

**Before the  
LOCAL TELEVISION LOAN GUARANTEE BOARD  
Washington, D.C. 20250**

In the Matter of )  
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**LOCAL Television Loan Guarantee Program** )  
 )  
Proposed Rule )

**COMMENTS OF THE WB TELEVISION NETWORK**

The WB Television Network (“The WB”), by its attorneys, hereby submits the following comments in response to the Proposed Rule issued by the Local Television Loan Guarantee Board (“Board”) and published in the *Federal Register* on August 15, 2003.<sup>1</sup> The WB supports the goal of facilitating access in rural areas to all broadcast television stations under the Board’s implementation of the Launching Our Communities’ Access to Local Television Act of 2000.<sup>2</sup> In order to reach that goal, however, the Board’s rules cannot discriminate in favor of the affiliates of the so-called “Big 4 Television Networks” (ABC, CBS, NBC and Fox), to the detriment of The WB’s affiliated stations. Instead, stations affiliated with The WB must be included in the Board’s definition of “Local Television Broadcast Signals,” so that viewers’ programming choices are maximized.

The WB is the nation’s fifth broadcast television network, offering programming to its affiliates six days per week, and is available in 92% of the country. As a newer network, it is still attempting to gain a competitive foothold in many areas. Nevertheless, The WB was the fastest-growing television network in the 2002-2003 season, both among total viewers and in key

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<sup>1</sup> 68 Fed. Reg. 48814 (Aug. 15, 2002).

<sup>2</sup> *Federal Funding Act for Fiscal Year 2001*, Pub L. No. 106-553, 114 Stat. 2762A-128 (2000),

population demographics. In fact, The WB is routinely the top-rated network in children's programming dayparts, 3:00-5:00 p.m., Monday-Friday and 8:00 a.m.-12:00 p.m., Saturday. In addition, in the upcoming season, The WB will become the fourth network, ahead of Fox, to offer a majority of its prime time programming in the high-definition format.<sup>3</sup> A growing number of WB affiliates produce and broadcast regular local news programs, as well as local college and professional sporting events, and the ability of even more affiliates of The WB network to offer additional local programming would obviously be enhanced by regulations that do not discriminate in favor of the well-established affiliates of the Big 4 Networks.

The WB thus deserves equal treatment from the Board. If The WB's affiliates are rightfully included among the definition of "Local Television Broadcast Signals," viewers in "Nonserved" and "Underserved" Areas will be provided an equal opportunity to receive the diverse entertainment options offered by The WB, including popular and groundbreaking programs such as "Smallville," "Reba" and "Gilmore Girls," as well as other local news, sports and weather programming broadcast by The WB affiliates.

**I. THE DEFINITION OF "LOCAL TELEVISION BROADCAST SIGNALS" MUST BE EXPANDED TO INCLUDE AFFILIATES OF THE WB.**

The Board proposes to define "Local Television Broadcast Signals" only as the signals of affiliates of the "four major national television broadcast networks, as recognized by the Federal Communications Commission ["FCC"] (as of August 15, 2003, these networks are ABC, CBS, Fox and NBC)." However, there is no justification in the FCC's rules or in the Act for limiting

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Title X (the "Act").

<sup>3</sup> "The WB Sees the Big Picture," *Broadcasting & Cable*, Sept. 8, 2003, p. 14.

this definition solely to the affiliates of the Big 4 Networks. In fact, many of the FCC's rules of broadest applicability to television networks – including rules on the carriage of television station signals by cable systems<sup>4</sup>; network non-duplication protection<sup>5</sup>; and territorial exclusivity,<sup>6</sup> as well as the laws of Congress relating to secondary transmissions of network stations for purposes of applying federal copyright law<sup>7</sup> -- utilize a definition of “network” that includes The WB.

Moreover, if the underinclusive definition of “Local Television Broadcast Signals” were ultimately adopted, the Big 4 Networks would enjoy a distinct and unfair advantage over The WB. The WB understands that under the Board's proposed definition, a “Nonserved Area” is any area outside of the “Grade B” signal contours of any one “Local Television Broadcast Signal” that does not have access to any commercial multichannel video programming distributor (“MVPD”) and an “Underserved Area” is any area outside the “Grade A” signal contours of any one such affiliate that has access to not more than one MVPD.<sup>8</sup>

If the Board retains these proposed definitions, funds would not be available to help deliver the signals of non-Big 4 Network affiliates to areas where the Grade B signal contours of the Big 4 Network Affiliates all overlap each other and no MVPD exists (or areas where their

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<sup>4</sup> 47 C.F.R. § 76.55(f).

