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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Cable Television)	MM Docket No. <u>92-259</u>
Consumer Protection and Competition)	
Act of 1992)	
)	
Broadcast Signal Carriage Issues)	

REPLY COMMENTS
OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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The National Cable Television Association, Inc., by its attorneys, hereby submits its reply comments in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

In our initial comments filed in this proceeding, NCTA made clear its continuing belief that the new must carry/retransmission consent requirements adopted by Congress in the 1992 Cable Act violate the Constitution. The comments filed in this proceeding only serve to confirm the severe disruption to operators, programmers and subscribers that the must carry rules and retransmission consent requirements will cause.

Any rules that the Commission may ultimately adopt to implement this scheme cannot cure its constitutional infirmity. To the extent that these statutory provisions are nonetheless upheld, the Commission still retains an independent obligation to

adopt rules that do not intrude even further into the operator's protected exercise of editorial discretion. Thus, where Congress has left the Commission responsibility to adopt implementing regulations, it should do so in the manner that is least intrusive into operator judgments. The Commission cannot impose upon operators additional burdensome requirements and procedural roadblocks that further limit exercise of their First Amendment rights.

Nor may broadcasters, already advantaged under these provisions vis-a-vis all other potential speakers on the cable system, demand yet further preferential treatment. At the very least, the burden should be on these broadcasters to obtain the information necessary to assert their rights, and to demonstrate, where appropriate, that they are entitled to carriage.

DISCUSSION

I. Mandatory Carriage Rules

A. Non-Commercial Must Carry

1. Designation of "Principal Headend" and Notice Requirements

The Commission's Notice suggested that in cases where a system is comprised of multiple headends, the operator should be permitted to designate which of its headends is its "principal headend". NCTA supported that common sense approach in its initial comments as consistent with past FCC precedent. We also noted that an operators' designation of its principal headend

could change over time for a variety of legitimate business reasons unrelated to the location of mandatory carriage signals, and therefore we suggested that the Commission not adopt rules that would impede these business judgments. This view was echoed by numerous other operators that filed in this proceeding.^{1/}

The Association of America's Public Television Stations ("APTS"), however, suggests a different -- and wholly unworkable -- approach. APTS starts from the erroneous assumption that operators will exercise any discretion given to them in bad faith, and therefore proposes to strip operators of any discretion in this regard. It proposes detailed rules governing where a "principal" headend is located (based on subscriber population);^{2/} prohibiting changes to such designations except

1/ See, e.g., Comments of Continental Cablevision, Inc. at 3-5 (detailing variety of business reasons why an operator may change its headend designation); Comments of Tele-Communications, Inc. at 5-7; Comments of Time Warner Entertainment Company, L.P. at 6-7; Comments of TKR Cable Co. at 3.

2/ WNYC's comments propose a different approach -- one that would essentially ignore altogether the "principal headend" element of the "qualified" non-commercial station definition. WNYC's comments suggest that in cases where systems have multiple headends, the system headend located closest to the designated reference point of the community of license of a qualified noncommercial station would be the "principal headend" of the system for purposes of that station. (WNYC Comments at 7). Apparently, WNYC proposes that NCE stations located closer to other headends of the system could assert carriage rights based on their distance from those other headends.

upon petition to the Commission; requiring operators to notify all NCE stations within 50 miles of, or which place a Grade B signal over, any portion of the system, and the Commission, of their initial headend designations, and requiring the Commission to list all such principal headends; and finally, providing an opportunity for challenge of these designations.^{3/}

To be sure, information about the location of its principal headend is uniquely available to operators, and we therefore would not object to a requirement that an operator list its principal headend designation in its public file, and, on request, provide this information to a station.^{4/} However, we strongly object to the placement of those additional burdens on operator proposed by APTS.

First, operators should not be obligated to provide notices to all stations that might potentially assert carriage rights,

(Footnote continued)

WNYC's approach would write the "principal headend" requirement entirely out of the statute. Indeed, under their rule virtually all non-commercial stations would gain carriage on the entire system, regardless of their distance from the single reference point. This additional burden on operators is neither required by nor consistent with the statute.

3/ APTS at 10-12.

