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May 12, 2006

Ms. Nazifa Sawez
Federal Communications Commission
Room 2-A726
445 12th St., S.W.
Washington, DC 20054

Re: **Ex Parte Presentation, MB Docket No. 03-15**
WABC-TV, New York, NY
Emergency Request for Waiver, American Broadcasting Companies, Inc. and
WPIX, Inc., FCC File Nos. BFRECT-20050209AKQ and BFRECT-20050210ATK

Dear Ms. Sawez:

This letter is filed on behalf of American Broadcasting Companies, Inc., licensee of station WABC-TV, New York, NY (“WABC”), in response to the proposal of the New Jersey Public Broadcasting Authority to relocate the digital operations of station WNJB, New Brunswick, NJ (“WNJB”) to 4 Times Square in New York City. As further set forth below, WABC continues to believe that grant of WABC’s pending waiver request is the best solution because it would have the smallest impact on the current viewers of both WABC and WNJB. Nevertheless, in order to move forward with the digital transition, WABC is willing to not assert an interference concern with WNJB’s 4 Times Square proposal, provided that, the FCC simultaneously grant WABC’s channel election of 7.

WABC Facilities. Although WABC has been broadcasting in analog in New York on channel 7 for decades, WABC temporarily also is broadcasting in digital on channel 45 as part of the digital television transition. When it completed construction of its World Trade Center facilities in 2001, WABC’s digital signal close to fully replicated its analog signal. After WABC’s facilities were destroyed on September 11, 2001, WABC constructed new facilities to operate in digital and analog from the Empire State Building and, on its own initiative, also constructed two auxiliary facilities to be used in case of emergency. WABC has spent millions of dollars constructing and re-constructing its television facilities in order to serve as many viewers as possible and to be secure and redundant in event of another emergency.

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WNJB Facilities. WNJB is one of four New Jersey Network public television stations which all overlap and broadcast the same New Jersey-oriented programs. In 1998, the FCC approved a channel swap that “squeezed in” a digital channel 8 for use by WNJB, which already had analog channel 58 and digital channel 18. The FCC later permitted WNJB to increase its power so as to create interference between it and its neighboring channels (channel 7, operated by WABC and channel 9, operated by WWOR). This higher power facility, if built, would permit WNJB, a New Jersey station, to serve many areas of New York never before served by WNJB, and already served by public television station WNET. WNJB thus far has not built the increased-power facilities, but instead is operating digitally on channel 8 with reduced power pursuant to special temporary authority from the FCC.

Channel Elections. WABC elected channel 7 for digital operation because that has been its primary analog channel for decades and because channel 7 allows WABC to closely replicate its analog signal, thereby reaching as many of its current viewers as possible, especially those in tall buildings, which is of particular concern in New York City. WNJB selected channel 8. Under FCC-approved calculation methods, WNJB’s digital operation on channel 8 would result in predicted interference to WABC on channel 7, and WABC’s digital operation on channel 7 would result in predicted interference to WNJB on channel 8. This caused a conflict between the stations’ channel elections. However, because the FCC accepted the elections of stations electing their allotted digital channel versus their allotted analog channel, regardless of the interference caused, the FCC did not consider the interference from WNJB to WABC but did consider the interference from WABC to WNJB. As a result, the FCC awarded WNJB its channel preference of 8 but denied WABC its preferred channel of 7.

Petition for Waiver. WABC petitioned the FCC to waive the interference criteria that resulted in the rejection of WABC’s election of channel 7 so that WABC could continue to reach as many of its existing over-the-air viewers as possible after the digital transition. That request is supported by Connecticut Public Broadcasting (“CPB”) because WABC’s use of channel 7 instead of channel 45 (WABC’s allotted digital channel) will facilitate CPB’s proposed channel swap involving channel 45. As shown in WABC’s petition, a waiver also is in the public interest because: (i) the vast majority of viewers potentially affected by WNJB’s service loss attributable to WABC currently are not served over-the-air by WNJB; (ii) the potential viewers in the area in which WABC is predicted to cause interference to WNJB already receive interference-free service and the exact same programming WNJB offers from its sister station, WNJN, as well as service from other noncommercial stations, such as WNET; (iii) lack of a waiver would permit WNJB to almost double its current service area and expand into the state of New York, an area outside its intended service area, and, at the same time, prevent WABC from merely replicating its current analog service area.

