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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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

REPLY COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

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SUMMARY

Time Warner Entertainment Company, L.P. ("Time Warner"), submits its reply comments in this proceeding mindful of the fact that it has challenged the constitutionality of the must-carry and retransmission consent provisions, inter alia, of the Cable Television Consumer Protection and Competition Act of 1992. Notwithstanding this position, and without waiving its rights, Time Warner offers its reply comments in this proceeding.

I. MUST-CARRY

- A cable system with facilities located in more than one ADI should be permitted to elect which ADI will apply for must-carry purposes, subject to a standard of reasonableness. Many systems would find it technically impossible or prohibitively costly to carry different sets of must-carry stations on different portions of the same system.

- When the FCC is asked to add or delete must-carry status for particular stations on particular systems, upon petition by the cable operator or affected station, the status quo should be maintained pending resolution of such petitions.

- Local commercial and noncommercial educational stations which invoke must-carry status should be entitled to assert syndicated exclusivity and/or network nonduplication protection only against non-local stations.

- Local commercial stations which elect retransmission consent should not be eligible for syndicated exclusivity or network nonduplication protection.

- Non-simultaneous programming must be considered as duplicative for purposes of the definition of "substantially duplicates," just as it is under the syndicated exclusivity and network nonduplication rules.

II. RETRANSMISSION CONSENT

- The FCC must establish a priority structure among the statutory options for channel positioning rights. On-channel carriage for certain stations, particularly UHF stations, is often virtually impossible.

- The legislative history of the 1992 Cable Act clarifies that retransmission consent applies only to commercial television broadcast stations, not to radio stations.

- FCC rules must account for the tight timetables necessary for negotiating retransmission consent and implementing any signal line-up changes necessary to comply with the new must-carry and retransmission consent requirements. Accordingly, the FCC should require local commercial stations to elect between retransmission consent and must-carry on May 1, 1993 and by May 1 every three years thereafter.

- The must-carry and retransmission consent requirements are so intertwined that they must be implemented on the same date, namely, October 6, 1993.

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TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P. ("Time Warner"), hereby respectfully submits these reply comments in response to various comments submitted in the above-captioned Notice of Proposed Rule Making ("NPRM") released by the Federal Communications Commission ("Commission") on November 19, 1992, relating to the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "Act").[1]

Time Warner is a partnership, which is primarily owned (through subsidiaries) and fully managed by Time Warner Inc., a

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[1]Pub. L. 102-385, 106 Stat. 1460 (1992). Sections 4, 5 and 6 of the 1992 Cable Act add Section 614, 615 and 325(b), respectively, to the Communications Act of 1934, 47 U.S.C. §151 et seq.

publicly traded Delaware corporation. Time Warner is comprised principally of three unincorporated divisions: Time Warner Cable, the second largest operator of cable systems nationwide; Home Box Office, which operates pay television programming services; and Warner Bros., which is a major producer of theatrical motion pictures and television programs.

As Time Warner stated in its initial comments, it is challenging the constitutionality of various provisions of the 1992 Cable Act, including those involved in this proceeding. Nevertheless, and without waiving its rights, Time Warner submitted comments in this rulemaking. Its reply is submitted subject to the same caveat.

I. MUST-CARRY REGULATIONS.

A. **Multi-ADI Cable Systems.**

Section 614 of the 1992 Cable Act requires a cable operator to carry the signal of any "local commercial television station", with certain exceptions, which requests carriage. The definition of what constitutes a "local commercial television station" is derived from Arbitron's Area of Dominant Influence ("ADI") for each television market in the United States. As Time Warner pointed out in its initial comments, every county in the contiguous United States is in the ADI of a single television market. Television stations which are licensed to a community which is located in an ADI are "qualified" to assert must-carry rights as to all cable systems within that ADI. In the NPRM, at paragraph 17, the Commission asked commenters to consider

situations where a cable system is located in more than one ADI. The Commission was particularly concerned with potentially inconsistent carriage demands being made of a technically integrated system located in more than one ADI. Time Warner suggested that, in those situations, the cable system should be considered located within only one ADI for must-carry purposes. The reason is that a rule which effectively places the cable system in more than one ADI for must-carry purposes would lead to anomalous and anti-consumer results.

