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BY HAND

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Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Carriage of the Transmissions of Digital Television Broadcast Stations, Amendment of Part 76 of the Commission's Rules
CS Docket No. 98-120

Dear Ms. Salas:

Transmitted herewith are original and nine copies of **Comments on Notice of Proposed Rule Making** in response to the above-referenced amendment of Part 76 of the Commission's Rules.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

Richard Hildreth

RH:jpg

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
OCT 13 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Carriage of the Transmissions of Digital Television Broadcast Stations	)	CS Docket No. 98-120
	)	
Amendment of Part 76 of the Commission's Rules	)	

COMMENTS ON NOTICE OF PROPOSED RULE MAKING.

I. Introduction

The below listed stations[1] by their counsel, respectfully comment on matters raised in the above-referenced Notice of Proposed Rule Making involving the carriage of digital television signals by cable antenna television systems.

The Commission's Notice of Proposed Rule Making (NPRM) raises not only some interesting questions but questions the answer to which can determine whether or not digital television (DTV) will achieve the success that Congress has mandated it should. First, there is simply no doubt that the Commission has the right and the responsibility to require the carriage of television broadcast signals on CATV systems.

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[1] The Pikes Peak Broadcasting Company (KRDO-TV, Colorado Springs, CO, KJCT(TV), Grand Junction, CO); Jasas Corporation (WBDC(TV), Washington, DC); Jasas Broadcasting 27 L.P. (WUNI(TV), Worcester, MA); GRK Productions (WGKI(TV), Cadillac, MI; WGKU, Vanderbilt, MI); Morris Network, (KARK(TV), Little Rock, AR, WDHN(TV), Dothan, AL, WXXV(TV), Gulfport, MI, WMGT(TV), Macon, Ga); Palazuelos (KTAS(TV), San Luis Obispo, CA); Thomas Broadcasting Company (WOAY-TV, Oak Hill, W.Va); Guenter Marksteiner (Ch 59, Stuart, FL).

This has been fully enunciated in the Cable Act of 1992 , (P.L. 102 - 385, 106 Stat 1460) and in the Supreme Court decision in Turner II (*Turner Broadcasting Systems, Inc. v. FCC,* 137 L. Ed. 2d 369 (1997)). The more recent actions in Congress contained in the Telecommunications Act of 1996 (P.L. 104 - 104, 110 Stat 56) make clear that Congress fully expects the FCC to require that CATV systems carry digital television signals when stations commence DTV operations. Section 614((b)(4)(B) of the Communications Act of 1934 as amended directs the Commission to ensure CATV carriage of "advanced television" signals, when so required of television broadcast stations. That digital television has finally arrived cannot be a surprise to anyone. The study of advanced televison transmission using digital methods has been the subject of considerable effort by both public and private organizations for over ten years.[2] That

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[2] The following documents have been issued in this proceeding. *Notice of Inquiry* in MM Docket No. 87-268, 2 FCC Rcd 5125, 5127(1987) ("*First Inquiry*"); *Tentative Decision and Further Notice of Inquiry* in MM Docket No. 87-268, 3 FCC Rcd 6520 (1988) ("*Second Inquiry*"); *First Report and Order* in MM Docket No. 87-268, 5 FCC Rcd 5627 (1990) ("*First Order*");*Notice of Proposed Rule Making* in MM Docket No. 87-268, 6 FCC Rcd 7024 (1991) ("*Notice*"); *Second Report and Order/Further Notice of Proposed Rule Making* in MM Docket No. 87-268, 7 FCC Rcd 3340 (1992) ("*Second Report/Further Notice*"); *Second Further Notice of Proposed Rule Making* in MM Docket No. 87-268, 7 FCC Rcd 5376 (1992) ("*Second Further Notice*"); *Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making* in MM Docket No. 87-268, 7 FCC Rcd 6924 (1992) ("*Third Report/Further Notice*"); *Fourth Further Notice of Proposed Rule Making/Third Notice of Inquiry* in MM Docket No. 87-268, 10 FCC Rcd 10541 (1995) ("*Fourth Further Notice/Third Inquiry*"); *Fourth Report and Order* in MM Docket No. 87-268, 11 FCC Rcd 17771 (1996) ("*Fourth Report and Order*"); *Fifth Further Notice of Proposed Rule Making* in MM Docket No. 87-268, 11 FCC Rcd 6235 (1996) ("*Fifth Further Notice*"); *Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87-268, 11 FCC Rcd 10968 (1996) ("*Sixth Further Notice*"). *Fifth Report and Order* in MM Docket No. 87-268, FCC 97-116, April 21, 1997; *Sixth Report and Order*, MM Docket No. 87-268, FCC 97-115, released April 21, 1997 ("*Sixth Report and Order*"). *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket 87-268, FCC 98-

