's maximized service area against other Round Two conflict decisions and Round Three channel elections
 - Treatment of WABC in Round Two is precedent
 - But unlike WABC, WHNT does not seek resolution of its request for preservation of maximized service as a pre-condition to its tentative channel designation
- In NPRM proposing Final DTV Table, provide for WHNT's maximized service on ch. 19
- If extension of WYLE's CP is deemed appropriate, provide it a different DTV channel