

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

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 07-269
Competition in the Market for the Delivery of)
Video Programming)

COMMENTS OF W.A.T.C.H. TV COMPANY

W.A.T.C.H. TV Company (“W.A.T.C.H. TV”) hereby submits its “phase two” comments in response to the Commission’s *Notice of Inquiry* (“*NOI*”) in the above-captioned proceeding.¹

At paragraph 40 of the *NOI*, the Commission asks whether wireless cable systems “remain viable competitors in the market for delivery of video programming.” In W.A.T.C.H. TV’s case, the answer is a resounding “yes.” W.A.T.C.H. TV’s nearly two decades of successful operation in the Lima, OH market is proof positive that a wireless cable system can compete successfully against incumbent cable and Direct Broadcast Satellite (“DBS”) operators if it digitizes its facilities and, like its competitors, is thereby able to offer hundreds of channels of programming that are a compelling value proposition to its subscribers. Moreover, W.A.T.C.H. TV is a case study as to how a wireless cable operator can leverage a successful multichannel video operation into competitive wireless broadband and VoIP services, and offer packages of services competitive with the “double play” or “triple play” offerings of incumbent cable and telephone companies.

¹ FCC 09-32 (rel. Apr. 9, 2009).

For further evidence of this, the Commission need only refer to its 2006 decision granting W.A.T.C.H. TV a waiver permitting it to “opt out” of new bandplan for Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) licensees in the 2.5 GHz band:

W.A.T.C.H. TV has developed an extensive business providing video, audio, and broadband service to customers in the Lima, Ohio area. The 12,000 customers that receive video programming and the 4,000 customers that receive wireless broadband service from W.A.T.C.H. TV represent a substantial customer base. W.A.T.C.H. TV has demonstrated that it is a meaningful competitive presence in the Lima market. Requiring W.A.T.C.H. TV to move its video programming into the [Middle Band Segment of the new 2.5 GHz bandplan] would require it to drop over 75 percent of its video programming. Such a result would cause major disruption to W.A.T.C.H. TV’s customers and would likely greatly diminish W.A.T.C.H. TV’s ability to compete with cable television systems in its area.²

Although cognizant of the impact W.A.T.C.H. TV’s opt-out would have on providers of 2.5 GHz broadband service under the new bandplan in neighboring markets, the Commission concluded that “a grant of a waiver is in the public interest because any effect on neighboring licensees would be far outweighed by the harm that would result to W.A.T.C.H. TV and its customers if it were not allowed to opt out.”³

W.A.T.C.H. TV has since illustrated the wisdom of the Commission’s decision. As of June 30, 2009, W.A.T.C.H. TV continued to serve approximately 11,500 subscribers with over 200 digital channels of programming and had 8,000 broadband subscribers, more than double its broadband subscribership in 2006. Of those 8,000 subscribers, approximately 800 were using W.A.T.C.H. TV’s portable (as opposed to fixed only) broadband service, and the company’s overall

² Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606, 5649 (2006).

³ *Id.* at 5650.

broadband subscribership has continued to grow at a healthy pace.⁴ Presently, the company has approximately 8,200 broadband subscribers.⁵

The rapid growth of W.A.T.C.H. TV's high-speed Internet access service can be traced in part to the fact that many consumers in the company's service area have had access to no other high-speed Internet access provider. Indeed, because neither of its DBS competitors carries the local television stations in Lima and because DBS is still struggling to develop a viable broadband product for residential customers, *W.A.T.C.H. TV is the only operator in its market capable of offering multichannel video programming packages and broadband services that are fully competitive with those of the cable system operators.*⁶ And, as one might expect, W.A.T.C.H. TV's presence in the market imposes downward pressure on how competing services are priced, as W.A.T.C.H. TV offers consumers a highly attractive alternative.

W.A.T.C.H. TV has succeeded because it has accepted and met every challenge the Commission has put before it over the past seventeen years. That is, at a time when the Commission was promoting analog wireless cable service as a competitive alternative to monopoly cable providers, W.A.T.C.H. TV launched its wireless cable system (one of the first in the United States) in 1992 with eleven analog BRS channels, ending its first year of operation with 1,706 subscribers. Two years later, after entering into leasing arrangements for all available EBS channels, W.A.T.C.H. TV expanded its multichannel video offering to 26 basic channels, four

⁴ W.A.T.C.H. also launched VoIP telephony over its 2.5 GHz network – the new service had 256 subscribers as of June 30, 2009.

⁵ Notwithstanding aggressive competition from incumbent cable and DBS operators, W.A.T.C.H. TV's video subscribership has held steady at 11,500.

⁶ Moreover, since off-air television reception often is not feasible for subscribers in remote areas, many of W.A.T.C.H. TV's customers rely exclusively on the company's multichannel video service for local television programming.

premium channels and three pay-per-view channels, serving nearly 6,000 subscribers by March 1994. Thereafter, when the Commission encouraged the deployment of digital technology to increase wireless cable's channel capacity, W.A.T.C.H. TV was one of the first commercial BRS/EBS systems in the country to deploy digital wireless cable service. Then, when the Commission adopted rules to promote use of BRS/EBS spectrum for high-speed Internet service, W.A.T.C.H. TV was one of the first wireless cable operators in the country to offer such service to its customers. Overall, W.A.T.C.H. TV has invested approximately \$30 million dollars towards making competitive multichannel video and wireless broadband services a reality in the Lima, OH market.

Furthermore, recent data on cable rates confirms that the competition provided by W.A.T.C.H. TV and other terrestrial MVPDs is needed now more than ever. According to the Commission's most recent annual survey of cable rates, from 1995 to 2008 the price of expanded basic service has grown from \$22.35 to \$49.65, an increase of 122.1% percent, while the Consumer Price Index increased only 38.4% over the same period.⁷ The Commission concluded that "it does not appear from these results that DBS effectively constrains cable prices."⁸ Preserving and promoting the competition supplied by W.A.T.C.H. TV and other terrestrial MVPDs remains the most effective antidote for this problem. Indeed, on a number of occasions cable incumbents in the Lima market have reduced their rates and/or attempted to enhance their service packages in direct response to the competition provided by W.A.T.C.H. TV.

⁷ See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, *Report on Cable Industry Prices*, 24 FCC Rcd 259, 260 (Media Bureau, 2009).

⁸ *Id.* at 261.

In sum, notwithstanding the 2.5 GHz industry's ongoing migration from multichannel video to broadband service, W.A.T.C.H. TV has demonstrated that the 2.5 GHz spectrum can still be used to provide hundreds of channels of video service that in turn can be leveraged into a menu of multichannel video, wireless broadband and VoIP telephony services that is highly competitive with similar service packages offered by wired incumbents. W.A.T.C.H. TV thus has given effect to the Commission's broader desire to ensure full deployment of the 2.5 GHz spectrum for delivery of a variety of competitive services to consumers, without compromising the spectrum's potential as a vehicle for competitive broadband service under the new 2.5 GHz bandplan. And, with the regulatory certainty provided by the Commission's grant of opt-out relief, W.A.T.C.H. TV can continue to make the investments necessary to optimize its system to accommodate new technologies and provide new services to meet changing customer demand. Simply put, the Commission's decision to afford W.A.T.C.H. TV opt-out relief has served the public interest and otherwise advanced the Commission's regulatory and public policy objectives for competitive MVPD and broadband services.

Respectfully submitted,

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July 29, 2009