with regard to satellite carriers, with regard to the treatment of master antenna television (MATV) systems, and with regard to the status of video dialtone providers.

131. A satellite carrier, as defined in the Satellite Home Viewer Act of 1988, is an entity that uplinks a broadcast signal and retransmits it over satellite facilities that the carrier may own or lease. See 17 U.S.C. §119(d). Satellite carriers' customers are home satellite dish (HSD) households. The carriers themselves sell retransmitted broadcast signals directly to HSD households, but they also license a variety of agents (e.g., program packagers, equipment distributors, and satellite equipment retailers) to sell the signals on their behalf. As noted above, the definition applies to a "television receive-only satellite program distributor." In order to resolve any potential ambiguity regarding responsibility for securing retransmission consent, and in view of the fact that the satellite carrier is the entity entitled to the compulsory license granted by 17 U.S.C. §119, we find that, with respect to HSD sales, the satellite carrier is the multichannel distributor and must secure retransmission consent.[367]

132. Several commenters address application of the multichannel distributor definition to SMATV, MATV, and MMDS. MMDS is, of course, explicitly included in the statutory definition. As noted above, the list of multichannel distributors in the definition is not meant to be exhaustive, and the legislative history clearly indicates that Congress intended SMATV systems to be included.[368] Accordingly, we find that SMATV systems also are multichannel distributors. However, the question of whether MATV systems are multichannel distributors, particularly when they are combined with SMATV or MMDS service, is more difficult.

133. Several commenters assert that a "standalone" MATV system, particularly if it is available without separate charge to all residents of a building or guests at a hotel or motel, is not a multichannel distributor and does not need retransmission consent for retransmitting local television broadcast signals.[369] In many cases, however, MATV systems are combined with

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[367] Satellite carriers generally also retransmit television signals to cable systems. With respect to cable subscribers, it is the cable operator rather than the satellite carrier that is the multichannel distributor.

[368] The Conference Committee adopted the definition of multichannel video program distributor contained in the Senate bill (Conference Report at 58). The Senate Report (at 71) comments that "[E]xamples of multichannel video programming distributors include wireless cable and satellite master antenna television." See also NCTA Comments at 25. Liberty Cable Comments at 4-6.

[369] See NAB Comments at 38 ("the simple operation of a collective antenna in an apartment building to receive local television signals does not involve the redistribution of broadcast signals, and the consent of those local stations would not be required"). See also NCTA Reply at 20 ("where a landlord merely erects a master antenna on an apartment building for use of

MMDS or SMATV service to provide a package of programming that includes both local television broadcast signals and other channels. In some cases, MMDS operators equip individual dwellings with a VHF/UHF antenna along with the antenna required for receiving services retransmitted via microwave channels.[370]

134. Providers of such combined services argue that they should not be subject to retransmission consent. For example, the Wireless Cable Association believes that "wireless cable systems are under no obligation to secure retransmission consent where they receive broadcast signals utilizing a VHF/UHF antenna at the subscribers rooftop and merely relay the signal to the subscriber's set."[371] Liberty Cable, a SMATV operator, asserts that the use of MATV facilities by a SMATV operator to serve a multifamily building "is not 'retransmission' of broadcast signals requiring retransmission consent under the Act."[372] On the other hand, Time Warner argues that "[W]here a SMATV, MATV, MMDS, or other multichannel video service provider distributes broadcast signals along with any other video programming service offering which is available for purchase, the retransmission consent provisions clearly require the consent of the broadcast stations involved."[373] NCTA agrees, proposing that "in order to avoid conferring an unintended economic advantage on one competitive provider of multichannel video service over all others," the Commission should find that "if MATV service is combined with other services (such as satellite or microwave delivered signals), then it should be subject to retransmission consent requirements."[374]

135. We find that local broadcast signals provided by MATV facilities or VHF/UHF antennas on individual dwellings situated within the station's broadcast service area are not subject to retransmission consent, provided

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its tenants -- then we do not believe that Congress intended retransmission consent requirements to apply").

370 See Wireless Cable Association Comments at 3, 12; Liberty Cable Comments at 9-10; Spectradyne Comments at 5-10.

371 Wireless Cable Association Comments at 4. The Association cites in support of this proposition the Senate Report's statement at 26 that "[B]roadcast signals will remain available over the air for anyone to receive without having to obtain consent."

372 Liberty Cable Comments at 9.

373 Time Warner Comments at 33-34. In support, Time Warner cites the Senate Report at 34, which states the Committee's belief that "Congress' intent was to allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means."

374 NCTA Comments at 20.

that these signals are available without charge at the residents' option.[375] This finding applies to standalone MATV facilities, which we find are not multichannel distributors (provided that the service is not made available "for purchase") and to MATV-SMATV combinations, as well as MMDS-SMATV and MMDS-individual antenna combinations. Our finding is based on an analogy between the installation by an individual of an antenna to receive local broadcast signals and the installation of a similar antenna by a building owner or by an MMDS operator on behalf of a building owner or individual.[376] Therefore, in order to be exempt from retransmission consent, the antenna facilities must be owned by the individual subscriber or building owner. They must not be under the control of the multichannel distributor. The multichannel distributor will therefore be unable to terminate or otherwise limit the availability of local broadcast signals to individual residents. MMDS and SMATV systems are, of course, multichannel distributors under the Act. They must, therefore, inter alia, obtain retransmission consent for any local or distant television broadcast signals (other than superstations) that they deliver via satellite or microwave channels.

136. Several commenters support our tentative conclusion that a pure video dialtone provider would not be considered a multichannel distributor[377] and would therefore not be responsible for obtaining retransmission consent.[378] Rather, the customer of the video dialtone provider, i.e., the entity actually choosing and obtaining the programming, would be required to obtain retransmission consent. Since a video dialtone provider is merely offering common carrier transport service, with no discretion or control over the content, it is not appropriate to hold that provider responsible for obtaining the consent of the originating station or stations. That responsibility should fall upon the entity choosing the programming and

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[375] This classification is analogous to that of the Copyright Act of 1976. That Act provides an exemption from copyright liability for a service that "consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission..." 17 U.S.C. §111(a).

[376] We have used this analogy before in declining to include MATV systems in our definition of cable system. See First Report and Order in Docket No. 20561, 63 FCC 2d 956, 996-97 (1977).

[377] We make this determination in the context of the Cable Act's retransmission consent provisions only. We make no decision herein regarding the status of video dialtone providers under other sections of the Cable Act.

[378] Bell Atlantic Comments; GTE Reply, United States Telephone Association (USTA) Reply at 1-2.

receiving the subscription fees for providing it.[379]

B. The Scope of Retransmission Consent

137. This subsection addresses the applicability of retransmission consent to radio stations, to low power television stations, to distant non-superstations, and to foreign stations. It also examines some issues relating to the scope of the four retransmission consent exceptions.

