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

In the matter of	)	
	)	
Annual Assessment of the Status of	)	**CS Docket No. 01-129**
Competition in the Market for the Delivery	)	
of Video Programming	)	

COMMENTS OF ELLIOTT B. BLOCK (WBQC-CA)

1. Elliott B. Block, licensee of Class A television station WBQC-CA, Cincinnati, Ohio ("WBQC") hereby submits these comments in response to the *Notice of Inquiry* in this proceeding, wherein the Commission seeks information the state of competition in the market for delivery of video programming. These comments are focused on the monopoly power held by, and the exercise of that power, by the cable television industry.

2. Mr. Block's principal point is that the Commission must look at competition and monopoly on a micro-basis as well as a macro-basis. Thus even if the cable television industry as a whole faces competition from over-the-air broadcasting, direct broadcast satellite systems, and other multichannel video service providers, it has an absolute monopoly on each individual television receiver to which its wires are attached. It enjoys absolute gateway control over each and every one of those receivers. Thus the only competition in the marketplace is to wean the subscriber away from the cable company altogether; there is no possibility of competition by those who seek to serve cable television viewers unless they can persuade the cable gatekeeper to open the gate. The Commission has recognized the bottleneck problem in the areas of local exchange telephone service and pole attachments. It is unrealistic to ignore the same strangulation that exists with cable television.

3. Mr. Block has operated WBQC for over 10 years. Not enjoying either cable must-carry rights or the power levels available to full power television stations, WBQC has from the outset had

to differentiate itself from other stations to attract viewers. As a Class A station, WBQC is required to broadcast, and does broadcast, an average of at least three hours of locally produced programming per week, a requirement not imposed on any full power television station.[1/] Its coverage of local area college sporting events contributes significantly to the Cincinnati community and are not otherwise available. In addition, since 1998, WBQC has been an affiliate of the UPN television network, bringing the services of that fledgling network to the Cincinnati market for the first time. As UPN grows, so will WBQC grow and be able to enhance its overall service to the community.

4. WBQC has for years sought cable carriage and for years has been unsuccessful. The local cable operator, AOL Time Warner Cable of Cincinnati, Ohio ("Time Warner"), has rejected requests to carry the station.[2/] So determined has Time Warner been not to carry WBQC that it has sought a direct affiliation with UPN,[3/] and failing that, has come up with the idea of importing Super Station/UPN Affiliate WSBK-TV, Boston, Massachusetts.[4/] It appears that Time Warner would rather import WSBK-TV, with no local component, at what WBQC understands will be a cost of about $3 million plus distant signal copyright fees, than carry WBQC's UPN programming and make WBQC's local programming available to its subscribers. More information about WBQC's ongoing "war" against Time Warner may be found at WBQC's website, http://www.wbqc.com/thewar/index.htm.

1/ WBQC also broadcasts 24 hours a day, seven days a week.

2/ While Time Warner has offered to carry WBQC full time via leased access for a fee of over $1.25 million dollars per year, that offer neither was nor or is realistic for WBQC. A cable carriage bill of that size is probably the best way for the cable company to drive the station promptly out of business and eliminate the access problem altogether.

3/ *See Low-Power and Powerless*, Steve McClellan, *Broadcasting and Cable* (June 25, 2001).

4/ *Id.*

5. The Commission must take cognizance of this anticompetitive behavior by a cable operator in assessing the state of competition in the video industry. There is no reason for Time Warner to refuse to carry WBQC except to eliminate a competitive local advertising outlet, or perhaps to advance the fortunes of the rival WB Network, in which Time Warner has a significant ownership interest.[5/]

6. Certainly Time Warner must compete against other multichannel video service providers to win subscribers in the first instance; but the point here is that Time Warner controls an absolute monopoly gateway into each and every television receiver to which its wires are connected, and it is not required to offer access to that gateway except to the limited extent that the Communications Act forces a wedge for must-carry stations, public/educational/channels, and leased access.[6/] The only way that a viewer can escape the gatekeeper's control is to take three steps: (a) disconnect the cable from the receiver, (b) attach an antenna to the receiver, and (c) reprogram the receiver's tuner to tune to broadcast rather than cable channels. The technical sophistication to do all that, and then to undo all three steps to resume cable viewing, is well beyond all but a very few diehard viewers. In other words, there can be virtually no competition among those who offer programming unless the cable operator opens the gate to the arena. As the keeper of the arena gate, the cable company enjoys significant monopoly power that the market place has not eroded, and essentially cannot erode.

