

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 4(g)	)	MM Docket No. 93-8
Of the Cable Television Consumer	)	
Protection Act of 1992	)	

**COMMENTS OF FREE PRESS**

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Free Press respectfully submits these Comments in response to the Federal Communications Commission’s (“FCC” or Commission”) request to update the record for a Petition for Reconsideration of its Report and Order in MM Docket No. 93-8, released May 4, 2007.

**I. Introduction**

The Commission opened this Notice of Proposed Rulemaking almost fifteen years ago. In that time, the communications industry has undergone multiple transformations. We have seen the rise of satellite television and digital cable, the continued decline of over-the-air-only households, and the exploding popularity of the Internet. All these transformations greatly impact the determination of this proceeding and have significantly changed the environment in which home shopping networks exist.

## **II. Discussion**

### **A. Defining a Broadcast Television Station that is Predominantly Utilized for the Transmission of Sales Presentations**

The 1992 Cable Act directed the FCC “to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity”.<sup>1</sup> We believe that the Commission should define channels that are “predominantly utilized” for home shopping purposes as any station that airs sales presentations or program length commercials for more than four hours during the hours of 6:00 a.m. and midnight. Congress stated further that the FCC “consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to non-broadcast services offering similar programming.”<sup>2</sup> In light of the changes within the industry since Congress’ directive was passed into law, these considerations are worthy of further examination.

### **B. Significant Competition Exists for Sales Presentations**

Home shopping networks enjoy carriage on all major MVPD systems. With the advent of digital cable and satellite TV, Americans have received a significant increase in the number of channels available to them since the time the Commission opened this proceeding. This increase has also led to routine carriage of multiple (and sometimes duplicate) home shopping networks. The networks tout the following figures for audience reach:

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<sup>1</sup> Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385. (“Home Shopping NPRM”)

<sup>2</sup> Id.

- QVC - 90 million U.S. households<sup>3</sup>
- Home Shopping Network (HSN) - 89 million U.S. households<sup>4</sup>
- Jewelry TV/Shop At Home - 80 million<sup>5</sup>
- ShopNBC - 67 million U.S. households<sup>6</sup>
- Gems TV is carried on DirecTV<sup>7</sup>

While these audience numbers include the over-the-air audience, it is certainly the case that the majority of citizens view these networks through cable or satellite.<sup>8</sup> In addition to this abundant carriage, a television viewer is also exposed to the everyday airing of paid programming on both broadcast and cable channels. Indeed, the Informercial Monitoring Service, which “records 40 networks, 24 hours a day, 7 days a week, which reach all 50 states”, reports that “over 25,000 hours of paid television programming each month” is aired on the stations it samples.<sup>9</sup> These results exclude home shopping channels, and therefore indicate that there is a significant amount of

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<sup>3</sup> QVC, “QVC Celebrates 20<sup>TH</sup> Birthday on Black Friday, November 24, 2006,” Press Release, November 22, 2006, Available at [http://www.qvc.com/qic/qvcapp.aspx/app.html/params.file.cplcp\\_press\\_112206\\_blackfriday.html](http://www.qvc.com/qic/qvcapp.aspx/app.html/params.file.cplcp_press_112206_blackfriday.html).

<sup>4</sup> HSN, “company information,” 2007, Available at <http://www.hsn.com/corp/info/default.aspx>.

<sup>5</sup> <http://www.jewelrystelevision.com/history>;  
<http://www.shopathometv.com/custserv/custserv.jsp?help=company>.

<sup>6</sup> <http://www.b2i.us/profiles/investor/CSummary.asp?f=1&BzID=949&Nav=1&LangID=1&s=0&tPName=Profile>.

<sup>7</sup> See channel lineup here: <http://www.directv.com/see/pdf/chnl lineup.pdf>

<sup>8</sup> The FCC estimates 14 percent of U.S. TV households rely on over-the-air television. See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report, (¶ 96) (2006).

<sup>9</sup> See <http://www.imstv.com/whatwedo.html>. The Informercial Monitoring Service does not monitor any of the home shopping networks or any broadcast stations. For a list of the networks monitored see <http://www.imstv.com/samples/SampleReport.pdf>.

television shopping already available in addition to that on home shopping broadcast stations. On top of this remarkable “intramodal” competition (i.e. competition between shopping programming among TV stations), the U.S. is teeming with “intermodal competition” (i.e. competition from non-television retail services).