1. Radio

138. Commenters were divided on the question of whether Congress intended radio stations to be subject to retransmission consent. Commenters arguing against inclusion of radio stress two points. First, they note that radio is not explicitly mentioned anywhere in the Cable Act or the Conference Report, while there is extensive discussion of television and affirmative instructions to the Commission to develop procedures allowing television stations to exercise retransmission consent rights.[380] Time Warner expands on this argument, asserting that the findings in Section 2 of the Act that provide the justification for must carry and retransmission consent, in particular Section 2(a)(19), stress the role of television stations in cable service as the impetus for these new provisions.[381] Second, NCTA suggests that radio retransmission consent would be impractical, since some cable operators receive and retransmit the entire band of terrestrial radio signals. It asserts that, if only one radio station were to refuse retransmission consent, this could, in practice, block cable's access to all radio signals.[382] .

139. On the other hand, NAB points to the plain language of Section 325(b)(1), which prohibits retransmission of "the signal of a broadcasting

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[379] GTE suggests an amplification of this finding, calling attention to the possibility that a television broadcast station might itself directly acquire transport services from a video dialtone provider. GTE suggests that, in this case, the station itself is the "multichannel distributor" and may be presumed to have given itself retransmission consent. See GTE Reply Comments. Notwithstanding the fact that the provider may be providing only one channel, we endorse GTE's suggestion.

[380] See NCTA Comments at 25; United Video Comments at 11. Acton Comments at 36.

[381] Time Warner Comments at 36-38. See also American Society of Composers, Authors, and Publishers et al. (ASCAP) Reply at 12.

[382] NCTA Comments at 26. NCTA does not explain why it would be impractical to filter out radio stations that did not grant retransmission consent. Presumably, this assertion is based on NCTA'a assessment of the cost of filtering equipment relative to the value that subscribers place on cable delivery of local radio signals.

station" without the express authority of the originating station.[383] There are limited exceptions to this, including exceptions for noncommercial broadcasting stations and certain satellite-delivered broadcast stations but not including radio stations. NAB also cites the Senate Report's discussion of the debate on the Radio Act of 1927. The discussion therein of the forerunner of Section 325 contains a reference to "the 'wired wireless,' which appears to have been a reference to an early form of cable transmission of radio signals." The Senate Report also describes the 1992 Act's retransmission consent section as closing "a gap in the retransmission consent provisions which, in the Committee's view, was not intended by the drafters of the 1934 Act." NAB argues that, since there were no television signals in 1934, the Committee must have had radio in mind. After careful consideration, we conclude, based on the plain language of Section 325(b)(1) and the legislative history cited by NAB, that radio is covered by the 1992 Act.

2. Low Power Television Stations

140. Although no commenters addressed the issue, we find that multichannel distributors may not retransmit the signals of low power television (LPTV) stations without the stations' consent. In other words, LPTV stations have retransmission consent rights. LPTV stations are, in fact, television broadcast stations, and the 1992 Act affords them limited must-carry rights. Hence, we conclude that LPTV stations cannot be retransmitted without consent, unless they are carried pursuant to must-carry status.

3. Exceptions to the Retransmission Consent Requirement

141. As stated in the Notice, there are four exceptions to the retransmission consent requirement. It does not apply (1) to noncommercial broadcasting stations, (2) to HSD reception of superstations, provided that the signal was retransmitted by a satellite carrier on May 1, 1991, (3) to HSD reception of network stations, provided the reception is by an unserved household, and (4) to superstation retransmission by cable operators or other multichannel distributors, provided that the signal was obtained from a satellite carrier and the originating station was a superstation as of May 1, 1991.

142. A few commenters offer interpretations of the fourth exemption, which states that the originating station's consent is not needed for "retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991." For example, Newhouse contests our tentative conclusion that superstation signals delivered via terrestrial means such as microwave remain subject to retransmission consent.[384] However, our conclusion is supported by

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[383] NAB Comments at 39-40. See also National Basketball Association and National Hockey League (NBA/NHL) Comments at 8, New Jersey Broadcasters Association and Oklahoma Association of Broadcasters Reply at 1-5.

[384] Newhouse Comments at 17-18.

the plain language of the statute.[385] NBA/NHL suggest that the superstation exemption applies only to cable systems that actually carried the superstations in question as of May 1, 1991, pointing to the use of the past tense in the statute -- "if such signal was obtained from a satellite carrier" (emphasis added).[386] Turner argues against this interpretation, suggesting that "the May 1, 1991, date simply does not apply to distribution."[387] We agree with Turner that the May 1, 1991, date is relevant only for determining which superstations are subject to the exemption. Therefore, we reject the NBA/NHL interpretation and find that the retransmission consent exemption for superstations applies to all multichannel distributors, regardless of when they commenced carriage of a superstation, as long as the superstation was a superstation on May 1, 1991.

143. NAB suggests that, to implement retransmission consent, the Commission should set up a procedure for enforcing the "unserved households" exemption to retransmission consent for home satellite dish subscribers.[388] This position is strongly opposed by the Satellite Broadcasting and Communications Association (SBCA), PrimeTime 24 Joint Venture (PrimeTime 24), and Netlink.[389] Netlink provides the following description of the procedures under the Satellite Home Viewer Act to ensure that only unserved households are able to purchase subscriptions to satellite-delivered network stations. Satellite carriers are required to provide each network with a list of subscribers receiving the signal of an affiliate of the network. The satellite carriers screen their potential customers at the time of subscription in order to weed out those who are not eligible. Customer lists are updated on a monthly basis. The networks classify the lists by geographic area and send them to the relevant affiliates, which can then check if the subscribers meet the statutory definition of an unserved household. Information on those who do not meet the definition is forwarded to the satellite carriers. If, upon re-examination, the subscriber in question is found to be ineligible for a subscription, service is terminated. Netlink further notes the statutory remedies, including liability for copyright infringement, for violation of the unserved area restriction. Cap Cities implies that these remedies should be supplemented by Commission enforcement on the grounds that it "would provide stations a realistic remedy in cases where

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385 See NAB Reply at 42-43.

386 NBA/NHL Comments at 10-12.

387 See Turner Reply at 1-3. Turner also cites the Senate Report at 83 to show that in the original version of S. 12, the exemption was intended to apply to the stations rather than to carriage by specific cable systems or other multichannel video programming distributors. Under the earlier version of S. 12, the exemption was to sunset on December 31, 1994. See also CATA Reply at 6.

388 NAB Comments at 40-41. See also CBS Comments at 6-7, Cap Cities Comments at 26-28, and Network Affiliated Stations Alliance (NASA) Reply at 1-4.