A number of broadcast interests in their comments have stated that a television station should have the right to be carried by all cable systems which are located in whole or in part within the station's ADI.[2] Broadcasters argue that if the must-carry requirement is to realize its full benefit for broadcasters, then the configuration of a particular cable system should be subservient to the broadcaster's entitlement to carriage throughout its ADI. Time Warner understands a broadcaster's desires in these situations, but there are a number of technical, practical, economic and public interest reasons which clearly outweigh whatever equities broadcasters may have.

The primary reason why a technically integrated cable system should not be forced to carry all signals in each ADI is that, from a technical standpoint, it is almost impossible to carry one set of signals in the communities in one ADI and a separate set

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[2]See Comments of National Association of Broadcasters at 7-9; Association of Independent Television Stations, Inc. at 3-4.

of signals in the communities in the adjoining ADI without incurring immense cost and inconvenience. In order to accomplish this feat, a cable operator would most likely have to construct separate headend facilities for the system segment in each ADI. This would negate the economies and technical advantages which caused the cable operator to create a technically integrated system in the first place.

It is not a satisfactory answer to say that a cable operator can avoid this technical problem by simply carrying each signal which it is required to carry in a particular ADI to all of the subscribers to its system. A signal could only be carried to the communities outside the station's ADI if retransmission consent was obtained. It is possible, if not likely, that contractual limitations may preclude the station from granting retransmission consent outside of its ADI. The technically integrated cable system would then be faced with the very problems outlined above.

In addition to technical issues, inconsistent channel lineups in various parts of a cable system create marketing problems and consumer confusion. Moreover, an inconsistent channel lineup and the cost involved in delivering it would undoubtedly have an impact on the rates charged for the basic tier since that is where these broadcast signals must be offered. Given the emphasis in the 1992 Cable Act on keeping rates for the basic service low, the imposition of significant costs to separate signal delivery in the different ADI portions of a cable system would obviously run counter to this policy.

Finally, a requirement that a cable system carry all commercial stations from each ADI in the respective communities served by the system would result in many systems having to devote a significant percentage of their channel capacity to satisfy must-carry requirements. Indeed, many would reach the statutory one-third of channel capacity maximum. Moreover, there may well be duplicative programming in cases where the test for "substantial duplication" is not met. Depending on the cable system's capacity, this could result in the displacement of non-broadcast cable networks which continue to struggle for an audience and economic survival.

Time Warner suggested a workable solution to this issue in its initial comments. The cable operator should in the first instance choose the ADI in which it will be considered located for must-carry purposes. This choice must be reasonable and it could be contested by an affected broadcaster. If either the system's principal headend or the coordinates of the center of the system are located in the chosen ADI, this would provide prima facie evidence of the reasonableness of the cable operator's choice of its ADI. Moreover, the Commission's special relief procedures could be invoked to request a market adjustment.

B. **Adjustment to Must-Carry Status.**

In its initial comments, Time Warner concurred with the Commission's conclusions in paragraphs 18 through 20 of its NPRM that there will be situations where various communities or

television stations will need to be added or subtracted from the must-carry eligibility list for particular cable systems. Most parties appear to agree that either a cable operator or a television broadcast station should have standing to file such a petition for special relief and that the special relief procedures ought to be used instead of the more time consuming rulemaking procedures.[3] Such a streamlined procedure is contemplated by Section 614(h)(1)(C) of the Act. Subsection (iii) of that provision states that a cable operator may not delete a commercial television station during the pendency of any proceeding of this nature. Time Warner concurs that the status quo should be maintained pending the resolution of any request for a market adjustment.

Some broadcast commenters asked the Commission to hold that not only should a cable operator continue to carry a signal during the pendency of a special relief petition, but that if a broadcaster seeks a change in market status so that its station would achieve must-carry status, the cable operator should have to commence carriage of that non must-carry station until the special relief petition was completed.[4] This notion runs completely contrary to the equitable principles normally applicable to special relief situations. Maintenance of the status quo should be the guiding principle. If a cable system

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[3]See, e.g., Comments of Malrite Communications Group, Inc. at 3-4.

[4]See, e.g., Comments of Association of Independent Television Stations, Inc. at 7.

had to commence carriage of a signal which it might later have to drop, there would be an unnecessary disruptive effect. Obviously, if a cable operator has been carrying a station, the Act specifically provides that the station cannot be dropped pending the outcome of a special relief request. However, if a cable system has not been carrying a station and the broadcaster is not entitled to must-carry status, then the cable operator should not have to carry that station while the broadcaster seeks to achieve must-carry rights from the FCC. Of course, as Time Warner pointed out in its comments, where the cable operator and the television station are in agreement over the relief requested in the petition, the parties should be free to implement the relief pending the Commission's action on the special relief request.

