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EX PARTE OR LATE FILED

June 4, 1998

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JUN - 4 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: *Ex Parte* Presentation in MM Docket No.

87-268

Dear Ms. Salas:

On June 4, 1998, we delivered to the Mass Media legal advisors for each Commissioner the attached documents that relate to the issue of cable carriage of DTV broadcast signals. We file them here for insertion in the record of the DTV proceeding where the issue of DTV cable carriage has been noticed and briefed.

Respectfully submitted,

Valerie Schulte

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May 29, 1998

Mr. Brian P. Lamb
C-SPAN
400 North Capitol Street, N.W.
Suite 650
Washington, D.C. 20001

Dear Brian,

As President Reagan once remarked, "There you go again."

In your recent letter to Congress, you repeat the same tired claim that the adoption of must carry in the 1992 Cable Act caused C-SPAN to be dropped in "over 10 million households," and that "we still haven't recovered all of those losses." That sounds like a great story. Unfortunately, as you well know, it isn't true.

C-SPAN and other cable programmers were required in the *Turner* litigation to come forward with evidence to support their claims that must carry resulted in loss of carriage. Here's what that evidence showed:

- Nationwide, cable operators continued to carry *99.8 percent* of the cable programming that they carried before must carry.
- In October 1992, when Congress adopted must carry, C-SPAN was carried on 4,253 cable systems. In September 1994, more than a year after must carry went into effect, it was carried on 4,799 systems. By March 1995, it was carried on 5,200 systems, almost a 25 percent *increase* in cable carriage.
- When must carry was enacted, C-SPAN 2 was carried on 933 systems. In September 1994, carriage had gone up to 1,200 systems, and it was seen on 1,357 systems by March 1995. Thus, after must carry, the number of cable systems showing C-SPAN 2 went *up* by more than 45 percent.
- The same is true if you look at subscribers. In October 1992, C-SPAN was available in 53,600,000 households. That number went up by September 1994 to 58,640,000, and continued to rise to 62,400,00 households in March 1995. That's more than a 16 percent *increase*. For C-SPAN 2, it could be seen in 24,300,000 cable homes before must carry and in 37,000,000 in March 1995. Instead of losing households as you claimed, the subscriber figures you produced under oath show that C-SPAN 2 *gained* more than 52 percent in household availability after must carry.

Mr. Brian P. Lamb
May 29, 1998
Page 2

- While you now claim that must carry resulted in C-SPAN's being dropped from cable systems, you told the FCC that its rate regulation rules were the reason C-SPAN was being dropped.
- At C-SPAN's deposition in April 1995, your witness was asked under oath to identify each cable system from which C-SPAN had been dropped because of must carry. You were only able to identify *eight* cable systems (out of more than 11,000) where you claimed C-SPAN had been dropped, and eight more where C-SPAN 2 had allegedly been dropped. As the deposition revealed, for most – if not all – of those systems, you had no evidence that must carry was the cause of the drop. Indeed, in one of the eight systems where you claimed C-SPAN 2 had been dropped, the evidence showed that the reason claimed by the cable system was “that all viewership surveys consistently demonstrate that C-Span 2 is the lowest viewed service on their line-up.”

The evidence of C-SPAN's own witness and documents is that, after must carry, C-SPAN and C-SPAN 2 were both carried on more cable systems and seen in far more households than before. You couldn't prove your claims of losing millions of viewers in court; it's time to stop peddling the same old line to Congress.

Kindest regards,



cc: House and Senate Leadership
Members of the House and Senate Commerce Committees
Members of the House and Senate Judiciary Committees
Members of the Federal Communications Commission

C-SPAN

A PUBLIC SERVICE CREATED
BY AMERICA'S CABLE
TELEVISION COMPANIES

Brian P. Lamb
Chairman and Chief Executive Officer

May 22, 1998

Dear Representative

As you are well aware, the rush is on toward digital technology in the cable television and broadcasting industries. All parties involved are working rapidly to meet the FCC's accelerated schedule as local broadcast stations prepare to simulcast their new digital signals to viewers, just as the Congress has prescribed. However, amid all this activity we at C-SPAN are having a terrible sense of *déjà vu*.