389 Netlink USA Reply at 1-6, PrimeTime 24 Reply at 8-10, SBCA Reply at 1-4.

litigation is unrealistic because of its expense."[390]

144. We agree with the satellite carriers and SBCA that delivery of this service is provided pursuant to copyright law and that Congress has provided a copyright law procedure to enforce the limits on satellite retransmission of network stations to home satellite dish households. (See 17 U.S.C. §119(a)(5)). However, given the limited exclusion from the retransmission consent requirement contained in Section 325(b)(2)(C), provision by satellite carriers of network stations to households that are not "unserved" as defined in 17 U.S.C. §119(d)(10) would now violate not just the copyright laws but the Communications Act. Therefore, we find that, in addition to copyright remedies, networks covered by 17 U.S.C. §119 and their affiliates may file complaints with the Commission if they believe that the network station exception to retransmission consent is being applied improperly.[391]

145. PrimeTime 24 raises an additional issue regarding the application of retransmission consent to network stations.[392] PrimeTime 24 is a satellite carrier that retransmits the signals of three network stations, one from ABC, one from CBS, and one from NBC. It supplies those signals to unserved home satellite dish households in the continental United States and also to roughly 400,000 cable subscribers, over 270,000 of which are in Puerto Rico and the United States Virgin Islands.[393] While the 1992 Act exempts from retransmission consent requirements network stations received by unserved home satellite dish households and superstations regardless of the transmission medium, it does not exempt network stations retransmitted by cable operators. Because network service is now almost ubiquitous in the continental United States, most cable subscribers have access to local affiliates of the major commercial networks. It appears likely that this access will be maintained, whether via must-carry, a retransmission consent agreement, or off-air reception. However, in Puerto Rico, there are no affiliates of the major commercial networks and in the Virgin Islands there is only one network affiliate.

146. Thus, if retransmission consent is not granted, television households in these two areas would lose access to network programming.

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390 Cap Cities Comments at 27.

391 See note 443 infra for a discussion of our authority to assess forfeitures. We note that the satellite carriers that retransmit network signals may not be Commission licensees. If they are not, our authority to impose forfeitures is limited by the requirement that a citation first be issued. If the satellite carrier compulsory license, which is scheduled to expire on December 31, 1994, is not renewed, this issue will decrease significantly in importance, since satellite carriers would then also have to secure licenses directly from the copyright holders of the programming carried on the signal of the stations in question.

392 PrimeTime 24 Comments at 1-6.

393 PRCTA Comments at 2; Caribbean Comments at 6.

PrimeTime 24 suggests that network affiliates should be required to grant retransmission consent if there is no local affiliate available, or at least that network affiliates should be prohibited from unreasonably withholding consent in those circumstances.[394] PRCTA also opposes retransmission consent requirements for U.S. network affiliates retransmitted by Puerto Rican cable television systems.[395] PRCTA notes that cable systems are exempted from retransmission consent requirements for superstations and suggests that English language U.S. network affiliates should be considered foreign language stations in Spanish-speaking Puerto Rico. As such, they could be considered as something other than network stations for the purpose of cable carriage in Puerto Rico and carriage could be permitted without retransmission consent pursuant to the superstation exemption.[396] PRCTA also suggests that, since Puerto Rico is an unserved area with respect to the major U.S. commercial networks, the home satellite reception unserved area exemption might apply by analogy.[397] In addition to the question of whether retransmission consent would be granted under these circumstances, commenters also express concern regarding the potential burden of retransmission consent fees.[398]

147. While the record does not suggest that the relevant stations necessarily would deny retransmission consent in the circumstances outlined by PrimeTime 24, PRTCA, and Caribbean, or that the relevant networks would attempt to prevent them from granting consent, or that retransmission consent fees would be unreasonable,[399] we note that the overriding intent of the 1992 Cable Act was to increase -- not reduce -- availability of broadcast signals to the public. Because there is no clear statutory authority to extend the retransmission consent exemption to cable systems in unserved areas, we find that cable systems in such areas are required to obtain retransmission consent from network affiliates prior to retransmitting their signals. However, in unique locations such as Puerto Rico and the Virgin Islands, where a network or networks have no local affiliate in the market, it may not be reasonable for an affiliate to refuse retransmission consent.[400] Therefore, we find that network

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394 PrimeTime 24 Comments at 5-6, 8. See also Caribbean Comments at 5-8, suggesting that retransmission consent should not apply to distant signals in general and to cable carriage in the Virgin Islands in particular.

395 PRCTA Comments at 1-8.

396 PRCTA Comments at 4-5, citing a similar ruling made by the Commission in 1974 that permitted an exception to the Commission's distant signal importation limits.

397 PRCTA Comments at 5. See also Caribbean Comments at 7, note 5.

398 See PRCTA Comments at 7; Caribbean Comments at 7-8.

399 See Reasonableness of Rates at paras 176-178, infra.

400 The Commission has historically seen retransmission or rebroadcast of television signals as a desirable method of bringing network service to areas without access to it. In a case that involved initial refusal to grant

affiliates cannot unreasonably withhold retransmission consent in these limited circumstances. We will evaluate any such refusals on a complaint-by-complaint basis.

4. Distant Non-superstations and Foreign Stations

148. Other commenters (e.g., Viacom) argue that retransmission consent does not apply to distant non-superstations. Once again, the plain language of the statute supports our tentative interpretation that all television stations, local and distant alike, have retransmission consent rights. Section 325 provides that, after October 5, 1993, "no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof" without the express authority of the originating station or pursuant to the must carry rules.[401] None of the four exceptions enumerated applies to distant signals that are not superstations. Moreover, contrary to Viacom's argument, the ability to grant retransmission consent is not contingent on having the choice between that and must carry. Congress conferred certain rights on television broadcasters in the 1992 Act, including the right to require multichannel distributors to get retransmission consent before retransmitting their signals. The fact that Congress also allows television broadcasters to trade off this right for certain other rights (i.e., must carry) in the case of cable operators in the local market does not mean that broadcasters do not have that right with respect to cable systems outside the market or, for that matter, other multichannel distributors within the market. In both of these cases, the broadcaster cannot assert must carry rights, but it can assert retransmission consent rights under the plain language of the Act.

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rebroadcast permission to a translator that would bring network programming to an unserved area, the Commission noted that it

> has declined to read Section 325(a) of the Communications Act (which requires the originating station's consent before another station may rebroadcast its programming) as sanctioning arbitrary refusals to grant such consent on the part of network affiliates and has stated that a refusal based upon no reason at all or upon unreasonable grounds would be a relevant consideration in determining whether the station was being operated in the public interest.

The Commission went on to grant the originating station's construction permit applications for its own translators, but required that station to advise the Commission within 30 days what steps it had taken to grant rebroadcast permission to the translator that it had initially rebuffed. See KAKE-TV and Radio, 10 R.R. 2d 799, 801 (1967).

401 We do, however, agree that foreign stations (e.g., Mexican or Canadian) are not eligible for retransmission consent or must-carry rights. See TCI Comments at 33-34, Adelphia Comments at 30-32, Newhouse Comments at 15-17, Viacom Reply at 7.