4/ Moreover, if the Commission determines that it desires this information then an operator could provide it as part of the routine information submitted to the FCC on an amended Form 320. This information would be publicly available to all interested persons.

nor should the Commission be required to issue a list of the principal headend designations for over 11,000 cable systems. Rather, stations desiring carriage at a minimum should be responsible for identifying those systems on which they desire carriage, and demonstrating, if necessary, that they are entitled to carriage. The Cable Act requires operators to carry any "qualified" non-commercial station "requesting" carriage. It does not require operators to solicit carriage requests.

Second, given the unlikelihood of any operator changing its principal headend designation merely to avoid carriage requirements, the Commission should declare that such changes may be freely made. In cases where a station has reason to believe that the change was made to escape must carry obligations, it remains free to follow the specific procedures for resolving complaints by non-commercial stations set forth in Section 615(j) of the Act. But the Commission need not and should not adopt another layer of additional procedures proposed by APTS.

B. Operator Discretion to Select Signals.

APTS also proposes a new and burdensome requirement designed to limit operators' discretion as to which signals to carry where the number of non-commercial stations requesting carriage exceeds the "cap" on such carriage for small and medium size systems. APTS suggests that an operator be required to carry the "in-state station that is most local unless the noncommercial educational stations involved agree otherwise." (APTS at 15.) This requirement has no basis in the Cable Act, which provides only

that an operator of systems with less than 36 channels "may, in its discretion, carry additional [qualified local non-commercial educational television stations.]"^{5/}

In cases where operators retain discretion as to which NCE signals to carry, that choice presumably will be made based on the level of subscriber interest in one station over another. It may well be that subscribers will desire to see the most local in-state station among several that may qualify for carriage. But that choice should not be predetermined by rules that go beyond what the Cable Act requires.

C. Commercial Must Carry.

1. Notice Requirements

The National Association of Broadcasters ("NAB") has conjured up no less than half a dozen notices or certifications that operators should be required to provide. Included among these paperwork requirements would be a certification, filed with the Commission and served on "each television station that is eligible for must carry on the system", detailing among other things the system's number of usable activated channels and the call signs of stations carried in fulfillment of the system's must carry obligations. Any change in channel capacity would

5/ Section 615(b)(2)(A) and (B)(iii).

trigger another round of notices.^{6/} Other broadcast commenters propose that operators identify all stations in their market and provide an initial notice asking whether they wish to elect must carry or retransmission consent, and that operators be subject to "substantial penalty" if they fail to provide such notice.^{7/} NAB's comments also suggest that operators are somehow responsible for demonstrating that a local television station does not deliver an adequate signal to the system, and proposes that operators be required to send a "good quality signal deficiency notice" to broadcasters, complete with an engineering statement.^{8/}

The essential flaw with these proposals, as with the proposal of APTS, is that they fundamentally -- and improperly-- shift the burden of obtaining carriage, and demonstrating that a signal is a "qualified" signal, from broadcasters to cable operators.^{9/} Moreover, absent a demand for carriage, there is simply no reason to expect operators to conduct research to determine which stations would be "qualified" local stations under the Act. Nor is there any hint in the statutory scheme

6/ Comments of NAB at 4.

7/ E.g., Comments of Nationwide Communications Inc. at 3-4.

8/ NAB Comments at 29.

9/ As we stated before, we would not object to providing relevant information that would be uniquely within an operator's control in public inspection files, or, upon request, to an interested party.

that Congress intended systems to search out all stations that could possibly assert a claim to mandatory carriage rights. Instead, the Act contemplates that broadcasters who believe that an operator is not in compliance with the Act must notify the system. It would be much more consistent with the statute, and more fair, to require stations to serve notice on operators that they wish to be carried and are eligible for carriage -- and not the other way around.

2. Definition of a Local Television Station

In our initial comments in this proceeding, we endorsed the Commission's suggestion that the determination of whether a particular signal is "local" should, in general, depend on the location of the system's principal headend. We recognized, however, that in certain situations, the location of the principal headend would not accurately reflect the system's service area, and in those instances proposed that the FCC afford operators flexibility to carry those signals that were in fact local to the system. For example, where a principal headend is located in one ADI, but the bulk of subscribers served by that headend is situated in a second ADI, an operator could elect to treat the second ADI as its market for determining which signals

would be local.^{10/}

NAB's and the Association of Independent Television Stations' ("INTV") comments, however, argue that the location of the principal headend is "irrelevant". They instead urge the Commission to adopt rules that operate on a community-by-community, rather than a system-wide, basis. If any community were located in an ADI, then all signals from that ADI would be local in that community; if another community of the same system were in a different ADI, a different complement of signals would be "local."^{11/}