digital transmissions will be an improvement over the present NTSC method of transmission and the further fact that it will release an extraordinary amount of spectrum back to the government for auction or other disposal is a certainty. That certainty places a mantle of responsibility on both television broadcast stations and CATV systems to do all that is necessary to ensure that DTV works and that the schedule established by the Commission is fulfilled. The obligation of CATV systems to participate in insuring the success of the digital television allocations requirements cannot be doubted.

II. The Commission's Mandatory Carriage Rules Must Provide Reasonable Assurance That Viewers Will Have Access to All Local DTV Signals During the Transition Period.

It is recognized that the issues raised in this proceeding present challenging choices for the Commission, involving the allocation of the burdens of the transition from analog broadcasting to DTV. However, the Commission must remain mindful of the significant burdens already imposed on broadcasters in meeting their obligation to deliver DTV to their viewers. The Commission must also remain mindful of the fact that DTV must-carry rules are no more than an extension of the must-carry provisions enacted by Congress in 1992.[3] The policy basis for Congress' enactment of must-carry requirements was to ensure that local stations retain the economic viability necessary to continue providing important local programming to viewers throughout the country. The

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23, released February 23, 1998; *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket 87-268, FCC 98-24, released February 23, 1998.

[3] Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat.1460 (1992) (the "1992 Cable Act").

Supreme Court relied primarily on the factual record supporting that policy, in its decision upholding the must-carry provisions of the 1992 Cable Act.[4] Now, in merely applying existing must-carry policy to the digital era, the very same concerns regarding the economic viability of stations mandate a broad application of the must-carry requirements to all DTV stations.

In the 1992 Cable Act, Congress made explicit findings in Section 2 regarding the importance to viewers of programming from local broadcast stations, and the necessity that such stations obtain cable carriage in order to retain the economic viability to produce such programming, stating in paragraphs 10, 11, and 12, the following:

> (10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is substantial governmental interest in ensuring its continuation.
>
> (11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.
>
> (12) Broadcast television programming is supported by revenue generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued viability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

1992 Cable Act at Sec. 2(a).

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[4] *Turner Broadcasting System v. FCC*, 117 S.Ct. 1174; 137 L.Ed. 2d 369 (1997).

These findings were not based on speculation, but rather on a record built in extensive hearings, over many years.[5]

In upholding the must-carry provisions of the 1992 Cable Act, the Supreme Court explicitly stated that Congress had substantial evidence that mandatory cable carriage was necessary for preserving the Nation's over-the-air broadcast system. *See*, *Turner, II*, 137 L.Ed. 2d at 399-400. The Court concluded that this policy basis for must-carry was the substantial governmental interest necessary for must-carry to pass muster under the First Amendment.

The Commission is urged to recognize that in the present proceeding, existing must-carry policy is being applied to the DTV signal of the very same stations that Congress recognized must receive carriage if viewers are to continue to receive the benefits of local programming. Nothing has changed in the intervening years in regards to the basic relationship between cable carriage and the economic viability of a station. Indeed, increased cable penetration and competition for advertisers in the intervening years have made stations even more reliant on cable carriage to reach viewers, and thus even more vulnerable without carriage.