C. Implementing Retransmission Consent

149. With regard to implementing the retransmission consent provisions, three main issues provoked disagreement in the comments. They are the timing of the retransmission consent election, when the must carry rules go into effect, and what the default selection should be for stations that fail to make an affirmative election by the deadline. This subsection addresses these and other matters relating to election mechanics.

1. Must-Carry/Retransmission Consent Election and Implementation

150. The statute is clear that the retransmission consent provisions become effective on October 6, 1993. Section 325(b)(3)(B) states that the Commission's retransmission consent regulations shall require that television stations make an election between must-carry and retransmission consent "within one year after the date of enactment" of the 1992 Cable Act and every three years thereafter. We believe that the instruction to provide for an election within one year gives us discretion to require that the election be made before October 6, 1993. Commenters generally support this conclusion, but differ on when the election should be made. NAB suggests requiring the initial election by August 2, 1993, while NCTA urges that the deadline be no later than June 1, 1993. By and large, cable interests favor early deadlines and broadcasters favor later ones.

151. Many commenters advocate some coordination between the retransmission consent elections and the compulsory license copyright royalty accounting periods (which are January 1-June 30 and July 1-December 31 of each calendar year). There is general agreement that subsequent triennial elections should become effective on January 1 or July 1 and that the election deadline should be three months before the election actually goes into effect. However, synchronizing the initial election with copyright royalty accounting periods is more difficult. The statute requires that retransmission consent take effect on October 6, 1993. Even if the Commission wished to do so, we could not delay it until January 1, 1994. Moreover, even with an early election, there is nothing to force stations and cable operators to reach retransmission consent agreements prior to October 6, 1993. Hence, cable systems may end up dropping and adding some signals in the middle of the July 1-December 31, 1993 accounting period. The possibility of this happening could be reduced if the retransmission consent election is made prior to July 1, 1993. However, cable operators will be required to give 30 days notice to any television broadcast stations that they intend to drop.[402] Hence, any decisions regarding signal carriage during the July-December 1993 accounting period would have to be made based on elections made prior to June 1, 1993. This is under three months from adoption of our retransmission consent rules and even less than that from public release of those rules.

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[402] See para. 155 infra. See also Notice at 8066, tentatively concluding that, once the must-carry rules take effect, cable operators must provide local commercial television stations 30 days notice before deleting them. We received little comment on this tentative conclusion and no outright opposition.

152. These factors lead us to conclude that it is not realistic to require an election early enough to have a significant impact on cable operators' decisions regarding the second half accounting period for compulsory license payments.[403] Since carriage for any part of an accounting period incurs copyright liability for the whole period, our attention now switches to the October 6, 1993 effective date for retransmission consent. Our interest here is to ensure that a reasonable time is available for retransmission consent negotiations, for notification of any stations that might be dropped from cable systems, for notification of subscribers regarding channel deletions or repositioning[404], and for the necessary technical and other adjustments (e.g., changing traps, changing program guides, changing customer bills) to take place.

153. With regard to must-carry rules, we tentatively concluded that we would not delay the rules' effective date until October 6, 1993, but that some period of time after adoption would be appropriate to allow cable operators to come into compliance. Broadcast commenters generally favor prompt implementation of the rules. NAB indicates that full compliance should come within 60 days of adoption of the new rules, i.e., by early June of 1993. Cable commenters argue that must carry and retransmission consent should take effect at the same time, in order to avoid the cost and consumer confusion and inconvenience of two major channel lineup changes within a short period of time.[405] While we seek to avoid unnecessary cost and inconvenience that may result from changes in channel line-ups, we believe that Congressional intent precludes us from simply delaying implementation of must-carry until October 6, 1993.

154. Nevertheless, we believe the public interest would be served by reducing the extent to which adjustments of channel line-ups is necessary during this transitional period. Toward this end, INTV suggests delaying the effective date of the channel positioning rules until October 6, 1993.[406] Under this regime, cable operators would not be required to rearrange their existing channel lineups until October 6, 1993, except to add any broadcast channels required by the must-carry rules. Prior to October 6, 1993, the cable operator would be free to place these added signals anywhere on its basic tier. This could limit the "churn" on cable system channel lineups and concentrate the bulk of channel positioning adjustments at one time, i.e.,

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403 We note that the issue of liability only comes up for distant signals and that broadcasters may make their elections at any time, and cable operators and broadcasters may make agreements earlier than the deadline.

404 See paras. 105-110. supra.

405 NCTA Comments at 29-30; TCI Comments at 42-43; Continental Reply at 5; Time Warner Comments at 41-44.

406 INTV Reply at 31.

after October 6, 1993.[407]

155. We are establishing the following schedule for implementing the must-carry and retransmission consent requirements. As of April 2, 1993, cable operators will be required to give subscribers and the affected stations 30 days' notice of deletion or repositioning of any television broadcast station carried. As of May 3, 1993, cable systems must notify qualified noncommercial educational stations of the location of their principal headend[408] and notify local television stations that may not be automatically entitled to must-carry status due to failure to meet signal strength requirements or imposition of increased copyright liability on cable systems.[409] On June 2, 1993, cable systems must begin carriage of their must-carry complement of commercial signals.[410] However, cable operators will not be required to rearrange their systems to conform to the channel positioning rules[411] until October 6, 1993.

156. On June 17, 1993, local television stations will be required to make their initial election of must-carry or retransmission consent status, and stations electing must-carry must notify cable operators of their preferred channel positions. We anticipate that negotiations between cable systems and

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[407] Moreover, as noted below, a cable operator electing to move a broadcast station from one channel position to another prior to October 6, 1993 must first give the station and the system's subscribers 30 days prior notice.

[408] See paras. 7-10 supra.

[409] See para. 31, supra.

[410] This approach reflects our belief that Congress intended for must-carry rights to vest promptly after the adoption of our rules and to be in force before the retransmission consent provisions take effect. See NAB Comments at 43. Of course, the must-carry provisions for NCE stations set forth in Section 615 of the 1992 Act became effective on December , 1992. Accordingly, cable operators already are required to be carrying their must-carry complement of NCE stations. However, to the extent that the must-carry status of a particular NCE station has been in doubt due to its inability to identify a cable system's principal headend or due to questions concerning its signal strength or copyright liability, our rules will provide a reasonable, yet fairly short, time period for resolution of such issues.

