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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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JUN - 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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	)	

OPPOSITION

TO PETITIONS FOR RECONSIDERATION

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June 7, 1993

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OPPOSITION
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complaints about the burdens allegedly foisted on their operations by the Commission's new rules. Therefore, INTV respectfully urges the Commission to deny the following requests to reconsider and clarify its *Order*:

I.

The request by the Community Antenna Television Association ("CATA") that cable operators be permitted to resolve unilaterally conflicting, valid requests for the same channel position by local broadcast stations should be denied.[2] First, the Commission fully considered and rejected this approach. CATA offers no new basis for a reversal of the Commission's determination. Second, CATA's proposal squarely contravenes Congressional intent. Congress consciously and deliberately left channel position selections exclusively to broadcast stations -- and for good reason.[3] Third, CATA's request rests heavily on pure speculation that numerous conflicts will arise and that good faith negotiations among the stations and system involved will not resolve the vast majority of such requests. Fourth, even if some basis existed for concern, the Commission should resolve any lingering conflicts. In no case should the unilateral power of cable systems to elect the channel position of broadcast stations electing must carry be restored. Therefore, CATA's request must be denied.

II.

CATA's request that stations lose their channel positioning options if they fail to make the must carry/retransmission consent election on June 17

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[2]Petition for Reconsideration, MM Docket No. 92-259 filed May 3, 1993, by the Community Antenna Television Association, Inc., at 5-6 [hereinafter cited as "CATA"].

[3]*See* Comments of INTV, MM Docket No. 92-259 (filed January 4, 1993) at 16.

should be denied.[4] Cable systems which receive no must carry/retransmission consent and channel position elections from a particular station hardly need acquire complete discretion concerning the station's channel position. First, a simple telephone call to the station easily could provide the system with the station's channel position election. This poses no serious burden to the system inasmuch as channel position requirements will not be effective until October 6, 1993. Second, the system already would assume the station to be a must carry station with at most three options for channel position, all of which would be well-known to the system. Third, the cable operator still would be required to carry the station on its basic tier, another known limitation on the scope of uncertainty concerning the station's ultimate channel position.[5] Therefore, CATA's request must be denied.

III.

The Commission should not "grandfather" any agreements which maintain cable system operation in violation of the rule requiring full-time carriage of broadcast signals.[6] The Commission has determined properly that pre-existing contractual arrangements provide no basis for exception or

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[4]CATA at 6.

[5]For the same reasons, even if the Commission did deprive stations of their election right, the cable system still should not be permitted to carry the signal on a non-basic channel or any channel other than one of the three option channels among those station might have elected under the rules. In that respect, INTV supports the position of the National Association of Broadcasters. *See* Petition for Reconsideration, MM Docket No. 92-259 filed May 3, 1993, by the National Association of Broadcasters, at 7 [hereinafter cited as "Columbia"].

[6]Petition for Reconsideration, MM Docket No. 92-259 filed May 3, 1993, by Columbia International, L.P., at 4-6 [hereinafter cited as "Columbia"].

failure to comply with the rules.[7] No reason exists to depart from that determination with respect to the rule prohibiting part-time carriage.

IV.

No basis exists for eviscerating the exclusivity rights of stations electing retransmission consent, regardless of whether they are carried.[8] Exclusivity (both network and syndicated program) and retransmission consent are distinct rights. Congress left no doubt about that.[9] Legal and practical reality also bar efforts to interlink them. A station may grant retransmission consent rights or it may not. A station may secure exclusive rights (which a cable system must respect) or it may not. Inherent in both rights is the possibility that a program might not be shown on a cable system. Furthermore, cable interests' concerns that the confluence of these distinct rights gives leverage to a station's position in retransmission consent negotiations pale in comparison to the still massive leverage cable can exercise via its monopoly power. Cable interests appear graceless in quibbling about the consequences of complying with rules which do no more that reflect the results of marketplace negotiations in which they still hold the upper hand. Therefore, stations electing retransmission consent should retain the ability to protect their exclusive rights to network and syndicated programming.

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[7] *Order* at ¶ 89.

[8] Petition for Reconsideration, MM Docket No. 92-259 filed May 3, 1993, by Cablevision Systems Corporation, at 2 [hereinafter cited as "CSC"]; .Petition for Reconsideration, MM Docket No. 92-259 filed May 3, 1993, by the National Cable Television Association, Inc., at 20 [hereinafter cited as "NCTA"].

[9] *Order* at ¶ 180.

V.