It wasn't so long ago that we were badly burned by the 1992 Cable Act. As a direct result of a resurrected must carry rule and the new retransmission consent provision, our carriage of the House of Representatives and the Senate was reduced or eliminated entirely in over 10 million households when C-SPAN and C-SPAN 2 were dropped from cable systems as operators scrambled to comply with the law. Even 5 years later, despite the extraordinary commitment of the cable industry and its leaders to keeping C-SPAN and C-SPAN 2 on systems, we still haven't recovered all of those losses.

Now, incredibly, it looks like it could happen again. This time the threat to our non-profit and purely public service programming is the possibility that must carry status could be granted to every local broadcaster's new digital channels.

Let me be absolutely clear on this point: if 'digital must carry' becomes law, C-SPAN and C-SPAN 2 *will go dark* in millions more American households.

The outcome is certain. It happened to us in 1993 and thereafter, and not enough has changed in the law, regulations, or the economics of the television business to lead to any other conclusion.

I tell this to you now (and to your colleagues on the telecommunications committees and in the leadership) because we waited too long last time to get our story out. Seven years ago in my testimony to the House telecommunications subcommittee I had only two messages for Congress on must carry. First, that if must carry became law, our public service efforts would be seriously harmed. They were. And second, that C-SPAN was not asking for any special favors for itself. Instead, we became second class citizens when the must carry rule forced us to take a back seat to every broadcast signal in a cable system's service area.

This time around, however, it may not be too late to get our message across. So much about the actual implementation of digital television is still up in the air. Nevertheless, many smart people in the free market are coming up with solutions to make the new technology work for themselves and their future customers. Unless Congress and the FCC take the same approach to their jobs, we could easily be saddled with old-think rules for a brand new technology. Merely applying the analog-era must carry rule to digital television would be a mistake, and a disaster for us, even assuming "best case" scenarios in cable systems across the country.

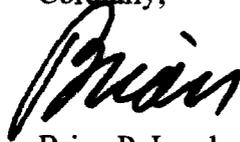
For example, a typical 59-channel cable system in "Anytown, USA" with no empty channels that carries C-SPAN and C-SPAN 2 could easily be required to carry at least 10 local broadcast stations (see the enclosed channel lineup). Even if each local broadcaster chose to create only one additional digital channel, the "Anytown, USA" system's must carry obligation would expand by *at least* 10 additional channels. The cable operator would then be forced to eliminate 10 existing programming services now watched and valued by his or her customers. (This is a "best case" scenario for us--even more satellite programmers would have to be dropped if a broadcast station used the new technology to create more than one channel within its new spectrum allocation.)

A cable operator's commitment to *both* C-SPAN and C-SPAN 2 (or to any programmer, for that matter), will be sorely tested under those circumstances. Our experience with must carry last time around tells us that C-SPAN and C-SPAN 2 will take a big hit with digital must carry, and it could start as early as later this year when the first digital channels become operational.

There is much more to be said about C-SPAN and digital must carry, and it cannot all be said in this letter. For now, however, I wanted you to be aware of our bitter experience with the must carry rule, and of our certainty that history will repeat itself unless Congress takes another look at must carry in the digital context.

I hope we will have an opportunity to discuss this in person before too long.

Cordially,

A handwritten signature in black ink, appearing to read "Brian", written in a cursive style.

Brian P. Lamb,
Chairman

Enclosure

Similar letters sent to Congressional leadership and to the House and Senate communications subcommittees.

If only, were there more channels -- would you take away from your customers?

To make room for a "digital must carry" program signal from each of the broadcast stations in Anytown, USA, this fictional but typical, 59 channel cable system -- with no more available channel capacity -- would be forced to delete at least 10 satellite delivered program services (shaded) from its lineup.