7. As the largest cable provider in the Cincinnati metro area, with an estimated 330,000 subscribers,[7/] Time Warner has substantial monopoly power to control what broadcast stations viewers may watch. The consolidation process that is sweeping through all media today is

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5/ Keeping the local UPN broadcast affiliate off the cable hurts UPN and helps its competitor. It also allows Time Warner to sell directly advertising time that otherwise would be sold by WBQC.

6/ The leased access rules permit such high prices that they are essentially ineffective. There is very little leased access going on in the cable industry today because of the price barrier that the Commission's Rules permit cable operators to erect.

7/ *2001 Broadcasting and Cable Yearbook*, at p. D-1173.

accelerating the problem. The impact on WBQC is direct and severe: WBQC is shut out of access to the majority of viewers within the coverage area of its broadcast signal, diluting local competition in Cincinnati.[8/]

8. WBQC urges the Commission to recognize the gateway monopoly in its Report and Order and in reports to Congress resulting from this proceeding. The Commission has recognized the bottleneck access problem in other contexts. Ignoring it in the cable context is both unrealistic and unjustified.

9. For example, the Commission has proposed to impose new and increased regulation on access charges imposed by competitive local exchange telephone carriers ("CLECs"), no matter how small their share of the overall market or how much competition they face for customers, because with respect to each individual telephone line they provide, they have absolute monopoly power over the terms and conditions under which calls originated by other local and interexchange carriers may be terminated. Although the Commission has traditionally viewed CLECs as highly competitive service providers, needing only minimal regulation, it came to realize the significance of the CLEC bottleneck when interexchange carriers threatened to stop delivering calls to CLECs whose rates they believed were excessive. The result would be that some callers would not be able to reach CLEC subscribers, leading the Commission to open a proceeding to explore how to deal with the absolute line-by-line monopoly.[9/]

8/ It is noteworthy that several other cable systems in the market do not share Time Warner's aversion to carrying WBQC, including Insight Communications, Adelphia (west), Lebanon, UC College Cable, Miami U Oxford, and Cincinnati Metro Housing. However, none of these systems is a large as Time Warner's.

9/ *In the Matter of Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-262 (released April 27, 2001).

10. Similarly, the Commission has recognized the monopoly characteristic of utility poles and ducts to which cable television and telecommunications entities seek to attach their wires. Without access poles or underground ducts, there can be no wired systems; and the likelihood of being able to secure authority to erect an independent system of poles is virtually *nil*. *See In the Matter of Alabama Cable Telecommunications Assoc., et al. v. Alabama Power Company*, Order, PA 00-003, FCC 01-181 (released May 25, 2001), at par. 54. Therefore, the rates for pole and duct attachments are heavily regulated. The Commission understands that each individual pole presents a monopoly at the place where it stands. It must likewise understand and acknowledge that a cable operator has a monopoly over each individual television receiver it serves.

11. It is clear, at least to WBQC, that the Commission must take a closer look at the different facets of cable company power than it has in the past. Looking at multichannel video provider competition is only half the picture. The impact on program providers of the cable monopoly over end user terminations is the other half. In Cincinnati, Time Warner has exercised its monopoly power with a vengeance, stifling the growth of WBQC and impairing achievement of the goal of Congress to encourage increased local programming services embodied in the Community Broadcasters Protection Act of 1999.[10/]

12. The first step is recognition of the problem, and this proceeding is the time and place to do that. Once there is recognition, the door will be open to consideration of appropriate remedial action.

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August 3, 2001	Counsel for Elliott B. Block

10/ Codified at Section 336(f) of the Communications Act.