What has changed in the intervening years is the advent of DTV and the immense costs to be borne by every television station converting to digital transmission. There is no need to repeat here the details of those costs or the special burdens such a conversion will impose on smaller market stations that have less advertising income to finance the conversion costs that are largely identical regardless of the size of a

---

[5] *See*, S. Rep. 102-92, 102d Cong. 1st Sess. ("Senate Report") at page 4.

station's market: the Commission has already recognized and acknowledged such special burdens in the Advanced Television proceeding. *See, e.g., Advanced Television Systems, Memorandum Opinion and Order*, 13 FCC Rcd 6860, 6886 (1998); *ATV Fifth Report and Order*, 12 FCC Rcd 12809, 12835(1997); *ATV Third Report and Order*, 7 FCC Rcd 6924, 6941, 6946-47 (1992). In that proceeding, the Commission created an extended construction schedule for smaller stations in order to ease the burden on those stations. But in this proceeding, the Commission must complete what it started: it must provide stations, especially the smaller market stations with reasonable assurance of carriage of their DTV signal, which is necessary in order to obtain and justify the financing necessary to construct DTV facilities. Without some reasonable assurance of carriage during the transition from analog to digital broadcasting, construction of DTV facilities in smaller markets will be delayed or prevented, and the benefits of DTV will be withheld from viewers in those markets. Such a result is inconsistent with Congressional policy set forth in the 1992 Cable Act, inconsistent with Congress' mandate that the Commission rapidly promote the advent of DTV, and inconsistent with Congressional policy stated in Section 1 of the Communications Act.[6]

In sum, in order to ensure that the benefits of DTV are received on a timely basis by viewers in smaller markets, the Commission must enact DTV must-carry rules that provide reasonable assurance to smaller market broadcasters that their DTV signal will

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[6] Section 1 states that the purpose of Commission regulation is to make wireline and radio communications services "... available, so far as possible, to all people of the United States ... " (emphasis added).

have cable carriage during the transition from analog to digital. Such assurance will not be created by the "System Upgrade", the "Either-Or", the "Equipment-Penetration", the "Deferral" or the "No Must Carry" proposals set forth in pages 24-26 of the *Notice*. Instead, adoption for the Top 25 markets, of the "Phase-In" proposal providing for five DTV channels at the very outset, and the addition of no less than four new DTV signals per year per system thereafter, and carriage of the local stations in the order that such stations commence broadcasting in DTV. This Phased-In approach would give stations the needed reasonable assurance of carriage, while minimizing the impact of DTV carriage on cable operators in larger markets with more local stations. For the remaining markets, It is urged that the Commission adopt the "Immediate Carriage" proposal. In these markets, where there are significantly less stations per market, there would be less of a burden on operators commencing carriage of DTV signals.

Lastly, it is urged that the Commission be mindful of a similar dilemma in the early days of the television era: the apparent nonviability of UHF stations, and the resulting lack of use of the UHF spectrum. The Commission made numerous attempts to resolve the problem by, for example, "de-intermixing" communities to require all broadcasters in a certain community to use UHF frequencies.[7] However, such solutions were not productive because many television sets were not constructed to even receive UHF signals. The only practical solution was one mandated by Congress: the "All Channel Television Receiver Act" (P.L. 87 - 529, 76 Stat 150) which required all TV sets sold in the United States to be able to receive signals from UHF stations as well as VHF

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[7] Fresno and Bakersfield CA were the only two communities where this was done.

stations. While cable systems were only in a nascent stage at that time, in the present situation, cable systems are now as much a "bottleneck" to their subscribers for reception of DTV signals, as non-UHF-capable receivers were to viewers then for reception of UHF stations. The Commission must take steps to ensure that viewers seeking the benefits of DTV do not suffer the delayed introduction and near failure suffered by UHF stations trying to serve viewers in the not so distant past.

III. Comments Regarding Other Issues Raised in the *Notice*

In addition to seeking comments on proposals addressing the application of must-carry to the transition from analog to digital broadcasting, the Commission raised issues on a variety of related topics. Comments on some of the more important issues are set forth below.

A. *Reliance on Retransmission Consent Negotiations is Not a Practical Approach to Achieving Interim Carriage of DTV Signals.*

In paragraph 33 of the *Notice*, the Commission states that it

> has been estimated that approximately 80 percent of commercial television broadcasters elected retransmission consent on some cable systems, rather than must-carry, during the 1993-1996-election cycle. Thus, assuming this information is accurate, the question arises as to whether the general pattern will be repeated with respect to digital broadcast television stations during the transition period. ... If it is repeated, however, it is possible that many of the transitional issues involved in this proceeding will be resolved through retransmission consent negotiations. (Emphasis added).