C. Syndicated Exclusivity and Network Non-duplication Rights.

Section 615(f) of the 1992 Cable Act recognizes that there are disparities between the definition of a signal which must be carried and the rights of television stations vis-a-vis each other in the Commission's exclusivity rules. Therefore, Section 615(f) states that a must-carry non-commercial educational television station whose signal is carried by a cable operator may not request non-duplication protection against other local non-commercial educational television stations which are also required to be carried by the cable operator. In its comments, Time Warner asserted that this policy should be equally applicable to commercial stations. Thus, local commercial

stations which invoke must-carry status should not be entitled to assert syndicated exclusivity and network non-duplication protection against other stations which are carried pursuant to Section 614.

Several broadcasters argued for the inviolability of the terms of the syndicated exclusivity and network non-duplication rules.[5] This is an elevation of form over substance. Indeed, one of the major reasons for reimposing syndicated exclusivity rules and strengthening the network non-duplication rules was to make up for the fact that there were no must-carry rules.[6] It would be anomalous indeed if a cable system was required to carry a particular television station and then had to incur the trouble and expense of deleting programming from that station because the Commission's rules did not provide an exact fit between the must-carry and exclusivity requirements. Time Warner strongly urges the Commission to mesh the two sets of requirements.

On a related issue, Time Warner took the position that local commercial stations which elect retransmission consent should not be eligible to invoke the syndicated exclusivity and network non-duplication rules. The reason for this is that stations which elect to pursue free market negotiations would be free to negotiate for such protection as one of the conditions of their consent. The invocation of the marketplace should carry with it

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[5]See, e.g., Comments of Association of Independent Television Stations, Inc. at 12-13.

[6]See Report and Order in Gen. Docket No. 87-24, 3 FCC Rcd 5299 (1988).

the abdication of regulatory protection. Moreover, if retransmission consent is not granted, it would be against the public interest for a station which is not carried to be able to invoke exclusivity protection and cause the public to lose programming which it may not be able to get from any other source.

The 1992 Cable Act allows local television stations to choose whether they wish to invoke must-carry or to enter the marketplace and attempt to negotiate retransmission consent agreements in their markets. The success or failure of these negotiations will inevitably affect the public's ability to receive programming. The Commission can and should prevent the public from being deprived of programming that would otherwise result if non-carried stations were allowed to invoke syndicated exclusivity and network nonduplication protection. As stated above, when the Commission reinstituted its syndicated exclusivity rules in 1988 and expanded its network non-duplication rules at the same time, it was done to give broadcasters leverage to help them obtain cable carriage which they could not otherwise legally demand. This rationale obviously no longer applies since the 1992 Cable Act reimposes must-carry rights. Thus, there is no public policy militating in favor of allowing a station to deprive cable viewers of programming received from other stations simply because the local stations have chosen not to invoke must-carry and have been

unable to conclude a retransmission consent agreement with a cable system.

D. **Substantial Duplication.**

The concept of "substantial duplication" is important for must-carry purposes for both noncommercial educational television stations and for commercial television stations. This is because, in circumstances delineated in the Act, cable operators do not have to carry certain must-carry stations in the event there is "substantial duplication" of programming among stations. Time Warner suggested a definition for both categories of stations which was the same as that used in prior Commission must-carry rules, i.e., 14 or more prime time hours per week.[7] Moreover, the programming should not have to be simultaneously broadcast to be duplicative.

Many commenters agreed on the essence of the definition of substantial duplication in that it should be a certain number of hours, or a certain percentage of prime time or of the total broadcast week. Time Warner will not quarrel with the differing particulars except to state once again that it believes that the 14 or more prime time hours per week test is one which the Commission has used before and is a reasonable suggestion.[8] However, several commenters suggested that, whatever the figure chosen might be, the programming should have to be simultaneous

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[7]47 C.F.R. §76.5(j) (1977) (deleted).

[8]See Concurring Comments of Capital Cities/ABC, Inc. at 16.

in order to count toward "substantial duplication."[9] Time Warner strongly disagrees with this position.