This approach neither comports with the language of the statute nor makes sense as a practical matter. First, far from being "irrelevant," the Act itself recognizes the principal headend as a legitimate demarcation point in determining carriage priority, and requires stations to deliver a specified signal strength to that point. It makes ample sense to use the

10/ Other operators' comments have proposed sensible solutions to the multiple ADI problem. See, e.g., Comments of Time Warner at 13-15 (proposing in multiple ADI situations that operators be free to choose the ADI in which it will be considered located; location of either principal headend or center of coordinates in chosen ADI should be prima facie evidence of a reasonable choice); Comments of Comcast Corp. at 2-4 (proposing threshold below which system can automatically elect to be governed by the carriage obligations of its dominant ADI); Comments of Intermedia Partners at 12 (proposing use of principal headend); Comments of TCI Cable Company at 4 (location of system based on location of principal headend, with allowance for systems with technical ability to carry different broadcast signals on different portions of integrated system if they wish).

11/ NAB Comments at 7; INTV Comments at 3.

principal headend location as a basis, in many cases, for determining carriage obligations as well.

Second, the broadcasters' approach would result in the imposition of burdensome and inconsistent carriage obligations throughout a technically integrated system. For many systems, it would be impossible to carry one set of signals in one community and another set in other communities.^{12/} This could result in operators being forced to carry commercial broadcast stations far in excess of their "cap".

Third, imposing carriage obligations on a community by community basis would impose significant burdens on operators because of the new retransmission consent requirement. If a station were only considered local within a portion of the system, its ability to be carried in other communities that are part of the same system would be governed by retransmission consent. A station opting for must carry in one community would be able to extort retransmission consent fees in other communities located in different ADIs simply because the cost of trapping out the signal would be prohibitive.

For all these reasons, we strongly believe that the approach that makes the most sense as a general matter would be to determine whether a station is "local" based on the location of an operator's principal headend, and give operators flexibility to choose a different ADI if the facts warrant. We further

12/ See generally Comments of Time Warner at 13-15.

believe that a system must be considered as a whole, rather than fragmented into discrete communities, for purposes of determining its signal carriage obligations. Finally, whatever rules the Commission adopts should make clear that systems under no circumstances are required to carry signals from multiple ADIs,^{13/} or to carry signals in excess of the system's "cap."

3. Definition of Local Television Market

There appears to be substantial agreement with the Commission's proposal that both stations and operators could petition to either add or delete communities from a particular ADI.^{14/} We do take issue, however, with the notion that program suppliers should be able to file such petitions, as suggested by the National Basketball Association and National Hockey League in their Comments in this proceeding. Nothing in the language of the statute remotely supports the notion that copyright owners should be able to withdraw access of broadcast stations from cable subscribers -- or force operators to add signals from outside the ADI. Allowing yet another group of petitioners to

13/ In our initial comments, we suggested that operators that are technically capable of providing different channel line-ups to different subscriber groups within a single technically integrated system should be permitted to do so. However, not all systems are technically capable of separating out signal carriage in this manner, and to require that they do so would impose operating inefficiencies and enormous costs -- costs that ultimately would have to be passed on to consumers.

14/ E.g., Comments of INTV at 8.

invoke this provision will only complicate and delay the expeditious resolution of these issues.

4. Definition of "Substantial Duplication"

NAB and INTV^{15/} propose an unduly narrow definition of "substantial duplication." They suggest that substantial duplication should be based on the simultaneous transmission of the identical programming which constitutes the majority of the entire program schedule of the station.^{16/} While NAB cites legislative history in support of this definition, the express language of the statute supports a broader view.

Section 614(b)(5) provides that

a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial station affiliated with a particular broadcast network (as such term is defined by regulation.)^{17/}

15/ NAB at 21; INTV at 13.

16/ It is interesting that broadcasters argue for such a stringent definition of "substantial duplication" in this proceeding. In the context of defining "simulcasting" for purposes of HDTV regulations -- a term that almost certainly connotes "simultaneous" transmissions -- the broadcasters urged that "same time" should be defined as "the same 24-hour period...." Joint Broadcaster Comments, MM Docket No. 87-268 (filed July 17, 1992) at 22.