Consumers have plentiful access to other both at-home and away from home retail options. The Internet has revolutionized the term “consumer choice” by allowing anyone with Internet access to find a product anywhere in the world and have it shipped to their residence. In 2006 alone, Americans spent over 100 billion dollars shopping online.<sup>10</sup> Furthermore, the National Mail Order Association tallied over 9,000 mail order catalogs that conveniently ship any imaginable consumer good to any doorstep across the country.<sup>11</sup>

Beyond at-home options, U.S. consumers have a bevy of physical establishments to choose from. The United States boasts over 48,000 malls and shopping centers.<sup>12</sup> According to the National Retail Federation, more than 1.6 million retail establishments exist in the U.S., garnering 4.7 trillion dollars in 2006 sales alone.<sup>13</sup> Without a doubt, U.S. consumers have nearly limitless options when it comes to retailing outlets. As can be

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<sup>10</sup> Keisha Lamothe, “Online retail spending surges in 2006,” CNNMoney.com staff writer, Available at [http://money.cnn.com/2007/01/04/news/economy/online\\_sales/?postversion=2007010410](http://money.cnn.com/2007/01/04/news/economy/online_sales/?postversion=2007010410)

<sup>11</sup> National Mail Order Association, Directory of Mail Order Catalogs, Available at <http://www.nmoa.org/catalog/mailorderdir.htm>.

<sup>12</sup> U.S. Census Bureau, Wholesale and Retail Trade, Statistical Abstract of the United States, Table 1035, Available at <http://www.census.gov/prod/2006pubs/07statab/domtrade.pdf>.

<sup>13</sup> National Retail Federation, Mission Statement, [http://www.nrf.com/modules.php?name=Pages&sp\\_id=146&pmenu\\_id=1&mn\\_type=1](http://www.nrf.com/modules.php?name=Pages&sp_id=146&pmenu_id=1&mn_type=1).

seen above, the competitive role of home shopping broadcast stations is minimal when considering the substantial intra and intermodal competition within the retail industry.

### **C. The Pervasive and Competitive Retail Market Stands in Stark Contrast to The Scarcity of Broadcast Spectrum**

The plethora of competitive choices in the retail sector stands in stark contrast to the scarcity of broadcast spectrum. The societal benefits and localism that result from spectrum licensees airing 24-hour sales presentations from a studio far away are slim to none. We urge the Commission to consider the bevy of retail alternatives and the substandard community benefits when formulating a rulemaking on this issue.

Broadcast spectrum is “beachfront property” that could be used for more productive purposes than home shopping. For example, this spectrum could enable the development of a “third pipe” alternative to the duopoly broadband offerings of the cable and telephone companies. Having a wireless “last mile” could facilitate broadband deployment in sparse rural areas where the incumbent wireline providers refuse to serve. The competing demands for the public’s airwaves significantly outweigh the benefits that home shopping networks provide to consumers. Put simply, the opportunity costs of leaving the spectrum in the hands of the home shopping networks is far too high, as the prices fetched in previous spectrum auctions indicate that this scarce resource could be used for more valuable purposes.<sup>14</sup> We believe that an accurate interpretation of “the level of competing demands for the spectrum” would include any potential spectrum

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<sup>14</sup> The most recent spectrum auction raised over \$13 billion. See [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=66](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=66). According to one estimate the upcoming 700 MHz could “generate between \$20 billion to \$30 billion”. Charles C. Townsend, Spectrum Valuation White Paper, Aloha Partners, Available at <http://www.alohapartners.net/pdf/WhitePaper.pdf>.

demand, whether that is first responders, wireless Internet, or any other legal use.

Congress' directive gave the Commission the power of interpretation. Instead of the narrow interpretation included in their report and order<sup>15</sup>, the Commission should seek to creatively assign this spectrum to do more than just provide one more conduit to gain access to a consumer's purchasing power.

#### **D. The Commission Should Attach Conditions to the Spectrum Used by Home Shopping Networks**

If the Commission deems these outlets worthy of retaining such valuable spectrum, we would ask that they be subject to conditions that reflect the nature of their programming when compared to other local television stations. Specifically, requiring free community use of the other digital sub-channels following the DTV transition. This action would create true localism benefits for a station that provides significantly less to the community than other broadcasters. Even the stations themselves cannot argue that providing high-definition home shopping programming is more valuable than this service. Given this lack of need for HD-broadcasting, the Commission, as an alternative to digital sub-channel reprovision, could limit spectrum use for home shopping networks in any TV market to a single 6 MHz band. This arrangement would allow approximately six home shopping channels (or more depending upon the chosen compression technology) to operate in a single market and free up scarce spectrum for more productive uses. The Commission should also consider administering a spectrum use fee. In light of the nature of their programming, it is not unreasonable that these licensees should pay for the public spectrum used for a pure retail purpose. If a station is allowed

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<sup>15</sup> See Report and Order released July 19, 1993, page 5, MM Docket No. 93-8.

to use public spectrum to reach a local audience with the sole mission of selling retail products, the Commission has every right to ask for something in return. These conditions would create considerable public benefits and reflect the nature of their programming and meager local community service.

### **III. Conclusion**

We urge the Commission to closely examine whether these stations are serving the policy goals of localism and diversity, and whether the spectrum could be used in a more beneficial and efficient manner. The interpretation of competing demands left to the Commission by Congress provides them the opening needed to put the public's priorities first. With the ubiquity of retail choices, wide availability of retail programming and advances in technology, we believe the public interest would be served by freeing up this spectrum for more appropriate uses. In short, the Commission has an opportunity to turn a 20<sup>th</sup> century proceeding into a 21<sup>st</sup> century solution.

Respectfully submitted,

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