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June 2, 2006

Ms. Donna Gregg
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

Re: Ex Parte Presentation
MB Docket 03-15

Dear Ms. Gregg:

This letter is filed on behalf of the New Jersey Public Broadcasting Authority (NJPBA) in response to ex parte presentations made by letters dated May 12, 2006 and May 22, 2006, respectively, by American Broadcasting Companies, Inc. (ABC), licensee of Station WABC-TV, New York, New York (WABC) and Thirteen/WNET, licensee of Public Station WNET(TV), Newark, New Jersey (WNET). ABC states, among other things, that it "will not object to 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-20050209 AKQ and BCERCT-20041105BCQ." ABC Letter, pp. 3-4. On the other hand, WNET asserts that relocation of WNJB-DT is inconsistent with a Congressional mandate regarding duplication of public television service, and would not serve the public interest.

NJPBA would have no objection to favorable action on ABC's pending waiver request, provided that the Commission simultaneously approves by final order an application by NJPBA for modification of WNJB-DT to colocate transmitting facilities at Four Times Square in New York City. In the latter regard, NJPBA would expect that ABC would support a request by NJPBA for waiver of the current freeze on modification applications like that which must be filed for WNJB-DT, so that ABC can secure timely and favorable action on its own waive request. Absent favorable action on its WNJB-DT relocation proposal, NJPBA will not voluntarily agree to favorable action ABC's waiver request.

In view of ABC's concession regarding location of WNJB-DT at Four Times Square, NJPBA will not address every issue raised by ABC in its letter. However, because that missive contains a number of mischaracterizations and inaccuracies and because of WNET's opposition to NJPBA's proposal, a few points bear comment.

First, by no stretch of the imagination does the proposed move of WNJB-DT's transmitting facility from a site in New Jersey to one in New York constitute a "relocation" that is somehow contrary to the FCC's rules or policies. See ABC Letter, p. 3, 4. There are no fewer than four television stations licensed to communities in New Jersey, including WNET itself, that operate from facilities in New York City. These New Jersey-based stations took advantage of whatever opportunity was presented to move transmitting facilities to New York City for the obvious reason that such a location maximizes their coverage. No one, least of all NJPBA, questions their rights to move or their wisdom in doing so. Likewise, NJPBA has every right to maximize its coverage and serve constituents wherever located, and it categorically rejects any effort to constrain its legitimate efforts in this regard by applying standards nowhere else applied.[1]

Second, the FCC and not ABC is responsible for determining whether or not extension of the "use it or lose it" deadline is warranted with reference to the standards it has already adopted in MM Docket 03-15.[2] In this connection, as observed by NJPBA in an ex parte letter filed March 3, 2006, any forced reduction in power for WNJB-DT to its current power level from its current location would only exacerbate the interference caused by WABC-DT to WNJB-DT, further undermining ABC's waiver request.

Third, it should be stressed that NJPBA's Four Times Square proposal effectively improves DTV service to the public and addresses the concern expressed by ABC (see, e.g., ABC Letter, p. 2) regarding the potential inability for a station to replicate analog service, the standard articulated by the FCC as the touchstone of DTV channel allocation.[3] In particular, if WNJB-DT were to continue operating from its current site, then, regardless of whether or not the FCC approves ABC's waiver request, WABC-DT will lose predicted service to almost 93,000 people, almost all of whom reside in New Jersey.[4] At the bottom line, whether or not it is appropriate for ABC to decree the proper geographical locus or focus of NJPBA's service, the fact is that colocation of

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[1] While ABC and WNET make much of the fact that relocated WNJB-DT would serve more people in New York than in New Jersey (ABC Letter, p. 3; WNET Letter, p. 2), this is already the case with the currently authorized WNJB-DT service contour and is irrelevant in any event. Obviously, signals do not stop at borders, and the ABC/WNET rationale could be used to deny service improvements by any station which by the circumstances of its geographical location serves multiple jurisdictions. At the bottom line, NJPBA's proposal improves service to New Jersey. Moreover, wholly apart from the increase in service resulting from a move to Four Times Square, as pointed out by NJPBA in a meeting among NJPBA, ABC and FCC representatives on January 19, 2006, it should be noted that such move would further improve service to New Jersey residents by locating the facility directly in the path of their mass antenna orientation.

[2] Second Periodic Review of the Commission's Policies Affecting the Conversion to Digital Television, Report and Order, 19 FCC Rcd 18279, para. 87 (2004)

[3] See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14588, paras. 29-33 (1997); Report and Order, supra, para. 72.

[4] See NJPBA Comments in Opposition to 'Emergency Request for Waiver', p. 10.

WNJB-DT at Four Times Square dramatically enhances overall service to New Jersey by both NJPBA and ABC.

Finally, a word about WNET, Newark, New Jersey. The only substantive concern raised by WNET until now is that it not be isolated as the only DTV VHF station operating in an all-UHF environment.[5] Of course, colocation of WNJB-DT ameliorates rather than exacerbates this putative concern. Now, for the first time, WNET claims alleged inefficiencies detrimental to public broadcasting that would result from the concededly dramatic expansion of WNJB. Yet this assertion wholly ignores the fact that much of NJPBA's schedule is not broadcast on WNET or any other station in the market. NJPBA in fact provides a service that is separate and distinct from that provided by WNET, and NJPBA's ability to serve a larger audience will strengthen its program service, which is already one of the largest providers of locally-produced programming in the public broadcasting system. Further, NJPBA today covers a substantial portion of the New York DMA, and there is not a shred of evidence to suggest that this market, which is the largest market in the nation and includes a substantial New Jersey constituency, either cannot support enhanced public broadcast service or should not have access to it. WNET's letter should be viewed for what it is – a transparent attempt to arrogate to itself the judgments of how much public broadcast service is appropriate for a region or what level of service is appropriate for NJPBA for the sole purpose of protecting WNET. This anticompetitive rationale for rejecting NJPBA's proposal cannot be sustained and should be rejected out of hand by the Commission.

Taken as a whole, the stances taken by ABC and especially WNET reflect a continuation of the historical treatment of New Jersey and its licensees as second-class citizens in the broadcast world.[6] The Commission has an opportunity to redress this situation while improving overall DTV service to the public by approving NJPBA's proposal.

This letter is filed pursuant to Section 1.1206 of the rules. As such, it should be treated as a written ex parte presentation.

Respectfully submitted,

NEW JERSEY PUBLIC BROADCASTING AUTHORITY

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May 31, 2006

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[5] See WNET's Comments in Support of Emergency Request for Waiver filed September 1, 2005.
[6] See NJPBA Comments in Opposition to 'Emergency Request for Waiver', pp. 6-7.

cc: Marlene Dortch, Secretary - TW-B204
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