The reason that nonsimultaneous programming must be considered duplicative is that under both the syndicated exclusivity and network nonduplication rules, nonsimultaneous programming is considered to be duplicative and cable operators must black out such programming upon request. The contrary position asks the cable operator to bear two burdens, that is, it would have to black out nonsimultaneous programming but it could not count nonsimultaneous programming toward a substantial duplication standard in order to avoid carrying stations which offer the same programming. This is obviously an absurd result. Moreover, this could be an invitation for some stations to alter their schedules to avoid meeting the substantial duplication test. Finally, the problem of time-shifting, which in part led the FCC to give nonsimultaneous protection to broadcasters, has been largely rendered moot by the widespread use of VCRs. Thus, long as the syndicated exclusivity and network nonduplication rules require cable operators to delete nonsimultaneous programming, such programming must count toward deciding when substantial duplication exists.[10]

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[9]See, e.g., Comments of the Association of America's Public Television Stations at 17-19; The National Association of Broadcasters at 20-21.

[10]Some commenters cite House Report No. 628, 102d Cong., 2d Sess. 94 (1992), which is said to indicate that "substantially duplicates" is intended to refer to the simultaneous transmission of identical programming. However, Section 614(f) of the Act quite clearly states that the Commission is responsible for

E. **Channel Positioning.**

The 1992 Cable Act provides three possible options for channel positioning of commercial stations which invoke must-carry status, i.e., the station's actual over-the-air channel number, the cable channel on which the station was carried on July 18, 1985, or the cable channel on which the station was carried on January 1, 1992. As to non-commercial educational stations, the options are the station's over-the-air channel number or the cable channel on which the station was carried on July 19, 1985. The Commission asked in its NPRM whether the Commission ought to promulgate a priority system for resolving channel positioning questions.

Time Warner concurred with the concept of a priority structure in its comments. Time Warner stated that it was going to be a difficult situation in any event and that having a priority structure as a benchmark could help resolve many conflicts at their inception. Time Warner did, however, state that there were a number of exceptions to this position. Most importantly, if a local station's existing channel position was the result of a negotiation and agreement with the cable operator, this should take precedence over any priority. Other caveats include technical obstacles, carriage of UHF stations on

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implementing the must-carry provisions, including defining "substantially duplicates," and no directive is included as to how this is to be done. Congress could have been specific on this matter, but instead it gave the Commission latitude.

basic tiers, requirements in a local franchise agreement and contracts with non-broadcast programmers.

Some commenters stated a preference for being carried on-channel or for resolving channel positioning conflicts in a fashion which considers only the broadcaster's interests but which ignores the realities which a cable operator must face.[11] The principal area of potential dispute between cable operators and television stations over channel positioning regards conflicting claims to the same channel and the resulting need to mutually agree to an alternative channel assignment. The Commission should avoid making rigid rules at this time, a view which was offered by the National Association of Broadcasters and with which Time Warner agrees. The Commission should rely heavily on the cable operator's independent judgment and on the ability of both parties to be able to work out a solution. Cable operators are in the best position to settle these matters with the stations involved in a satisfactory fashion. Only the failure of good-faith negotiations should provoke the Commission's involvement in resolving such disputes.

As Time Warner stated in its comments, a local station's existing channel position on the cable system should govern if the cable system and station are in agreement. If this is not the case or if the station is not one which is presently being

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[11]See Comments of Capital Cities/ABC, Inc. at 20-22; Nationwide Communications Inc. at 8-9; Cedar Rapids Television Company at 5-6.

carried, the station's over-the-air channel should be the first priority followed by its January 1, 1992 channel position (if applicable) in the case of commercial stations and the July 19, 1985 channel position for non-commercial educational television stations. The preference for existing channel position is based not only on the fact that it is often a subject of agreement with a broadcaster or with a franchising authority, but also because of the viewer disruption which would occur in the event of mass channel changes. The time this would take, the financial cost and the effect on customer goodwill cannot be overestimated. Therefore, a preference for an agreed-upon status quo should be given great weight in channel positioning disputes.[12]

A good illustration of this problem is presented by the carriage of WNYC, Channel 31 in New York City, on Time Warner's technically-integrated systems in the metropolitan area. Time Warner began carrying WNYC on channel 3 on its Manhattan system many years ago. On-channel carriage was not possible on that early limited channel capacity system. Since that time, Time Warner has constructed several systems in the metropolitan area, all of which carry WNYC on channel 31. The Manhattan system has been rebuilt, all of the area systems have been linked, and Time Warner wants to change WYNC's channel position to channel 31 for technical and marketing reasons. WNYC objects to this change.