17/ Emphasis supplied.

Since Congress drew a distinction between substantially duplicating stations and duplicating network affiliates, the definition the Commission adopts should establish a different standard for each. If the broadcasters' approach were adopted, however, it is difficult to conceive of any stations -- other than full-time affiliates of NBC, ABC, CBS, or Fox -- that would be deemed substantially duplicative. Yet, that would read the separate "substantial duplication" provision out of the Act entirely.^{18/}

NCTA proposed in its initial comments that the Commission adopt a definition of "substantial duplication" that was based on programming that would be considered duplicative under its exclusivity rules.^{19/} Under this precedent, a station could be substantially duplicative of another station because it presented the same programming at a different time of day, or even where it presented different episodes of the same program series. NCTA also urged that the rules establish different duplication thresholds for both prime time and all day programming.

18/ It is ironic indeed that INTV in arguing for a simultaneous duplication standard expresses concern that "cable subscribers should not be arbitrarily denied stations which offer meaningful program and time diversity." INTV at 13. Broadcasters sought -- and achieved -- precisely this outcome in arguing in the context of syndex and network non-duplication rules that simultaneous duplication of the same episode should not be necessary in order to require operators to black out "duplicative" programming.

19/ We also proposed that the Commission exempt must carry signals from the operation of the network non-duplication and syndicated exclusivity rules.

Requiring simultaneous duplication over the entire broadcast day, in contrast, would not relieve operators from the burden of presenting two stations that carried largely the same programming at different times, to the detriment of operators' ability to provide a diverse program line-up to subscribers.

5. Carriage of VBI Material

a. Ghost Cancelling

The Act provides that "where appropriate and feasible, operators may delete signal enhancements, such as ghost-cancelling, from the broadcast signal and employ such enhancements at the system headend or headends." Section 614((b)(3). Notwithstanding this clear language, the Association of Maximum Service Telecasters ("MSTV") urges that the Commission prohibit operators from stripping ghost cancelling reference signals from line 19, at least until the Commission concludes its separate rulemaking proceeding dealing with ghost cancelling and line 19.^{20/} MSTV appears primarily concerned not with the quality of the signal viewed by cable subscribers, but with the development of a market for receivers that include line 19 decoders.

The statute, however, addressed a different concern -- system operators' ability to provide their subscribers with an

20/ MSTV at 5-6.

improved television signal free of ghosts. Cable operators already are purchasing ghost cancelling equipment for their own headends, and in those systems, signals traversing the cable system will have no need for broadcast ghost cancelling. In fact, requiring operators to retain the broadcast signal ghost cancelling reference signal in line 19 in those circumstances may well lead to a viewer's television set creating a ghost. The interests of viewers in obtaining improved signals would be disserved by constraining operator flexibility in removing ghost cancelling from an over-the-air signal and employing their own enhancements at the headend.^{21/}

b. "Program-Related" Material

A separate provision of the Act requires operators to carry "program-related" material contained in the vertical blanking interval or on subcarriers.^{22/} While the Act does not define "program-related", it goes on to state that "retransmission of other material in the vertical blanking interval or other

21/ Furthermore, if a system has its own ghost cancelling equipment, there is no need for a consumer to purchase a television set with a ghost cancelling decoder. That cable viewers may be able to purchase a less expensive television set and at the same time receive an improved picture is a benefit that derives from allowing operators to use their own ghost channelling equipment at the headend; adopting MSTV's suggestion, in contrast, would foster an inefficient policy of forcing subscribers to purchase equipment they do not need.

22/ Section 614(b)(3).

nonprogram-related material (including teletext and other subscription and advertising-supported information services) shall be at the discretion of the cable operator." Id. Several operators in their comments have suggested definitions of "program-related" material, and we support those views.^{23/}

The Act and its legislative history make clear that operators are not required to assist broadcasters or others in their separate commercial ventures, even if tangentially related to the programming broadcast.^{24/} The services offered by A.C. Nielsen, as described in their comments, would appear to be precisely the type of services that Congress did not consider to be "program-related." They are neither offered by the broadcast licensee nor intended to be seen by viewers watching the program.

c. "Technical Feasibility"

A separate issue raised in the Notice concerns when retransmission of information in the VBI or on subcarriers is

23/ See, e.g., Comments of TCI at 18-19 (endorsing adoption of copyright test for determining whether material is "program related"; VBI programming must be "intended to be seen by the same viewers as are watching the [primary program] during the same interval of time in which that [primary program] is broadcast, and as an integral part of the [primary] program."); Comments of Time Warner at 23-24.