However, the premise of the Commission's suggestion above is seriously flawed, and accordingly, while some stations may be able to obtain DTV carriage through retransmission consent negotiations, because many (perhaps the majority of) stations do not have the leverage to obtain DTV carriage through retransmission consent, the

proposal must be rejected as a dangerous and impractical overall solution to the problem.

First, the factual premise of the Commission's proposal to rely primarily on retransmission consent is questionable even as applied to the 1993 election cycle: the one journal article relied upon for the "80 percent" figure itself cites a single article from the *San Francisco Chronicle,* which spoke of stations "negotiating" for retransmission consent but which did not provide a figure as to whether retransmission consent or must carry was the ultimate choice. In fact, experience demonstrated that retransmission consent negotiations were very difficult and that most small market stations had to eventually turn to "must carry" in order to preserve their right to carriage. While the *Chronicle* article appears to have been based on a NAB/TVB press release, that article is hardly a rational basis for determining, as of this date, such an important issue as the method of implementing DTV carriage.

In fact, while a significant number of stations may have elected retransmission consent ("RC") in the initial 1993 cycle, they did so believing that they could obtain substantial compensation from cable operators. In light of the disappointing experience in that regards in 1993, when the election cycle came up again in 1996, It is believed that many more broadcasters elected must-carry because they had no other choice. The reasons that a large number of stations elected must-carry in 1996 are obvious: electing RC negotiations leaves open the significant possibility that if terms of an RC Agreement are not agreed upon by the operator and the station, then the operator will not carry the station. Stations that do not have the leverage to force the cable operator

to agree to carriage through the RC negotiation process will not elect RC, but rather will elect must-carry.

In sum, many stations will not be electing RC during the transition era, and even stations that currently elect RC will likely lack the leverage to use negotiations to obtain carriage for a second DTV signal. Accordingly, the proposal to primarily rely on RC negotiations to handle the carriage of DTV signals is based on a flawed premise, and would dangerously leave many or most stations to "fend for themselves" in obtaining carriage of their DTV signal. Ultimately, the result will be less stations obtaining carriage of their DTV signal in the transition, causing less viewers to obtain the benefits of DTV.

An ironic twist to the proposal to use RC negotiations to obtain DTV carriage is that the only stations that will be able to do so are the ones that are less likely to have trouble obtaining DTV carriage: namely, major market affiliates of the major national networks on cable systems close to their city of license. This excludes many of the stations Congress was concerned about in enacting must-carry, including the small independent stations. Congress was specifically mindful of the damage that cable operators can impose on such stations through manipulation or denial of carriage. *See, e.g.*, H.R. Rep. No. 102-628, 102d Cong., 2d Sess., at page 51:

> The record before the Committee persuasively demonstrates that the substantial governmental interest in promoting competition in the video marketplace will be threatened if cable systems have unfettered discretion to drop local broadcast signals, carry them in a disadvantageous manner .... This was pointed out to the Committee in the testimony of Thomas L. Goodgame, Chairman of the Television Board of the National Association of Broadcasters: 'Cable systems are dropping broadcast signals or demanding payments or other concessions for carriage.... This is

> particularly true of independent stations, since many of their programming choices are being copied by some cable-only programmers. If a cable operator believes he can increase profits by dropping (or not adding) an independent station and forcing viewers to switch to similar cable-only programming, then the independent station will be dropped or not added.

Accordingly, while carriage of DTV could be part of RC negotiations, it would be dangerous and most unwise for the Commission to rely on RC negotiations as the primary tool for implementing cable carriage of DTV signals.

B. There is No Rational Basis for Repealing Program Exclusivity Rules.

In paragraph 96 of the *Notice*, the Commission seeks comments as to whether program exclusivity rules (those addressing syndicated exclusivity and network non-duplication) "are applicable in the digital age, with or without must-carry, and whether it would be possible to repeal these rules and instead rely on the retransmission consent provisions of Section 325 of the Act to protect the rights in question." This strange proposal is again based on the flawed premise (discussed above) that most or all stations will elect RC, and accordingly the proposal should be discarded for that reason alone. However, an even more dangerous flaw in the proposal is that it ignores a basic premise of the utility of the program exclusivity rules: exclusivity can be demanded by a station even if that station is not currently carried on the cable system that is the recipient of the claim. Thus, many stations that rely on the protection of program exclusivity rules would not be able to obtain similar protection in the context of RC negotiations, because they would not be participating in such negotiations with cable operators that do not carry the station demanding protection. Accordingly, the proposal to make program exclusivity protection part of RC negotiations would not just "shift" the

source of protection from one rule to another, but rather, would strip the protection from many stations that currently are entitled to the protection, without giving those stations a substitute means for obtaining that protection. It is not believed that this is the result intended by the Commission.