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[12]Indeed, Congress was sensitive to the disruptive effect on viewers and broadcasters. See Section 614(b)(9) of the Act which prohibits channel positioning changes during ratings sweeps periods.

Since there is no agreement, Time Warner ought to be able to carry WYNC on its over-the-air channel throughout this technically-integrated system complex.

With regard to UHF stations and the issue of on-channel carriage, Time Warner strongly reiterates its position that a station should not be able to require a cable system to carry it on a channel number which is not offered as part of the basic service tier (e.g., channel 61 on a channel 2-13 basic tier). In many, if not most, instances, a requirement that a UHF station be carried on a basic tier will be prohibitively expensive and will certainly affect a cable system's ability to provide an inexpensive basic tier to the public. The technical configuration of most systems would cause a cable system attempting to carry a UHF channel on a basic tier to engage in expensive trapping or trapping adjustments at each subscriber's premises and/or having to supply converter boxes to subscribers not having cable compatible television sets. Indeed, in some cases, the entire cable television system simply lacks the channel capacity to accommodate on-channel carriage of many UHF stations operating on high channel numbers (e.g., channel 61 on a 54-channel system). For example, public television station KVPT in Fresno, California, which operates on Channel 18, broadcasts in Bakersfield, California on channel 65 by means of a translator. KVPT's translator in Bakersfield entitles KVPT to invoke must-carry rights with respect to Time Warner's Bakersfield system. However, the Bakersfield system only offers

55 channels and thus does not extend to channel 65. As for channel 18 on the cable system, Time Warner has a contract for use of that channel with a non-broadcast programmer.

Another example is presented by the situation of Tri-County Cable, a division of Time Warner Cable, which is located south of Philadelphia in New Jersey. WYBE, a public television station located in Philadelphia has requested must-carry on its over-the-air channel, Channel 35. However, Tri-County Cable currently provides a nine-channel basic service on channels 3 and 6 through 13. Tri-County Cable has not been required to provide converter boxes to subscribers who purchase only basic service because even old television sets receive channels 2 through 13. If channel 35 would have to be included on the basic service tier on its off-air channel, Tri-County Cable would be required to provide converter boxes at a cost of $45 to $50 per box to its basic service only subscribers who do not have cable compatible television sets. Moreover, Tri-County Cable would have to purchase and install traps at a cost of $6.00 for each trap plus an additional $40.00 for installation at each subscriber's home. This effect would be compounded if at any time in the future any other channels made similar demands because each time a new channel must be added in this fashion, Tri-County Cable would have to order and install a special trap to accommodate the particular channel demand.

Thus, it can be seen that the carriage of a station on its over-the-air channel, which sometimes presents difficult enough

issues as it is, is compounded when a UHF channel demands carriage on a channel number which is not even part of the existing or planned basic tier.

II. RETRANSMISSION CONSENT

A. **Applicability.**

Time Warner notes that most of the commenters who addressed the issue agreed that an expansive reading must be given to the Act's definition of a multichannel video programming distributor.[13] These parties have different reasons for requesting that the definition be read as inclusive, but the conclusion that they reach is the same. Time Warner concurs and urges the Commission to so interpret the Act. One exception to this general agreement is the position exemplified by the comments of Liberty Cable Company, Inc. Liberty, a SMATV operator in New York City, agrees that SMATVs are included in the statutory definition but argues that MATV systems should not be included. The flaw in Liberty's logic is that even if a pure MATV system is somehow not included, a position which Time Warner disputes, it cannot be stretched to cover SMATVs which use MATV facilities to deliver local broadcast signals. This would be a classic example of elevating form over substance. If a SMATV operator is a multichannel video programming distributor for purposes of the Act, its delivery of local television stations

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[13] See Comments of National Private Cable Association, et al at 3-6; National Cable Television Association at 25; National Association of Broadcasters at 36-38.

should not become exempt from the requirements of Section 325(b) through the trick of hooking up with MATV systems.