24/ House Report at 93 ("The Committee does not intend that this provision be used to require carriage of secondary uses of the broadcast transmission, including the lease or sale of time on subcarriers or the vertical blanking interval for the creation or distribution of material by persons or entities other than the broadcast licensee.")

"technically feasible." In our initial comments, we suggested that the Commission not define that term with any specificity, since a determination of whether a particular system is technically incapable of retransmitting particular information may depend on the particular facts and circumstances of that system. We endorse the view contained in the comments of several operators, however, that the Commission should make clear in advance that if an operator does not have the necessary equipment to transmit this information, then it is not required to replace its existing equipment or purchase new equipment in order to facilitate the delivery of these secondary services.^{25/}

6. Channel Positioning

In its Notice, the Commission tentatively concluded that Congress could not have intended stations to be able to assert on-channel carriage rights where their channel assignment fell outside of the channel numbers contained within an operator's basic service tier. We strongly support this practical reading

^{25/} See, e.g., Comments of TKR at 9-10.

The Commission should reject the notion, suggested by NAB (NAB at 25), among others, that operators should be required to design future systems to carry this information -- or that cable technology somehow should be modified to ensure that broadcasters continue to obtain this transmission capacity. At most, the Commission could address this issue in a separate proceeding once compression technology is developed and in place. But advancements in cable technology should not be artificially stifled at this point to facilitate the free delivery of broadcasters' secondary services.

of the statute, which is, as we noted in our comments, entirely consistent with past Commission precedent. Any approach that required on-channel carriage outside the basic tier lineup would impose enormous costs on those cable operators not already technically capable of doing so.

We also supported the notion that cable operators are in the best position to resolve conflicting requests for channel positions.^{26/} NAB proposes^{27/} that stations with conflicting channel demands should be free to negotiate between themselves. NCTA would agree with this proposal if the Commission ensures that operators do not have to begin carriage of these stations until their dispute is resolved, and that all channel disputes must be resolved at least 60 days prior to the effective date of any election. Otherwise, an operator would be forced unfairly to constantly change their channel lineups, and provide 30 days' prior notice of those changes to the affected stations.

7. Remedies

The Notice proposes that stations be required to file complaints with the Commission within a specified time period (either 30 or 60 days) after an operator has replied to a

26/ In order to facilitate the expeditious resolution of channel position claims, the Commission should make clear that as part of any election notice, a broadcast station must identify its channel preference.

27/ NAB Comments at 29.

station's complaint relating to an allegation of failure of carriage. NAB and INTV argue that no time limit should be imposed. There is, however, no good reason why an operator should be at risk while broadcasters sit on unresolved complaints.

Requiring stations to file a complaint with the Commission within a specified time period would impose no burden on those stations. Uncertainty regarding the extent of an operator's carriage obligations, however, harms operators who must make decisions regarding carriage of other broadcast stations or commitments to cable program networks. Accordingly, we endorse the Commission's proposal that broadcasters must file complaints within 30 days of receipt of a response from the operator.

II. Retransmission Consent

A. Definition of "Multichannel Video Programming Distributor"

A review of the comments reveals little dispute over the proposition that SMATVs should be considered "multichannel video programming distributors" for which retransmission consent would be necessary. However, there is less of a consensus as to how

MATVs should be treated.^{28/}

The statute contemplates a level playing field for the retransmission of broadcast signals. Where an entity is not part of this competitive market -- such as where a landlord merely erects a master antenna on an apartment building for use of its tenants -- then we do not believe that Congress intended retransmission consent requirements to apply. But in order to avoid conferring an unintended economic advantage on one competitive provider of multichannel video service over all others, we propose that the Commission rule that if MATV service is combined with other services (such as satellite or microwave delivered signals), then it should be subject to the retransmission consent requirement. Otherwise, the rules would create a loophole for those MMDS and SMATV systems that do not themselves distribute local broadcast signals, but instead rely