In addition to stripping program exclusivity protection from stations that are currently entitled to such protection, the Commission's proposal would interfere with the RC negotiations that the Commission suggests could replace exclusivity rules. Currently, when a station enters into RC negotiations with a cable operator, one factor that the cable operator must consider is that if it denies carriage to the station, that station may still enforce exclusivity demands on the operator, denying that operator access to certain network and/or syndicated programming. If program exclusivity rules were to be eliminated, and thus this consequence for denying carriage to a local station eliminated, not only would the current balance in RC negotiations be further shifted in favor of cable operators, but the overall result would be more carriage of programming that is "distant" to local subscribers, and less carriage of local programming. Such a result is inconsistent with both the goals of this proceeding and with the policies that lead to the enactment of program exclusivity rules.

In light of the importance of program exclusivity rules to the market for and marketing of local television programming, it is surprising that the Commission would propose such a radical step in a proceeding addressing such a significantly different topic as DTV must-carry. Indeed, given the substantial and extended rulemaking proceedings employed by the Commission to create and modify the program exclusivity

rules, and the subsequent litigation over the proceeding to modify the rules, if the Commission believes that the program exclusivity rules need to be revised again, then it should initiate a separate proceeding on such matters.

C. *The Burden of Interim Carriage of DTV Signals Will Not be Substantial, Even on "Small" Systems.*

Congress and the Commission have created an ambitious goal: the rapid, nation-wide implementation of a new television broadcast system. While there will likely be significant benefits to viewers from the advent of DTV, fulfilling this ambitious goal will no doubt impose significant burdens on broadcasters, at least in the short run. Yet while the rapid implementation of DTV through DTV must-carry rules may impose some burden on cable operators, it should be remembered that the structure of must-carry rules, and other factors, inherently limit that burden, even for "small" cable systems, regardless of how such systems are defined.

First, as set forth in paragraph 51 of the *Notice*, the provision of Section 614 of the Act limiting must-carry obligations to one-third of a system's channel capacity ought to continue to apply in the DTV transition era. Most cable operators nationwide do not currently devote that one-third of their channel capacity to must-carry stations, because the channel capacity of most cable systems is significantly more than three times the number of local commercial television stations.[8] Thus, while cable systems would likely have to increase their number of must-carry signals during the transition, many or most

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[8] *E.g.,* most systems with 60 channels do not currently devote one third of their capacity to must-carry, because most markets do not have 20 local commercial stations.

of those systems still would not meet the one-third capacity cap. In any case, the one-third channel capacity cap would not change, and thus the overall obligation set forth in the rules would not be changed from the current overall obligation.

Second, it is widely recognized in other contexts that cable systems are as a general matter eager to expand their channel capacity for a variety of reasons,[9] and are in fact doing so. As operators continue to upgrade their systems in the next few years, increased new channel capacity should more than accommodate the few additional channels required in most markets for carriage of local DTV signals.

The Commission must remain mindful of these principles in considering whether any exemptions from DTV must-carry obligations should be provided for "small" cable systems. Furthermore, it should be noted that Section 614 (b)(1)(A) of the Act already provides an exemption from must carry requirements for truly small cable operators, *i.e.,* those with fewer than 12 activated channels and 300 subscribers. Even if the Commission has Congressional authority to determine whether DTV stations are entitled to must-carry (a point which is not conceded), the Commission does not appear to have the authority to create its own exemption from must-carry requirements, different from the one explicitly mandated on this topic by Congress in the Communications Act.

It should also be noted that "small" cable systems are often located in smaller television markets. In considering the possibility of exempting small cable systems from

---

[9] Among the pressures on operators to expand capacity are the need to compete with multi-channel digital satellite services, the desire to provide a wide variety of broadband services, and pressure from franchising authorities to increase capacity as part of a franchise renewal.

the obligation to carry DTV signals, the Commission should be cognizant of the fact that, as extensively discussed above, smaller market viewers are as entitled to the benefits of DTV as viewers in larger markets.