[411] See paras. 83-91, supra. We recognize that this is not a panacea. It affords cable operators some additional flexibility, but we note that if an operator adds a broadcast signal to a tier that previously had none, the operator's revenue basis for calculating copyright royalties goes up. This limits the benefits to cable operators of this deferral. On the other hand, a wide range of local signals are currently carried by cable operators. The net effect of the new-must carry rules (e.g., use of ADI markets to determine eligibility, no requirement to carry substantially duplicating signals) is not yet clear.

television broadcast stations regarding channel positioning will be completed by August 1, 1993.[412] The retransmission consent and channel positioning requirements will take effect on October 6, 1993. We believe this schedule will provide an adequate transition period.[413] We note that, in order to effect the transition to retransmission consent and, in particular, to meet the deadlines for notifying stations and subscribers of channel deletions and repositioning, it will generally be necessary for retransmission consent agreements to be concluded well before the October 6, 1993 effective date. We therefore expect that, with limited exceptions, initial retransmission consent agreements will be concluded by early August of 1993. Pursuant to our discussion at paragraph 152, supra, of coordinating retransmission consent elections and copyright royalty accounting periods, we determine that subsequent elections will be made by October 1, 1996, October 1, 1999, etc., to be effective January 1, 1997, January 1, 2000, etc.

157. The Act requires that "if there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems." Some cable commenters suggest that "geographic area" should be interpreted to mean "ADI market" and, hence, television stations must make the same election for all cable systems in the market.[414] We reject this approach. The legislative history makes it clear that this provision applies to cable systems that compete with one another, i.e., overbuilds. We asked for comment on the extent of overlap necessary to trigger the same-election requirement. One commenter suggests standards based on the number or fraction of households in the overlap area.[415] However, there does not appear to be a principled way of picking an overlap number. Moreover, an important goal of the 1992 Act is encouraging competition and we believe that this should include potential competition. For that reason, we adopt the suggestion by InterMedia Partners that systems with overlapping franchise areas should be considered in the same geographic area.[416] In this manner, not only actual but potential competitors will be placed on a level playing field.[417]

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412 Negotiations should be concluded in sufficient time to permit notification of subscribers of any changes in channel line-ups.

413 We note that, contrary to NCTA's suggestion, cable operators and broadcasters can discuss carriage rights prior to the broadcasters' election.

414 See NCTA Comments at 26-28, CATA Comments at 21-23.

415 Malrite Comments at 15-16.

416 See InterMedia Comments at 27-28. See also Adelphia Comments at 36-37 (endorsing the franchise area overlap criterion and pointing out that, since elections are made for three-year periods, additional building during a single election "term" could significantly change the amount of actual overlap).

417 In the event of a truly de minimis overlap of franchise areas, interested parties could file special relief petitions.

2. The Default Election Procedure

158. Commenters were split with regard to the question of default elections, that is, if a television broadcaster fails to make an election by the prescribed deadline, how is it classified? NAB, CBS, and Westinghouse propose that the default be must carry, while Time-Warner suggests that it be retransmission consent without compensation and NCTA proposes carriage "at the cable operator's discretion."[418] The argument in favor of retransmission consent as a default is that, in a wide range of situations, this is the only possibility. That is, with regard to cable operators outside of the local market and with regard to all non-cable multichannel distributors, broadcast signals cannot be carried except with retransmission consent. A retransmssion consent default could leave the cable operator on the same competitive footing as rival distributors.

159. On the other hand, if a television broadcaster did not bother to make an election, perhaps it would not bother to take the additional action of granting the "express authority" necessary for actual carriage. This could leave a cable operator without any means of acquiring access to a signal for its subscribers. Choosing must-carry as the default would solve this problem. Strong television stations having the potential for gaining retransmission consent revenues would forfeit their negotiating opportunities if they did not make an affirmative election of retransmission consent. Therefore, we believe that making must-carry the default category will give stations incentives to make an affirmative election. Moreover, must-carry can be self-executing; i.e., cable operators can, if necessary, proceed to retransmit a local television signal without interaction with the broadcaster. We therefore decide that local television broadcasters that fail to make an affirmative election between must-carry and retransmission consent by prescribed deadlines will be deemed to have chosen must-carry status.

3. Other Matters

160. Most commenters agree with our proposal to require television broadcasters to place copies of their election statements in their public files. There was also general agreement that broadcasters should send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Some commenters object, however, to the proposal that a broadcast station send copies of all of its election statements to each cable operator. Information about a station's elections with respect to other cable systems is not necessary for a particular cable system to complete signal carriage arrangements for that station. Moreover, there is no specific requirement in the 1992 Act for broadcast stations to inform each cable operator of their elections with respect to other cable operators. Furthermore, all of a television station's election statements will be in the station's public file, so cable operators will have access to that information. Therefore, we find that television stations are only required to send each cable operator their election

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[418] NAB Comments at 44-45; CBS Comments at 9-10; Westinghouse Reply at 7-8; Time Warner Comments at 48; NCTA Comments at 30.

statement for that particular cable system.

161. No one commented on our proposal to require new television stations to make their initial must-carry/retransmission consent election within 30 days from the date that they commence regular broadcasts. We also proposed that this initial election would take effect 60 days after it is made. A few commenters addressed this issue, suggesting a 90 day interval.[419] In view of the fact that we have established a 90 day interval between the initial retransmission consent elections of existing stations and the date on which retransmission consent takes effect, we will allow a 90 day interval for the initial elections of new stations to take effect. We also adopt our proposal to require new stations to make initial elections within 30 days after they begin regular broadcasts.

162. The Notice at 8068, paragraph 63, raised questions about the limited circumstances in which a television station might be permitted to change its election during a three year period. The Conference Report posited the following example of such a situation: A station elects must-carry status but a cable system does not offer the station carriage pursuant to the must-carry regulations (for example, because the cable operator has already fulfilled its aggregate carriage requirements). If the cable system wishes to carry the station outside the must carry framework, the station then should be able to assert retransmission consent rights.[420] NAB was the only party to address this situation.[421] In addition to endorsing the Conference Report language, NAB suggests that retransmission consent contracts may include provisions by which a station may preserve "its must carry election in the event that a must carry 'slot' becomes available." We believe that Congress intended for stations that elect must-carry but are not carried to assert retransmission consent rights. Moreover, we agree with NAB that stations should be able to bargain with cable systems regarding a wide range of signal carriage issues.[422] Therefore, agreements such as those described by NAB are permissible.

163. TCI was the only other party to comment on mid-term election changes.[423] It cited two instances when such changes might be permitted or required. The first case involves a cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems. If a television station had previously elected must carry with respect to one and retransmission consent with respect to the other, and if the cable operator had failed to reach a retransmission consent agreement with the station, TCI suggests that the cable operator should be able to require the

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419 See, e.g., Tel-Com Comments at 34.

