

on cable operators' and programmers' speech posed by analog must-carry regulations is inapposite to the proposed transitional digital must-carry rules. As shown above, the imposition of digital must-carry rules during the transition period would burden substantially more cable operator and programmer speech than is necessary to further any asserted governmental interest. By contrast, there is every reason to expect that a less intrusive alternative -- leaving these matters to resolution in the marketplace -- would produce a better outcome without the damage to First Amendment rights and viewer interests associated with the proposed digital must-carry rules. Therefore, the proposed rules cannot satisfy the narrow-tailoring prong of intermediate First Amendment scrutiny.

CONCLUSION

TCI believes that a transitional digital must carry requirement would violate the First Amendment. Specifically, such a rule cannot meet the applicable constitutional standards because (1) there is no problem to which imposition of a transitional digital must carry obligation would be an appropriate solution and (2) the proposed rules would not be "narrowly tailored" so as to avoid significant harm to cable operators, programmers, and consumers. Even if the Commission did have a Constitutionally sufficient basis for such rules, it would still be contrary to the public interest to impose such rules on a business as complex and dynamic as digital television. Instead, as it has in other similarly situated industries, the Commission should allow the marketplace time to resolve the issues raised in this NPRM. TCI therefore urges the Commission not to adopt any transitional digital must carry rule.

Respectfully submitted,

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