The essential nature of DTV station carriage by cable systems is perhaps best demonstrated by Exhibit 1 hereto which lists cable carriage of each market of the commenting parties. Every listed system has at least thirty-five channels available and two have over seventy. In the cities of license, those subscribing to cable exceeds fifty percent. The same is true in each market's DMA. What this demonstrates is the tremendous power of CATV to hobble, if not destroy, the development of DTV operations in such markets if DTV carriage is not required during the transition period. With so much signal capacity, every CATV system is the dominant player for audience as well as advertising dollars. Annual spending on programming by cable "exploded" from $1.784 million in 1984 to almost $6 billion in 1997, an increase of 236 percent. Annual cable operator investment in basic cable programming rose from about $300 million in 1984 to over $3.8 billion in 1987. There are now some 164 national cable networks which are substantially eroding network viewing and, of course, non network viewing. Cable advertising which has grown from $5.684 billion in 1995 to a projected $7.926 billion in 1997.[10] With cable operators continuing to upgrade their system expanding "$6.01 billion this year alone", television broadcasting even without the burden of DTV, has a real fight on its hands to provide service in the public interest as Congress demands. To strip television stations of a right to have their DTV

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[10] Source. *Cable Television Industry Overview* as of April 1998 published by NETA. See Exhibit 2.

transmissions carried on cable television systems in the same manner as are their NTSC transmissions, is an invitation to disaster.

IV. Conclusion

In order to bring the benefit of DTV to viewers throughout the Nation, stations in all markets must have some reasonable assurance that their digital signal as well as their analog signal will be carried by cable operators during the transition period. Reliance on retransmission consent negotiations will not work, and accordingly, must-carry is required if DTV is to be rapidly initiated on a nationwide basis.

Respectfully submitted,

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Paul J. Feldman

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(703) 812-0400

October 13, 1998

EXHIBIT 1

DATA SOURCE:

TELEVISION & CABLE FACTBOOK

Volume 66

Warren Publishing, Inc. (1998)

10/9/98

City	# of Chnls	number of households in city of license	Cable subscriber count in city of license	Non-subscribing households in city of license	percentage of city not subscribing	Total viewing households in DMA	viewing households in DMA not subscribing to CATV	percentage of viewing households not subscribing
Dothan, AL	61	25,000	13,683	11,317	45%	86,210	26,480	30.7%
Little Rock	43	87,093	53,502	33,591	39%	448,440	160,030	35.7%
Colorado Sprg	78	168,000	87,552	80,448	48%	267,410	86,020	32.2%
Grand Jct.	35	43,900	28,110	15,790	36%	54,280	19,090	35.2%
Macon, GA	60	110,711	70,126	40,585	37%	183,600	55,730	30.4%
Worcester, MA	78	157,098	124,047	33,051	21%	163,910	5,130	3.1%
Cadillac, MI	54	7,346	4,736	2,610	36%	142,100	59,440	41.8%
Vanderbilt, MI	n/a	n/a	n/a	n/a	n/a	63,360	29,250	46.2%
Gulfport,MS	40	26,610	22,522	4,088	15%	117,360	22,460	19.1%
S.Luis Obispo	54	66,706	46,000	20,706	31%	n/a	n/a	n/a
Stuart, FL	60	99,042	75,000	24,042	24%	n/a	n/a	n/a
Oak Hill,WV	35	10,900	8,700	2,200	20%	123,230	23,910	19.4%

Data Source: TELEVISION & CABLE FACTBOOK, Volume 66, Warren Publishing, Inc. (1998).

As the empirical evidence indicates, a majority of the commenting stations' viewing audience receives its signal through CATV. However, the number of off-the-air viewers is still considerable - these off-the-air viewers will not have access to DTV signals if DTV stations do not succeed. In particular, the nine stations owned by the commenting parties - and for which viewer data is available - are tuned in to over-the-air signals by nearly a half-million non-cable viewers. In the cities of license alone, more than one quarter million households do not subscribe to or have access to CATV.