420 Conference Report at 76.

421 NAB Comments at 49-51.

422 Senate Report at 36.

423 TCI Comments at 41-42.

broadcaster to make a uniform election. We agree, but, since a cable operator will know well in advance that two systems are to become technically integrated, we will require cable operators to give stations 90 days' notice of such an integration. This will allow for the reopening of retransmission consent negotiations. If those negotiations are unsuccessful, the cable operator may, 45 days prior to integration, require a uniform election, to be effective 30 days prior to integration. TCI's other example involves a change in a cable system's market designation. If such a change makes a television station eligible for the first time for must-carry status on the cable system, the station should have the right to make a must-carry election. We agree, provided the new election is made within 30 days of the date that the new market definition takes effect and that the election takes effect 90 days after it is made.

D. Retransmission Consent and Section 614

164. Commenters generally agree that local stations carried pursuant to retransmission consent should count against the must-carry signal complement required. However, there is disagreement about whether the Section 614(b)3(B) requirement to "carry the entirety of the program schedule of any television station carried on the cable system" (subject to Commission rules on sports broadcasting, network nonduplication, and syndicated exclusivity) should apply to retransmission consent stations.

165. We reject our tentative conclusion that cable operators can negotiate with broadcasters and agree not to carry the entirety of the program schedule of retransmission consent stations. We are persuaded by commenters that the plain language of Section 614(b)(3)(B), requiring cable operators to "carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted" applies to retransmission consent stations as well as must-carry stations.

166. While we are aware that the language of the other signal requirements of Section 614(b) is generally limited to signals carried pursuant to Section 614 requirements,[424] the legislative history of Section 614 appears to indicate that Congress did not intend for cable operators to carry partial broadcast signals. The Senate Report, in describing Section 614, notes the requirement that "cable systems carry the entirety of the program schedule of any television stations carried on the cable system, except where FCC rules governing network nonduplication, syndicated exclusivity, sports programming, or similar regulations require the deletion of specific programs by a cable system and permit the substitution therefor of other programs."[425]

167. The House bill that went to the Conference Committee included language identical to that adopted in Section 614(b)(3)(B) of the 1992 Cable Act. Commenting on that provision, the House Report states that it "prohibits

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424 However, see paragraph 171 infra.

425 Senate Report at 85.

'cherry picking' of programs from television stations by requiring cable systems to carry the entirety of the program schedule of television stations they carry, except to the extent that FCC rules intended to preserve local stations' exclusivity rights either permit cable systems to delete individual programs or insert substitutions for programs which cannot be carried on the cable system."[426]

168. Some supporters of the proposition that cable operators may carry less than the complete program schedule of a retransmission consent station point to Section 325(b)(1), which states that multichannel video program distributors may not "retransmit the signal of a broadcasting station, or any part thereof," except with the express authority of the station or pursuant to an election of must carry (emphasis added). We believe, however, that Congress included the emphasized language to provide for instances in which Commission rules (i.e., network nonduplication, syndicated exclusivity, or sports broadcasting) require deletion of some program material.[427]

169. Section 325(b)(4) states that if a television station elects to exercise retransmission consent rights, then "the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system." NAB suggests that "it is logical to construe that provision [Section 325(b)(4)] to apply to the protections Congress established only for must-carry stations, and not section 614(b)(3)(B) which was intended to govern any carriage of a broadcast signal.[428] NAB buttresses its assertion with a reference to the Conference Report. The Conference Committee adopted the Senate provisions on retransmission consent. The House bill had none. In describing the Senate bill, the Conference Report states that "stations which elect to require retransmission consent from a cable system will not have signal carriage rights under sections 614 or 615 on that cable system."[429] NAB asserts that "Section 614(b)(3)(B) does not create any right of signal carriage; instead it limits cable operators' discretion in dealing with signals they do carry, whether under retransmission consent or must carry."[430]

170. We conclude that, subject to the Commission's network nonduplication, syndicated exclusivity, and sports broadcasting rules, cable systems must carry "the entirety of the program schedule" of every television station carried, whether carriage is pursuant to the must-carry rules or

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426 House Report at 93.

427 It is also possible to interpret the prohibitory language of Section 325(b)(1) as designed to preclude claims by cable operators or other multichannel video programming distributors that no retransmission consent is required for carriage of less than the entire signal of a broadcast station. Compare 47 U.S.C. §325(a).

428 NAB Comments at 48.

429 Conference Report at 76.

430 NAB Reply at 39.

pursuant to a retransmission consent agreement.[431] Our finding infra at para. 173 regarding the nature of the retransmission consent right is also relevant to this conclusion. As explained infra, we have determined that a commercial television station may grant retransmission consent only for the entire signal and not for portions thereof. In other words, entirely apart from Section 614(b)(3)(B), Section 325(b) requires that, if a cable operator acquires any retransmission consent rights from a television station, the rights will be to the entire signal.

171. Because we have rejected our tentative conclusion with regard to the television signals to which Section 614(b)(3)(B) is applicable, we also now review the three other provisions of Section 614(b) whose plain language indicates applicability to more than just television signals carried pursuant to the must-carry rules. Section 614(b)(3)(A) and (b)(4)(A) each refer to "local commercial television stations," and Section 614(b)(9) refers to "a local commercial television station." Using the same "plain language" approach we used in analyzing Section 614(b)(3)(B), we find that these three provisions, in fact, apply to all local commercial television stations carried by a cable system, and not just to must-carry stations.[432]

E. Retransmission Consent Contracts

172. Broadcast and cable commenters generally agree that broadcasters may exercise their retransmission consent rights without permission or interference from the copyright holders of their programs.[433] On the other hand, MPAA asserts that the statutory provision that "[N]othing in this section should be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcast stations and video programmers" means that those licensing agreements may

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[431] In view of this decision, and our determination with regard to technical standards, we replace Section 76.62 of our rules with a more comprehensive version.

[432] In our Notice at 8068, we asked for comment on how to codify the Section 325(b)(5) provision that retransmission consent stations shall not interfere with or supersede the Section 614 or 615 rights of stations electing must-carry status. We noted that the Conference Report indicates that this provision applies, inter alia, to channel positioning negotiations. We received no specific guidance in comments on how to codify this provision. Hence, we shall adopt the statutory language along with the specific example from the Conference Report.

[433] See, for example, NAB Comments at 51-54, NCTA Comments at 36-39, CATA Comments at 14-17, Continental Comments at 25-27, CBS Comments at 16-19, Tribune Broadcasting Company (Tribune) Comments at 7-15.

supersede the new right granted broadcasters by Section 325(b).[434]

173. The legislative history of the 1992 Act suggests that Congress created a new communications right in the broadcaster's signal, completely separate from the programming contained in the signal.[435] Congress made clear that copyright applies to the programming and is thus distinct from signal retransmission rights. INTV suggests that the Commission declare this new right an inalienable right of the broadcaster.[436] Such an interpretation, however, would be inconsistent with Congressional intent. As the Senate Report expressly stated, "[I]t is the Committee's intention to establish a marketplace for the disposition of the rights to retransmit broadcast signals..."[437] Thus, we interpret Section 325 as meaning that the new right may be bargained away by broadcasters in future contracts and conceivably could have been bargained away in some existing contracts. We stress in this regard, however, that retransmission consent is a right created by the Communications Act that vests in a broadcaster's signal; hence, the parties to any contract must have bargained over this specific right, not a copyright interest. Just as Congress made a clear distinction between television stations' rights in their signals and copyright holders' rights in programming carried on that signal,[438] we intend to maintain that distinction as we implement the retransmission consent rules. Accordingly, we find that broadcasters cannot bargain over retransmission consent rights to individual programs carried via broadcast signals. Any bargaining must be for retransmission consent rights to the entire signal.