<sup>5</sup> 47 C.F.R. § 76.120(c).

<sup>6</sup> 47 C.F.R. § 73.658(b).

<sup>7</sup> 17 U.S.C. § 119(d)(2). The Copyright Office has interpreted the definition of a “network station” to include affiliates of The WB, in addition to ABC, CBS, NBC and Fox.

<sup>8</sup> The definition of “Nonserved Areas” provided in Section 2201.1 of the Board's proposed rules could be read to consist of any area outside of the Grade B contours of all four of the Big 4 Networks not served by an MVPD, and the definition of “Underserved Areas” could be read to consist of any area outside of the Grade A contours of all four such networks served by only one

Grade A signal contours overlap and only one MVPD exists.) However, funds would be available to help deliver the signals of Big 4 Network affiliates to areas where non-Big 4 Network affiliates operate. This could lead to the incongruous result of significantly strengthening the Big 4 Network affiliates, by preventing non-Big 4 Network affiliates from competing with them within their core coverage areas, while simultaneously significantly weakening non-Big 4 Network affiliates, by preventing them from competing with the Big 4 Network affiliates in their home areas.

To illustrate, as is evident from Map 109 published in the *Cable & Station Coverage Atlas* (Warren Communications, 2000), the affiliates of the Big 4 Networks in the Louisville, Kentucky Nielsen Designated Market Area (“DMA”) operate with Grade B signal contours that essentially form concentric circles around Louisville. Due to limitations imposed by the FCC’s broadcast station allocation requirements, however, The WB affiliate in the Louisville DMA, WBKI-TV, is forced to operate from facilities producing a Grade B contour extending to areas south and east of Louisville and including substantial areas that do not overlap at all with those of the Big 4 Network affiliates. If there is an area inside the Grade B contours of all of the Big 4 Network affiliates that is not served by an MVPD, no funds would be available to deliver the signal of WBKI-TV to that area. Thus, residents of such an area would be deprived of the ability to view their local WB affiliate, and the affiliates of the more established Big 4 Network stations would be shielded from competition. On the other hand, in the areas south and east of Louisville, where the Big 4 Network affiliates’ Grade B contours do not reach and that are not served by an MVPD, funds would be available to allow those stations to intrude on the primary

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MVPD. The Board should clarify these definitions in its final rules.

coverage area of WBKI-TV.

In sum, the proposed definition of “Local Television Broadcast Signals” would have the perverse effect of authorizing funding to enable expansion of coverage by established affiliates of the Big 4 Networks, who are least in need of such assistance, whereas similar funding might not be available to enable affiliates of an emerging network such as The WB to expand their coverage and compete on a more level playing field. Accordingly, the first sentence of the proposed definition should be revised to read as follows:

*Local Television Broadcast Signals* means the television signals that carry the local network broadcasts of the national television broadcast networks as defined by Section 76.55(f) of the rules of the Federal Communications Commission (47 C.F.R. § 76.55(f), as of August 15, 2003.)

The FCC has already recognized that The WB is a “nascent” network that uses UHF and low power television (“LPTV”) facilities that result in a “substantial coverage disadvantage compared with the major networks.”<sup>9</sup> The Board’s proposed definition would permit the Big 4 Networks to enjoy additional competitive advantages, at the expense of The WB. As described above, The WB, despite its status as a new network and the fact that its affiliates do not always enjoy powerful VHF signals often licensed to their Big 4 affiliate counterparts, has nevertheless out-performed certain of those networks, on both ratings and technological bases. The WB thus deserves to be included in the Board’s definition of “Local Broadcast Television Signals.”

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<sup>9</sup> *In the Matter of Amendment of Section 73.658(g) of The Commission’s Rules – The Dual Network Rule*, 16 FCC Rcd 11114 (2001), ¶45.

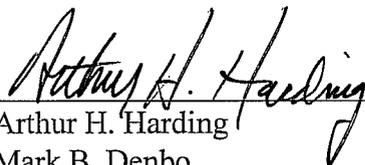
## II. CONCLUSION

In order to ensure that viewers in the rural areas of television markets have the option to receive all available programming options, the Board must include The WB in its definition of "Local Television Broadcast Signals." Such an expanded definition would enable The WB to compete with the Big 4 Networks on a level playing field and would promote the intent of Congress in adopting the Act.

Respectfully submitted,

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