

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

In the matter of

Implementation of Section 302 of the  
Telecommunications Act of 1996

Open Video Systems

**CS Docket No. 96-46**

RECEIVED

JUL 5 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

**PETITION FOR RECONSIDERATION OF  
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The Association of Local Television Stations, Inc. ("ALTV") hereby requests that the Commission reconsider one aspect of its *Second Report and Order* in the above-captioned proceeding.<sup>1</sup> ALTV urges the Commission to state a "zero tolerance" policy for widespread carriage of local signals beyond their local market areas on open video systems which span multiple television markets. As it had done with cable systems, the Commission in its *SRO* gave open video system operators a choice where their systems spanned multiple markets. They may provide all eligible broadcast stations to all subscribers to the system or configure their systems so that subscribers receive only the eligible stations in their market. Therefore, an open video system

---

<sup>1</sup>FCC 96-249 (released June 3, 1996), 61 FR 28698 (June 5, 1996) [hereinafter cited as *SRO*].

No. of Copies rec'd  
LRS ABCDE

0214

which spans multiple markets may carry local signals from several markets throughout all the markets spanned by the system.

An obvious potential for abuse exists -- a potential which is far greater in the case of open video systems than in the case of cable television. The critical distinction between open video systems and cable systems arises because, unlike cable systems, open video systems remain largely in the design phase. They have yet to be constructed and made operational. Cable television systems, on the other hand, were with rare exceptions already up and running by 1993, when the Commission adopted its cable television must carry rules. In 1993, therefore, the Commission could determine that it was making a reasonable accommodation for cable systems built and operating when the rules went into effect. It assured that must carry signals would be carried throughout their local markets but also accommodated the limited number of cases where cable systems spanned multiple markets and were not configured to provide only local market signals.

For open video systems, however, this approach easily could become a loophole which could undermine the operation of the must carry and retransmission consent rules. Nothing prevents the design and construction of open video systems which in terms of their physical distribution facilities serve broad, contiguous areas spanning large areas of multiple markets. These systems could be configured so as to provide only system-wide distribution of signals with no capability for limiting local signals to their respect markets. On such a system, "local" signals from several large television markets might be retransmitted throughout the system (and into other markets).

Widespread carriage of "local" signals would pre-empt the retransmission consent rights of those stations outside their own markets. If a station's signal is carried beyond its market pursuant to the must carry rule, it has no ability to assert retransmission consent rights in those areas.



The ability to configure systems to carry signals only over the entire system also could render the must carry rights of stations illusory. Under the cable compulsory license, 17 U.S.C. §111, cable systems must pay distant signal royalties for carriage of broadcast signals beyond their local market areas, even in cases where the Commission permits carriage due to system configurations.<sup>2</sup> In such cases, however, the cable system may require the local station asserting must carry rights to reimburse the system for copyright fees incurred for carriage of the station in the non-local communities.<sup>3</sup> If the copyright fees are significant, then the station may be unable to afford to pay the fees and will be forced by economic necessity to forego carriage on the system (including areas where it otherwise would be entitled to carriage under the must carry rules).<sup>4</sup>

Whereas this has been more than a marginal concern only occasionally in the case of cable systems, the potential for erosion of must carry rights on open video systems is considerably greater. A technically integrated open video system spanning several large television markets (*e. g.*, Washington-Baltimore-Philadelphia) and configured to carry signals only on a system-wide basis could insist on reimbursement of massive and prohibitive copyright fees as a condition of carriage of a truly local signal pursuant to the must carry requirement.<sup>5</sup> Thus, the open video system could

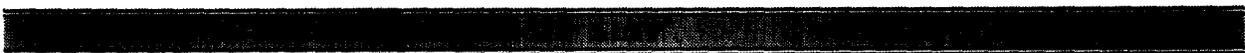
---

<sup>2</sup>*Notice of Policy Decision (Cable Compulsory License)*, 60 FR 65072 (December 18, 1995).

<sup>3</sup>*Broadcast Signal Carriage (Reconsideration)*, 9 FCC Rcd 6723, 6736, n.191 (1994).

<sup>4</sup>These fees often may be based on the 3.75% excess distant signal rate for distant signals. Cable systems typically carry several "superstations" which account for the quota of distant signals carried at the normal royalty rate. Additional distant signal, therefore, are subject to the much higher rate.

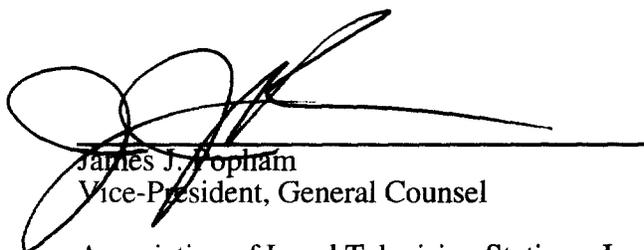
<sup>5</sup>The eligibility of open video systems for the cable compulsory license currently is under review by the Copyright Office. Whereas ALTV submits that the cable compulsory license should be available to open video system operators and their unaffiliated video program providers, the possibility remains that the Copyright Office will reach a contrary (and, ALTV posits, arbitrary) conclusion with respect to the eligibility of open video systems for the cable compulsory license. Needless to say, the inability of open video systems to retransmit broadcast signals pursuant to the cable compulsory license would exacerbate ALTV's concerns about prohibitive copyright license fees reimbursements.



use this effective loophole to avoid carriage of stations it simply did not wish to carry in utter derogation of the goals of the must carry requirement and at a debilitating cost to the station in access to its audience.

ALTV, therefore, urges the Commission to state *now* that it has no intention of permitting its policy governing carriage of must carry signals in adjoining markets to become a loophole used to pull the rug out from under stations' must carry and retransmission consent rights. Again, open video systems still are largely creatures of the drawing boards. Potential open video system operators retain the flexibility to design and construct their systems to permit retransmission of local television station signals only to subscribers in their markets. An admonition from the Commission now will assure that they do not design their systems to turn a reasonable accommodation for already-built cable systems into a loophole which threatens the integrity and benefits of the Commission's must carry and retransmission consent requirements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James J. Ophraim", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

James J. Ophraim  
Vice-President, General Counsel  
Association of Local Television Stations, Inc.  
1320 19th Street, N.W.  
Suite 300  
Washington, D.C. 20036  
(202) 887-1970

July 5, 1996