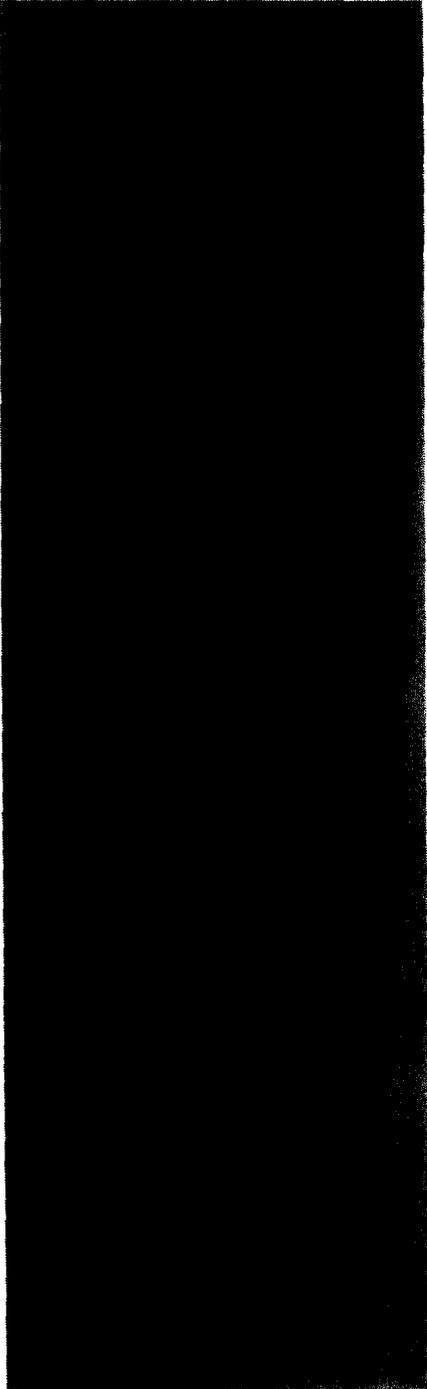
**Anytown, USA
Cable Television Program Channel Lineup**

"Must Carry" Broadcasters

- ABC
- CBS
- NBC
- PBS
- PBS
- FOX
- WB
- UPN
- Independent
- Independent

Access Channels

- Public Access
- Government Access
- Educational Access



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C-SPAN Networks in Jeopardy?

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C-SPAN's Warning Prompts NAB Response

Shortly after C-SPAN's letter was sent to the Congress, the National Association of Broadcasters responded with a letter addressed to C-SPAN CEO Brian Lamb challenging C-SPAN's claim that the 'must carry' rule was the reason C-SPAN and C-SPAN 2 had been dropped from cable systems in 1993 and thereafter.

The letter, from NAB President and CEO Edward O. Fritts, focused on information generated from C-SPAN's lawsuit challenging the constitutionality of the rule. Although most of the facts in the NAB letter are correct, they do not contradict C-SPAN's claim that millions of households were and continue to be denied full access to the C-SPAN Networks as a result of the 'must carry' rule alone.

Most significantly, however, the NAB response does not challenge C-SPAN's warning to Congress that if full 'must carry' status is granted to all digital television signals, millions of Americans will lose the C-SPAN Networks' coverage of their government.

The full text of the NAB letter is below. It is followed by a brief statement issued by C-SPAN in response.

NATIONAL ASSOCIATION OF



Edward O. Fritts

President & CEO

1771 N Street, NW • Washington, DC 20036-2891
(202) 429-5444 • Fax: (202) 429-5410
efritts@nab.org

May 29, 1998

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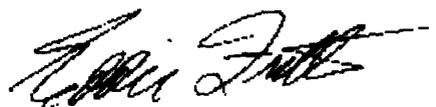
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Members of the House and Senate Judiciary Committees

Members of the Federal Communications Commission

[Read Full Text of C-SPAN Response to NAB.](#)

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