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Negotiations. WABC also attempted to negotiate an agreement with WNJB regarding permissible interference. WABC proposed a technical solution whereby WABC would pay for a new antenna for WNJB that would be built in New Jersey and that would decrease the interference between the stations. WABC reiterates that its proposal is still open for discussion, if WNJB were interested in pursuing such a solution. Under this solution, both stations generally would be able to continue serving their current viewers.

4 Times Square Proposal. Thus far, WNJB has not wanted to pursue WABC's proposed solution. Instead, WNJB proposed that it move from its current New Jersey broadcast location to a location in New York City at Four Times Square. As with its currently permitted digital authorization, the proposed Four Times Square facility would permit WNJB to serve with a digital signal New York viewers who never before received an analog signal from WNJB. WNJB's request also would require a waiver because the FCC currently has placed a "freeze" on any proposals which, like WNJB's proposal, would increase a station's coverage area beyond its allotment.¹

WABC believes that approval of WNJB's 4 Times Square proposal essentially would result in a relocation of WNJB from New Jersey to New York City. In fact, based on WABC's preliminary analysis, if WNJB constructed its Four Times Square proposal, New Jersey viewers would make up only 33% of WNJB's population coverage while New York viewers would constitute 62% of its population coverage. Despite this coverage disparity, WABC evaluated the interference consequences of WNJB's proposal very carefully and compared the proposal with all the various options presented at this point. Although WABC's engineering review of the WNJB proposal indicates that WNJB's movement to New York would not result in any significant *predicted* interference to WABC pursuant to the FCC's current standards, ABC is concerned that *actual* interference indeed would result. This is because the FCC's predictive processes do not adequately account for the fact that signals in highly urbanized areas, like New York City, suffer wider amplitude excursions than do signals in less densely populated areas. Nevertheless, to be responsive to the Commission in moving this proceeding along and to enable WABC to serve as many viewers as possible with a digital signal, WABC will not object to

¹ See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," DA 04-2446 (rel. Aug. 3, 2004). Recent decisions indicate that the FCC generally will not consider waivers of this freeze. See, e.g., Letter from Barbara Kreisman, Chief, Video Division to Kathryn Schmeltzer, Esq., Counsel to WFGX-DT, Ft. Walton Beach, FL (rel. Mar. 29, 2006) (rejecting request for waiver of freeze in part because "situation is no different from any other station seeking to expand its service area by a modification proposal during the current freeze on such applications").

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WNJB's Four Times Square proposal from a technical perspective provided that the FCC expeditiously approve WABC's election to construct its digital facilities using channel 7, as specified in FCC File Nos. BFRECT-20050209AKQ and BCERCT-20041105BCQ.

Additional Considerations. Given the FCC's interests in bringing the channel election process to a close, and in light of the impending July 1, 2006 "use it or lose it" deadline, WABC requests that the Commission expeditiously and simultaneously grant its petition for waiver so that WABC has the certainty it needs to plan for operations on channel 7 and, in the event that WNJB later withdraws its proposal to move its facilities to Four Times Square, so that WABC no longer would be subject to further revision of WNJB's construction plans.² Moreover, in light of this protracted proceeding and the public interest in resolving the channel elections in New York as soon as possible, WABC notes that an extension of the July 1, 2006 deadline for WNJB would be unwarranted. In addition, as noted above, WNJB's move to 4 Times Square essentially would relocate a station intended to serve New Jersey to New York. Given this reality, WNET may have legal and policy concerns about such a move. Because of WNET and WABC's current partnership constructing and operating combined transmission facilities after the loss of the World Trade Center facilities, WABC respectfully requests that WNET's concerns be taken into account. Finally, as noted in an earlier response, and as WNJB stated in a recent meeting with Commission staff, WNJB is not asking WABC for a financial contribution for any move to New York. Thus, for the sake of clarity, WABC reiterates that it is not willing to compensate WNJB for such a move to New York.

² The FCC previously has granted applications that would result in interference to a broadcast station in excess of the 2.8% predicted interference from WABC to WNJB, albeit in a different context. *See, e.g.*, Letter from Barbara Kreisman, Chief, Video Division to Jennifer M. McCarthy, Qualcomm Incorporated, ULS File No. 0002395142 (rel. Apr. 18, 2006).

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This letter is filed pursuant to Section 1.1206 of the Commission's rules and should be treated as a written *ex parte* communication. A copy of this letter will be provided to WNJB and its counsel of record.

Respectfully submitted,



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