Time Warner notes that, predictably enough, most broadcast commenters took advantage of the arguably inconsistent language in new Section 325(b) and alleged that radio stations should be included in the retransmission consent requirements.[14] Time Warner stands on the argument set forth in its initial comments that neither the language nor the legislative history indicates that retransmission consent was to apply to other than television broadcast stations. For the Commission to hold otherwise would not only misread the legislative history, but also would result in the cessation of carriage of radio stations which sought compensation for retransmission consent since cable systems do not value radio stations sufficiently to pay a price for their carriage.

B. **Implementation Procedures.**

One of the most crucial issues in retransmission consent is the initial implementation of the requirement, including the date on which local broadcasters must make their election between must-carry and retransmission consent and the date for compliance with the new commercial must-carry rules. Time Warner took the position in its initial comments that a workable election deadline should be established as May 1, 1993 and that the must-carry and retransmission rules, intertwined as they are, must go

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[14]See, e.g., Comments of National Association of Broadcasters at 39-40.

into effect on the same date, October 6, 1993. As expected, broadcast interests suggested election dates ranging from early August until October 5, 1993,[15] and effective dates for commercial must-carry going out no farther than 60 days after the Commission's decision is issued.[16]

As Time Warner previously said, implementation of the must-carry and retransmission consent rules will undoubtedly cause considerable disruption to existing signal carriage and historical viewing patterns. The Commission must fashion regulations which minimize the effect on cable operators and their subscribers. The transition process must allow some time for stations to make their election, adequate time for stations and cable operators to negotiate if retransmission consent is elected, and sufficient time for cable operators to implement the changes in signal carriage which this process will inevitably cause.

With the implementation of a must-carry/retransmission consent regime, a cable operator must make decisions as to tier configuration, equipment, methods to implement tier security, pricing, creating of marketing materials, preparation of programming guides, notice to cities and subscribers, etc. None of this can be done until cable operators have finished negotiating retransmission consent agreements. Of course, cable

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[15]See Comments of CBS, Inc. at 8-9 (August 6); Association of Independent Television Stations, Inc. at 23 (up to October 6).

[16]See Comments of National Association of Broadcasters at 44.

operators will not even know which stations they need to negotiate with until the must-carry/retransmission consent election is made.

In addition to the length of time that will be needed to negotiate retransmission consent agreements, the election timetable must recognize that the beginning of the accounting period for copyright purposes is January 1st and July 1st of each year. The Copyright Office has consistently interpreted the Copyright Act to require full payment for any broadcast signal which is carried for any part of an accounting period. If a cable operator must pay full copyright fees on a broadcast signal, particularly a "distant" broadcast signal that it must drop for lack of retransmission consent, the cable operator would be forced to incur copyright fees for part of a time period during which he may not be able to carry the station in question. This is applicable to a number of stations which may be "local" for must-carry and retransmission consent purposes but which are "distant" for copyright purposes.[17]

The cable operator is also going to need to reconfigure his basic tier to accommodate whatever changes might occur in broadcast station carriage. Not only does this apply to which stations are carried and the number of stations which will be carried, but also the channel positioning of those stations. In

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[17]Time Warner notes that the United States Copyright Office is sensitive to this issue as well. See its comments, at 10-11, where a July 1 election date is suggested. Obviously, however, the election would have to be made earlier for the cable operator to be able to act on it.

many cases, operators will have to replace existing traps to allow basic subscribers to receive additional channels or will have to install traps in the first instance. The Commission's implementation procedures must give operators enough time to identify the type of equipment needed and then to order, receive and install the equipment prior to the October 6th deadline. In the event that some signals which have been carried for years will no longer be carried, the implementation period must allow for notification of subscribers and cities, education as to the fact that such stations will no longer be carried and arrangement for replacement programming.

All of these considerations taken together mean that in order for the rules governing retransmission consent to take affect on October 6, 1993, an election must be made sufficiently far in advance so as to minimize the disruptions of the transition period. Time Warner suggested May 1st as being the best possible date to meet the considerations discussed above and in its initial comments. Some broadcast commenters did realize that these complications require a relatively early election, but they offered dates no earlier than the beginning of August. For the reasons stated above, this does not adequately address Time Warner's concerns. The May 1st date would give the broadcasters one month to make their election after the Commission's decision in April and would still allow for some time prior to the July 1st copyright date for cable operators to take actions to minimize their copyright royalty fee exposure.