174. In this framework, we interpret the statutory provision holding that existing or future licensing agreements are to be unaffected by retransmission consent means that programmers can negotiate such limitations with broadcast stations, separate and apart from any copyright arrangements. Again, however, we emphasize that the central issue is whether the parties intended to encumber the broadcaster's rights in the signal created by Section 325(b) of the Communications Act. We agree with the Copyright Office and other

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434 MPAA Comments at 3-4, MPAA Reply at 1-14. For additional support for this position, see Cap Cities Comments at 32-37, Viacom Comments at 51-55, Time Warner Comments at 53-59, Fox Comments at 4-7, NBA/NHL Comments at 13-14, Major League Baseball Reply, ASCAP Reply at 2-11.

435 See Senate Report at 36 ("The Committee is careful to distinguish between the authority granted broadcasters under the new section 325(b)(1) of the 1934 Act to consent or withhold consent for the retransmission of the broadcast signal, and the interests of the copyright holders in the programming contained on the signal.")

436 INTV Comments at 18-21. See also Acton Comments at 32-34 (contract language is preempted) and Tribune Comments at 11-12 (boilerplate clauses in contracts should be voided so as not to frustrate intent of law).

437 Senate Report at 36.

438 See NAB Reply at 40.

commenters[439] that the courts are the proper forum for interpreting and enforcing programmer-broadcaster agreements regarding retransmission consent and for deciding if, in fact, retransmission consent rights have been bargained away in particular contracts.[440]

175. Some commenters suggest that the Commission should assert jurisdiction in the case of a direct violation of its retransmission consent rules, for example, in the event that a multichannel distributor retransmits a television signal and has not obtained consent.[441] Commission intervention in such a situation would be consistent with Section 325(a) precedent and we agree that properly documented retransmission of a television signal without consent would be grounds for imposition of a forfeiture.[442] We note that some multichannel distributors (e.g., satellite carriers and SMATV operators) may not be Commission licensees, and our forfeiture authority is limited in those cases.[443]

F. Reasonableness of Rates

176. Section 325(b)(3)(A) directs the Commission to consider in this proceeding the impact that retransmission consent may have on cable basic service tier rates and to ensure that our retransmission consent regulations do not conflict with our obligation under Section 623(b)(1) "to ensure that the rates for the basic service tier are reasonable." Relatively few commenters address this issue. Broadcast commenters generally agree that the place to ensure that basic rates are reasonable is in the rate regulation

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439 TCI Comments at 38, NAB Comments at 41-42.

440 MPAA asserts that, in making these determinations, courts must seek to determine the actual intent of the contracting parties, even when the retransmission consent issue is not explicitly addressed in the contract. MPAA Comments at 4. The Copyright Office does not take a position on what it calls the "more difficult question" of "whether a broadcaster in the absence of a contractual retransmission prohibition (or where such a provision is ambiguous or unclear), must still obtain affirmative copyright owner permission before exercising its section 325(b)(1(A) right." After presenting arguments on both sides, the Copyright Office concludes that "[R]esolution of this issue undoubtably rests with the courts." Copyright Office Comments at 15-16.

441 See, e.g., Cap Cities Comments at 25.

442 See Channel Seven, Inc., 3 R.R. 2d 679 (1964), in which the Commission issued a Notice of Apparent Liability for forfeiture in connection with a violation of Section 325(a) by a television station.

443 The Commission can impose limited forfeiture on non-licensees in certain instances where the party is first notified that the specified behavior violates our rules and the behavior persists. See 47 U.S.C. §503(b)(5).

rules,[444] and that Congress has given the Commission sufficient flexibility in crafting those rules to accomplish the goal of keeping basic service rates reasonable.[445]

177. On the other hand, the Competitive Cable Association advocates a cap on retransmission consent rates across the board, while the Community Antenna Television Association recommends that the Commission cap rates for small and/or rural systems.[446] While not objecting to the resolution of reasonableness issues in the rate regulation proceeding, Time-Warner asserts that "retransmission consent fees are a direct cost of providing basic service, and thus cable operators must be allowed to recoup these costs."[447] Adelphia asserts that "the Commission...has an affirmative obligation to ensure that retransmission consent terms demanded by broadcasters are not unreasonable," and claims that "the Commission must adopt a policy prohibiting a station from unreasonably refusing to grant retransmission consent."[448]

178. It appears that Congress did not intend that retransmission consent rates be directly regulated. In discussing compensation for retransmission consent, the Senate Report asserts that "it is the Committee's intention to establish a marketplace for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in this bill to dictate the outcome of the ensuing marketplace negotiations."[449] Moreover, while retransmission consent may have an effect on basic service tier rates, the record here provides no evidence that the effect may be significant, no credible analysis suggesting that the effect cannot be dealt with in the rate regulation proceeding, and, hence, no basis for considering such effect in the decisions we make herein. Accordingly, based on the record in this proceeding, we decline to adopt regulations specifically limiting retransmission consent rates here.

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[444] See Notice of Proposed Rulemaking in MM Docket No. 92-266, 8 FCC Rcd. 510, 518, n. 60 (1992).

[445] See NAB Comments at 54, CBS Comments at 19.

[446] Competitive Cable Association Comments at 12-13; CATA Comments at 7-11. The NCTA does not take a position on reasonableness of retransmission consent rates.

[447] Time Warner Comments at 59. See also Viacom Comments at 60 ("when the FCC takes those costs [e.g., retransmission consent costs] into account it should permit their full recovery from the basic service rate;" this matter "should be addressed in more detail in the rulemaking proceeding proposing to adopt regulations to implement rate regulation.").

[448] Adelphia Comments at 61-62 (citation omitted).

[449] Senate Report at 36.