EXHIBIT 1

EXHIBIT 2

CABLE TELEVISION INDUSTRY OVERVIEW

10/9/98

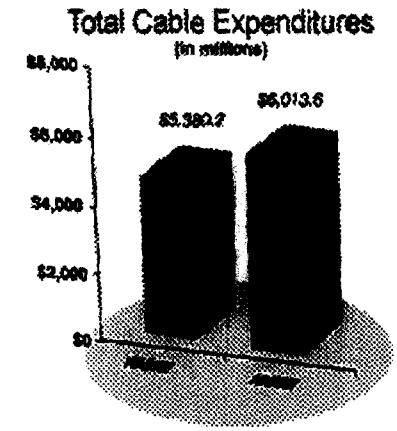
Cable Television Industry AS OF APRIL 1998

Cable Building to Deliver the Future

Cable companies have invested heavily in infrastructure improvements -- **$6.01 billion this year alone** -- bringing our customers higher quality pictures and sound, more programming and two-way capable systems.[1] From 1996 through 2001, the cable industry will spend an estimated $33 billion to upgrade its facilities.

Facility Upgrades

- In 1997, cable operators continued to upgrade their facilities to 550MHz-750MHz, creating more bandwidth for the delivery of more channels and two-way interactive services. **It is estimated that 55% of all cable homes now are passed by 550MHz-750MHz+ plant.[2] And by year-end 1998, 71% of all cable homes will be passed by at least 550MHz.**



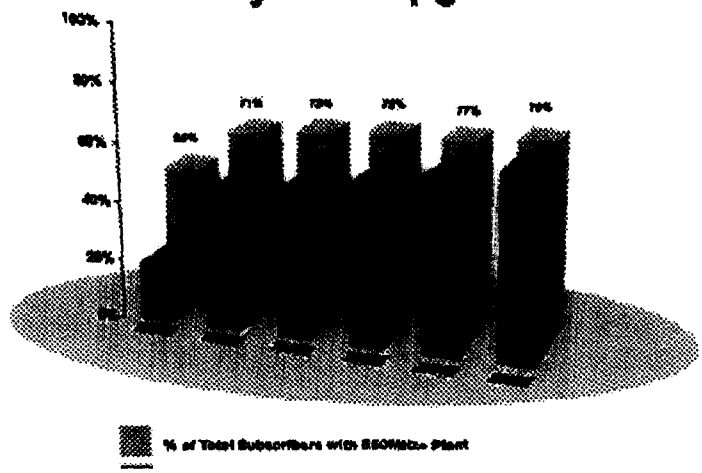
Source: Morgan Stanley, *4Q/1Q Preview*, Jan. 30, 1997, p.4.

MSO Facility Above 550MHz			
	1996	1997E	1998E
Tele-Communications	32%	37%	37%
Time Warner	32%	44%	62%
US West Media	38%	58%	70%
Comcast	53%	73%	98%
Cox	65%	86%	100%
Source: Company data, Deutsche Morgan Grenfall estimates.			

- Moreover, industry analysts estimate that 20% of all cable homes are passed by activated two-way plant, which allows for the deployment of interactive on-line services and telephony.[3] By year-end 1998, 44.8 million homes (47%) will be passed by two-way plant.

- Cable companies accelerated their deployment of fiber optics in 1997 by 27% over 1996, totaling 134,370 route miles; cable operators are projected to deploy 23% more fiber in 1998, totaling 164,750 route miles.

Cable System Upgrades



% of Total Homes Passed with 2-way Plant

Source: Paul Kagan Associates, Inc., Cable TV Technology, June 30, 1997, p. 2.

- Additionally, cable greatly expanded its digital capability by deploying **digital cable technologies** including digital headends and set-top boxes. As cable operators deploy digital technologies -- which allow for as many as 12 high quality digital channels to be compressed into the space of one analog channel -- the quantity and quality of cable services will increase exponentially. It is estimated that 500,000 homes will subscribe to digital cable service this year, and that 2.7 million homes will be subscribers next year.[4]

- In 1997, cable system channel capacity increased to an average 53 channels. However given the fact that larger cable systems tend to offer more channels, the average cable customer received a weighted average of 78 channels, an increase of 14.7% more channels than just one year ago.[5] By year-end 1998, the average cable customer is expected to receive 90 channels.[6]

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[1]Richard Bilotti, 4Q 96/1Q 97 Preview: *"Spending for the Future Growth in New Services,"* Jan. 30, 1997, p. 4.
[2]Paul Kagan Associates, Inc., *Cable TV Technology*, June 30, 1997, p. 2.
[3]Id.
[4]Paul Kagan Associates, Inc., *Cable TV Technology*, Jan. 31, 1998, p. 4.
[5]Paul Kagan Associates, Inc., *Cable TV Programming*, Aug. 31, 1997.
[6]Id.