NCTA's request that UHF stations lose their "on-channel" carriage option in deference to carriage on the basic tier must be rejected.[10] First, NCTA's concerns are speculative and premature. No rash of UHF stations insisting on on-channel carriage in the face of basic tiers confined to lower channels has erupted. Indeed, such a turn of events is extraordinarily unlikely.[11] Second, NCTA says nothing really new. Yes, carriage of a UHF station on-channel may cost a few bucks and may be the proverbial pain in the neck for the cable operator, but the Congress and the Commission have considered the balance of interests and flatly rejected NCTA's position. Third, the Commission did lay out the welcome mat for waivers, even if NCTA chooses to look the gift-horse in the mouth! Fourth, if the Commission is bombarded with truly meritorious waiver requests post June 17, then it still has ample time to deal with them prior to October 6, 1993, without prematurely unraveling the statutory scheme established by Congress in the Act.

VI.

The definition of substantial definition should not be revised as requested by NCTA.[12] NCTA requests that the Commission "reconsider its definition of substantial duplication, so that what is considered duplicative for must carry purposes is the same as what is considered duplicative under the syndex and nonduplication rules." NCTA, however, provides no specific language for its requested modification of the rule. Thus, the precise action NCTA requests is far from apparent. Moreover, NCTA has offered nothing

really new. The Commission carefully considered its definition, and no valid reason has been offered to modify the rule.

VII.

NCTA has provided an insufficient basis for the Commission to modify the limited exception to must carry rule for commercial establishments.[13] NCTA has requested that the Commission "clarify that an operator may wire individual rooms, and need not require its customer to provide connections for all television sets in its establishment in order to be exempt from the rule." This clarification only adds ambiguity and risks creation of a gigantic loophole. What if the cable system wires 25 of 125 rooms in a motel? What if it wires only two rooms? What if it wires 120? NCTA's proposed clarification knows no bounds and would create an exception that eviscerated the rule in 99% of the cases. Therefore, it should be rejected.[14]

VIII.

NCTA's "thumb on the scale on the side of broadcasters" argument neglects the monopoly fist weighing heavily on cable's side of the scale in retransmission consent negotiations.[15] NCTA's arguments for revoking application of the full-time carriage rule to retransmission consent stations decry the additional bargaining power the full-time carriage requirement accords broadcasters. This epitomizes myopia. May the Commission conclude rationally that a cable system which is a monopoly -- and thereby enjoys ultimate bargaining power in retransmission consent negotiations -- is likely

[13]NCTA at 16.

[14]INTV had hoped the day had passed when a UHF station invited potential advertisers to its community only to register them in a hotel which offered only VHF stations on room televisions.

[15]NCTA at 17.

to be bowled over by the full-time carriage requirement? The answer is far too obvious to state. Therefore, NCTA's argument provides no basis for repealing the full-time carriage rule for retransmission consent stations.

IX.

The Commission should rationalize the superstation exception to the retransmission consent requirement. Numerous requests have been made to revise the superstation exception to the retransmission consent requirement.[16] In the final analysis, however, the only rational distinction in the case of superstations is whether they are local or distant. Distinctions based on manner of reception (*i.e.*, by microwave, satellite, direct feed, or off-air) only create anomalies which cause confusion and undermine the basic scheme of the Act.

INTV, therefore, proposes that the superstation exception apply to all non-local cable systems, that is, those systems on which the station may not elect must carry status. Generally speaking, this would permit superstations, like other local stations, to elect retransmission consent within their ADIs, but permit their carriage without consent beyond their ADIs. This approach would moot the bulk of concerns about the current Commission interpretation of the superstation exception, while preserving the application of the exception in areas where the exception is meaningful. It also would place superstations on par with their local competitors with respect to retransmission consent rights in their local market areas.

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[16] *See, e.g.*, Petition for Reconsideration and/or Clarification of Tribune Broadcasting Company, MM Docket No. 92-259 filed May 3, 1993, by Tribune Broadcasting Company; Petition for Reconsideration of Newhouse Broadcasting Corporation, MM Docket No. 92-259 filed May 3, 1993, by Newhouse Broadcasting Corporation.

X.

INTV supports A.C. Nielsen's request that "Source Identification Codes" be considered "program-related" and, therefore, subject to carriage as part of a station's signal.[17] INTV fully concurs with A.C. Nielsen that "Source Identification Codes" should be carried as an integral, program-related part of station signals. INTV also has requested reconsideration on this point. Therefore, INTV reiterates its request and supports that of A.C. Nielsen.

Respectfully submitted,

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June 7, 1993

[17]Petition for Reconsideration, MM Docket No. 92-259 filed May 3, 1993, by A.C. Nielsen Company.

CERTIFICATE OF SERVICE

I, JAMES J. POPHAM, hereby certify that on this 7th day of June, 1993, I have caused to be served by first-class mail, postage prepaid, a copy of the foregoing "Opposition to Petitions for Reconsideration," addressed to the individuals listed below:

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