G. Other Matters

179. Some commenters urge the Commission to prohibit exclusive retransmission consent agreements, that is, to forbid a television station from agreeing with one multichannel distributor to be carried by it and to deny carriage rights to other multichannel distributors.[450] The Wireless Cable Association supports its argument against exclusive retransmission consent agreements by citing the problems that led Congress to adopt the mandatory program access provisions in the 1992 Cable Act and urges the Commission to "ban cable operators from either securing exclusive agreements with broadcasters or including in retransmission consent agreements provisions that would require the broadcaster to discriminate against emerging competitors with respect to price or any other terms or conditions governing retransmission."[451] The Commission recognizes that exclusivity can be an efficient form of distribution, but, in view of the concerns that led Congress to regulate program access and cable signal carriage agreements, we believe that it is appropriate to extend the same nonexclusivity safeguards to non-cable multichannel distributors with respect to television broadcast signals, at least initially. Accordingly, we will prohibit exclusive retransmission consent agreements between television broadcast stations and cable operators. We will revisit this issue in three years.[452]

180. Several commenters urge us to find that the network nonduplication rules do not apply to stations that elect to exercise retransmission consent rights with respect to a cable system. Indeed, NCTA has filed a Petition for Rulemaking on this topic.[453] The Senate Report on retransmission consent states that

> the Committee has relied on the protections which are afforded local stations by the FCC's network non-duplication and syndicated exclusivity rules. Amendments or deletions of these rules in a manner which would allow distant stations to be submitted (sic) on cable systems for carriage or (sic) local stations carrying the same programming would, in

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450 See Bell Atlantic Reply, National Private Cable Association Comments at 6-13.

451 Wireless Cable Association Comments. See esp. at 24.

452 We are implementing the Cable Act's program access and regulation of carriage agreements sections in a separate proceeding. For purposes of regulating carriage agreements under Section 616, Congress defined the term "video programming vendor" as "a person engaged in the production, creation, or wholesale distribution of video programming for sale." 47 U.S.C. §536(b). Thus, it is possible that Section 616 may apply separately to retransmission consent agreements.

453 "Petition for Rulemaking of the National Cable Television Association, Inc.," filed Jan. 19, 1993. See also "Opposition to Petition for Rulemaking of the National Cable Television Association, Inc. to Revise the Network Non-duplication Rules," filed February 8, 1993.

the Committee's view, be inconsistent with the regulatory structure created in S. 12.[454]

It appears that this passage addresses possible substitution on cable systems of distant signals for local ones carrying the same programming. It seems clear that Congress intended that local stations electing retransmission consent should be able to invoke network nonduplication protection and syndicated exclusivity rights, whether or not these stations are actually carried by a cable system. We therefore deny the NCTA petition.

181. Section 325(b)(1)(A) prohibits, with limited exceptions, multichannel distributors from retransmitting television broadcast signals without "the express authority of the originating station." While television stations may elect must-carry status with respect to certain cable systems, all non-cable multichannel distributors must have the originating station's consent in order to retransmit its signal starting October 6, 1993. Some commenters suggest that an election of must-carry with respect to a cable system should be deemed to grant retransmission consent at no fee to rival distributors. There is no explicit warrant in the statute for this proposal and we believe that the plain language of the Act, requiring the "express authority" of television broadcast stations, rules it out.

IV. ADMINISTRATIVE MATTERS

A. Regulatory Flexibility Analysis

182. The Commission's final regulatory flexibility analysis for this Report and Order is set forth in Appendix B.

B. Ordering Clauses

183. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Part 76 of the Commission's Rules, 47 C.F.R. Part 76, is AMENDED as set forth in Appendix C.

184. IT IS FURTHER ORDERED that pursuant to the need to avoid disruption to cable subscribers and broadcast television stations during the transition to the new broadcast signal carriage rules and the authority contained in the Administrative Procedure Act, 5 U.S.C. §553(d)(3), Sections 76.58(a) and 76.59 of the rules set forth in Appendix C of this Report and Order will be effective April 2, 1993.

185. IT IS FURTHER ORDERED that Sections 76.56 and 76.58(e) of the rules set forth in Appendix C of this Report and Order will be effective June 2, 1993.

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[454] Senate Report at 38.

186. IT IS FURTHER ORDERED that Sections 76.64 and 76.302 of the rules set forth in Appendix C of this Report and Order will be effective June 17, 1993.

187. IT IS FURTHER ORDERED that all other sections of the rules set forth in Appendix C will be effective May 3, 1993.

188. IT IS FURTHER ORDERED that the Petition for Rule Making filed by the National Cable Television Association on January 19, 1993, IS DENIED.

189. IT IS FURTHER ORDERED that MM Docket No. 90-4 IS TERMINATED.

190. IT IS FURTHER ORDERED that MM Docket No. 92-295 IS TERMINATED.

C. Additional Information

191. For further information on this proceeding, contact Marcia Glauberman, Mass Media Bureau, (202) 632-5414 or Jonathan Levy, Office of Plans and Policy, (202) 653-5940.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

APPENDIX A

LIST OF COMMENTERS

Initial Comments

1. A.C. Nielsen Company
2. Acton Corp; Allen's Television Cable Service, Inc.; Cable Television Association of Maryland, Delaware and District of Columbia; Columbia International, Inc.; Frederick Cablevision, Inc.; Gilmer Cable Television Company, Inc.; Greater Media, Inc.; Helicon Corp.; Jones Intercable, Inc.; KBLCOM Inc.; Monmouth Cablevision Assoc.; MultiVision Cable TV Corp.; OCB Cablevision, Inc.; Rock Associates; TeleCable Corporation; Texas Cable TV Association; West Virginia Cable Television Association; and Zylstra Communications Corporation
3. Adelphia Communications Corporation; Arizona Cable Television Association; Cable TV of Georgia; Cable Video Enterprises; Coaxial Communications, Inc.; Hauser Communications; Mid-America Cable Television Association; Mount Vernon Cablevision, Inc.; Nashoba Communications Limited Partnership; Pennsylvania Cable Television Association; Prestige Cable TV; Star Cable Associates; Tele-Media Corporation; Weststar Communications, Inc.; and Whitcom Investment Company
4. AFLAC Broadcast Partners
5. Agape Church, Inc.
6. Alpha-Omega Broadcasting of Albuquerque, Inc.
7. Appalachian Broadcasting Corp.
8. Armstrong Utilities, Inc.
9. Arts & Entertainment Network
10. Association for Maximum Service Television, Inc.
11. Association of America's Public Television Stations
12. Association of Independent Television Stations, Inc.
13. Bell Atlantic
14. Black Entertainment Television, Inc.
15. Board of Commissioners, Township of Lower Merion, Pennsylvania
16. Capital Cities/ABC, Inc.
17. Caribbean Communications Corp. d/b/a St. Thomas-St. John Cable TV
18. CBS Inc.
19. Cedar Rapids Television Company
20. Comcast Corporation
21. Community Antenna Television Association, Inc.
22. Community Broadcasters Association
23. Competitive Cable Association
24. Consortium of Concerned Wireless Cable Operators
25. Consortium of Small Cable System Operators
26. Consumer Federation of America and Media Access Project
27. Continental Cablevision, Inc.
28. DirecTV, Inc.
29. Discovery Communications, Inc.
30. Educational Broadcasting Corporation
31. ESPN, Inc.
32. Fox, Inc.