• As more and more households subscribe to cable, cable operators have increased their investments in cable programming to further enhance program quality and diversity. Overall annual spending on programming exploded from $1.784 million in 1984 to almost $6 billion in 1997, representing an increase of 236 percent. Annual cable operator investment in basic cable programming rose from about $300 million in 1984 to over $3.8 billion in 1997.[16]

• The increased investment in programming translated into not only better programming on existing cable networks but also the development of new cable networks. Today, 164 national cable networks serve a wide variety of interests and issues compared to year-end '95 and '96 totals of 139 and 162 respectively.

• **Cable networks continued to erode broadcast network viewing share in 1997.**

• Cable television viewership increased by two million households from 1996 to 1997 while broadcast networks lost 839,000 households.[17]

• Cable's prime-time viewing audience continues to grow as well. In the November 1997 television sweeps, cable earned a collective share of 33.8 compared with 31.1 in 1996. Cable's average rating increased as well to 21, with the rating increasing to 49 in cable households.[18]

• Cable advertising revenue grew from $5.684 billion in 1995 to $6.775 billion in 1996, and is projected to increase to $7.926 billion by year-end 1997, demonstrating the growing value that major advertisers place on cable programming.[19]

Emmy Nominations

• Cable networks' investments in quality original programming have met with both critical and popular acclaim. This year, cable network programming was honored with a record 138 prime-time Emmy nominations. This figure exceeds the previous record of 125 nominations in 1996, and represent 35% of the total 391 nominations announced. All told, cable programming networks received a record number of Emmys -- 9 out of the 28 prime-time awards bestowed. In addition, cable networks received 19 Emmys in non-televised technical categories, for a total of 28 -- surpassing last year's total.

• Home Box Office received 89 nominations, which set a record for cable networks and was the second highest number among broadcast and cable. Breaking another record for HBO, The Larry Sanders Show received 16 nominations marking an all-time high for any comedy series in a single season. The TV Academy presented HBO with its prestigious Governors Award for seven Comic Relief benefit specials.

• In all, 15 cable networks received at least one nomination,

including 10 networks with multiple nominations: Showtime (9); TNT (8); A&E Television Network (6); Disney Channel (5); USA Network (4); Comedy Central, The Family Channel and TBS (3 each); Nickelodeon (2); American Movie Classics, Bravo, Cartoon Network, Discovery Channel and The Learning Channel (TLC) all received one nomination each.

Cable's Children's Programming

In 1997, the cable industry remained the clear leader in bringing a wide variety of quality programming to families. In addition to popular cable networks whose programming is completely devoted to children (Nickelodeon, WAM! America's Kidz Network), more cable networks are responding to the call for quality children's programming by increasing their commitment to include extended programming blocks just for kids (Disney Channel, Cartoon Network, TLC, The Family Channel) and other networks continue to consistently offer educational and enriching programs for children as part of their regular programming format (The Discovery Channel, The History Channel, C-SPAN).

Specifically:

- Cable TV provides more children's programming -- ***almost four times as much as all other programming sources combined*** -- averaging 341.3 hours per week on cable, compared to all other sources combined airing an average of 87.3 hours per week.[20]

- Cable TV networks offer nearly 80 percent of all television *hours* devoted to children.[21]

- More than 86 percent of children's programming viewed by children in cable households is viewed on cable TV networks.[22]

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[16] National Cable Television Association estimate based on Paul Kagan Associates, Inc.
[17] Cabletelevision Advertising Bureau analysis of Nielsen data, published in *Cableday*, Dec. 1, 1997, p. 2.
[18] Id.
[19] Paul Kagan Associates, Inc., *The Cable TV Financial Databook*, 1997, p. 15.
[20] Cabletelevision Advertising Bureau, 1998 Cable TV Facts, p. 53.
[21] Id.
[22] Id.

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