28/ See, e.g., Comments of Liberty Cable Company, Inc. at 7-10 (arguing that SMATVs using MATVs for delivery of local broadcast signals should be exempt from retransmission consent requirement); Comments of the Wireless Cable Association International, Inc. at 11-12 (asserting that retransmission consent is not applicable to MMDS systems that rely on MATVs for delivery of local broadcast signals); Comments of Spectradyne at 5-9 (proposing exemption from retransmission consent for entities providing service to hotels); Comments of Newhouse Broadcasting Corp. at 21-22 (arguing that MATVs that make multiple channels of video programming available for purchase subject to retransmission consent); Comments of Time Warner at 32-34 (arguing MATVs should be covered); Comments of Intermedia Partners at 24-26 (same).

on master antennas on subscriber roof tops.^{29/}

B. Applicability of Section 614 to Retransmission Consent Stations

In our initial comments, we pointed out that the clear language of the statute, its legislative history, and the entire statutory scheme conclusively supported the proposition that

29/ The National Basketball Association and National Hockey League advance an unduly narrow interpretation of the "superstation" exemption to the retransmission consent requirement that should be rejected by the Commission. NBA/NHL claim that the exemption applies only where the signal was retransmitted by satellite on May 1, 1991, and the cable system received the superstation signal on that date. NBA/NHL Comments at 10-12. Under their strained reading of the statute, no cable system that commenced operation after May 1, 1991 could carry a superstation absent consent, and no cable system after May 1, 1991 could add a superstation previously not carried without such consent.

There is no support for this construction of the statute. Congress intended to grandfather particular signals that were transmitted by satellite on May 1, 1991 and exempt these signals from the retransmission consent requirement. There is no indication that Congress intended to freeze distribution of those signals as of that date.

The Wireless Cable Association International, Inc., in its comments, proposes that the Commission adopt a rule prohibiting cable operators from entering into exclusive retransmission consent agreements with broadcasters. There is no need for the Commission to adopt this sweeping prohibition. Where a particular arrangement between an operator and a station is anticompetitive, the antitrust laws would fully apply. But there is nothing inherently anticompetitive about exclusive contracts -- and nothing in the Cable Act to support this unduly expansive restriction. Congress already considered the issue of exclusive contracts in Section 19 of the Act, and did not prohibit these types of arrangements between broadcast signals and systems.

stations electing retransmission consent forfeit all of the protections afforded stations that opt for must carry status. Nonetheless, several commenters urge that, at a minimum, one protection afforded all commercial television broadcast stations is found in Section 614(b)(3)(B), which provides that operators "shall carry the entirety of the program schedule of any television station carried on the system."^{30/}

However, we submit that a close reading of the Act reveals that this right does not automatically apply to retransmission consent stations. Section 325(b) provides that no multichannel video programming distributor shall retransmit the "signal of a broadcasting station, or any part thereof" without the consent of the station. If Congress had intended that the requirement that operators "carry the entirety of the program schedule" would apply to retransmission consent signals, it would have been unnecessary to address the need for consent for partial signal carriage.^{31/}

Furthermore, the underlying premise of retransmission consent is that broadcast stations should be treated like any other cable program supplier, and should be able to negotiate a

30/ See, e.g., Comments of NAB at 47-48; Comments of CBS at 12-14; Comments of MPAA at 6-7.

31/ See also Senate Report at 83 (explaining that "a cable operator is not required to carry in its entirety programming for which it has not received consent to carry such programming as required by this new section 325(b)") (emphasis supplied).

carriage agreement with the system. Whether or not an entire program schedule must be carried -- and the extent to which an operator may insert its own advertising in a program service -- are certainly elements of that negotiation. Broadcast stations electing retransmission consent should be treated no differently in this respect.

In our initial comments, we raised similar concerns about the automatic application of existing rules, such as the network non-duplication rules, to stations electing retransmission consent. In order to avoid further complicating this existing docket, we are separately filing a petition seeking a revision to the network non-duplication rules so that stations electing retransmission consent may not avail themselves of regulatory non-duplication protection. Instead, we propose that the rules be modified so that the extent of exclusivity protection would be an element of any negotiated agreement between the station and system, and so that if a network affiliate chooses retransmission consent and is not carried, it cannot deny cable subscribers the right to view network programming on other affiliates.

C. Ability of Program Suppliers to Restrict Station's Grant of Consent

Finally, a critical issue that must be clearly resolved by the Commission concerns whether a station's ability to grant retransmission consent may be restricted by program suppliers or networks. Any uncertainty surrounding this important issue could