

BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C.

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In the Matter of)
Carriage of the Transmission)
of Digital Television Broadcast Stations)
Amendments to Part 76)
of the Commission's Rules)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 98-120

Comments of Pegasus Communications Corporation

Introduction

Pegasus Communications Corporation ("Pegasus") hereby files its comments in the above-referenced proceeding. Pegasus believes that there are two separate, but fundamental issues to be addressed by the Commission in this proceeding:

- i) Whether, and to what extent, the must carry/retransmission consent obligations of cable systems in regards to digital broadcast television signals ("DTV") can, or should, be different from the must carry/retransmission obligations of cable systems in regards to existing broadcast television signals ("Analog TV"); and
ii) Whether, and to what extent, cable systems should be burdened with must carry obligations in regards to both Analog TV and DTV during the transition period when broadcasters are licensed to broadcast signals in both Analog TV and DTV.

Pegasus is uniquely qualified to offer its perspective on the issues facing the Commission in its evaluation of these matters, because Pegasus is currently a broadcaster, a cable operator and a distributor of DBS services. In broadcast, Pegasus currently operates Fox, WB and UPN-affiliated television stations in 6 DMA's comprising approximately 1.9 million television households. In cable, Pegasus operates a cable television system in Puerto Rico which, upon completion of the planned acquisition of a contiguous cable system, passes approximately 175,000 TV homes and serves 50,000 subscribers. Finally, in DBS, Pegasus is the nation's largest independent distributor

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of Direct TV, serving over 400,000 DBS subscribers in 36 states. As a broadcaster, Pegasus recognizes the crucial importance of cable carriage to the viability of the new DTV stations. However, as a cable operator, we also recognize the potentially significant burden that mandatory carriage of both Analog and DTV signals could place on cable systems during the transition period from Analog TV to DTV.

Pegasus believes that the concerns of broadcasters and cable operators can be balanced in a manner that is simple and that will assure the preservation of free over-the-air broadcasting through the transition from Analog TV to DTV. To accomplish these objectives, the Commission should:

- i) Acknowledge that the existing must carry/retransmission consent obligations which currently govern Analog TV apply to DTV with such modifications as are necessary to reflect the technical differences between the analog and digital transmission of a station's broadcast signal; and
- ii) Define new rules, applicable only during the transition period from Analog TV to DTV, which assure that cable operators are burdened with must carry obligations for *one* (not both) of a local broadcaster's Analog TV or DTV signals, but which allow the broadcaster to elect whether its Analog TV or DTV signal will be subject to the must carry election.

The Need for Extending Must Carry to DTV

In the Turner decision upholding the must carry rules,¹ the Supreme Court found a strong governmental interest in the preservation of free over the air television, and in the unique services that such stations provide to the citizens of this country. The Court judged this interest strong enough to overcome the minimal burdens placed by the must carry/retransmission consent rules on the free speech rights of the affected cable systems. In view of the action Congress has taken to create the new digital television spectrum, to mandate a reasonable transition period, and to direct

¹ Turner Broadcasting System, Inc. v. Federal Communications Commission, 520 U.S. 180 (1997)

the Commission to resolve must carry concerns, Pegasus submits that the same public interest benefits must still be assumed to prevail.

There is no evidence that free, local programming comparable in quantity, quality, timeliness or audience acceptance to that provided by over-the-air broadcasters is to be found in any other television medium today.² DTV will provide the opportunity for local stations to increase the quantity and quality of their local programming in a spectrum efficient manner. The Commission, Congress and the American public have a strong interest in expediting the transition from Analog TV to DTV, because it will allow the Commission to reclaim for re-auction the spectrum formerly utilized for Analog TV. For these reasons, Pegasus believes that the public interest will be served if the must carry/retransmission consent obligations, which currently require cable systems to carry Analog TV signals, are extended to DTV signals.

Transition Rules

Pegasus recognizes the legitimate concerns of cable operators were new must carry/retransmission consent rules implemented which would obligate them to carry *both* the Analog TV and DTV signals of local broadcasters during the transition from Analog TV to DTV. Such an obligation, if implemented, would effectively double the current must carry/retransmission consent

² The Commission asks in its Notice whether cable local origination programming has developed sufficiently to make continuation of must carry unnecessary. It has been the experience of Pegasus that local news and other substantive local content on cable systems has developed only in the very largest markets. Even in these markets, local origination channels are limited in programming and their programming rarely, if ever, generates an audience significant enough to be reflected in Nielsen ratings. This is in stark contrast to the ratings generated by local broadcasters. Because most cable systems have an insufficient local subscriber base to justify the high costs of local news content, Pegasus believes that such content will develop slowly, if at all, in smaller television markets.

obligations of cable operators, even though it is likely that during the transition from Analog TV to DTV there will be duplication of some content between the Analog TV and DTV signals of broadcasters. Pegasus recognizes that there are substantial differences in channel capacity among cable systems, that there are large differences in the number of licensed broadcasters in different DMAs and that there are likely to be differences in how and when cable operators upgrade their systems to carry digital transmissions. As the Commission recognizes, these differences will undoubtedly affect cable systems' ability to meet their current Analog TV must carry/retransmission consent obligations *and* simultaneously carry broadcasters' new DTV signals. However, Pegasus also notes that the vast majority of cable systems have greater channel capacity today than at the time of enactment of the current must-carry rules. Cable systems are therefore likely to be proportionally less burdened by increased channel demands today than would have been the case at that time.

Pegasus believes that the concerns of cable operators in regards to being burdened with must carry carriage obligations on account of both Analog TV and DTV signals can be met with a simple set of transition rules. These rules would provide that each broadcaster may elect to have the must carry rules apply to either of their Analog TV or DTV signals, but not to both. (This election would be made at the same time as the broadcaster elected must carry or retransmission consent.) Such a requirement would ensure that cable operators are no more burdened as to channel capacity during the transition from Analog TV to DTV than they are at present.

Early in the transition period a stronger station may elect must carry for its DTV signal to speed the introduction of the new DTV signals, taking a risk that the cable system would still elect to carry its Analog TV signal on a basis to be negotiated voluntarily. By contrast, weaker stations feeling that they were not in a position to negotiate retransmission consent for their Analog TV signal might, in the early stages of the transition to DTV, choose must carry for their Analog TV

signal. As the transition period progressed, and as the simulcast provisions of the Commission's digital broadcasting rules take effect, most stations would presumably elect must carry for their DTV signal, as it would by definition encompass the programming broadcast on their Analog TV signal.

The transition rules Pegasus proposes will not increase the Analog TV must carry/retransmission consent obligations to which cable systems are currently subject. They also provide a framework that provides broadcasters and cable operators the freedom to negotiate, on a case-by-case and localized basis, issues relating to must-carry, retransmission consent, modulation techniques, interactions of set-top boxes and digital television sets, while assuring broadcasters and the public that cable operators cannot arbitrarily limit the retransmission of new DTV signals.

DTV Must Carry Obligations

Currently, Analog TV must carry requires that all cable systems pass through to their customers "undegraded" the signals broadcast by television stations in their respective markets, including, "to the extent technically feasible, program material carried in the vertical blanking interval or on subcarriers". 47 U.S.C. Section 534 (b)(3). This requires that cable systems provide their subscribers a television station's broadcast signal (video programming and associated closed captioning and related broadcast services) in a format equaling the quality of the available over-the-air signal and easily displayed on a standard television set. Pegasus believes the Commission should implement DTV must carry obligations that assure cable subscribers the same rights that consumer has in the current system - the ability to receive a television station's programming displayed in a format equaling the quality of the over-the-air signal and easily displayed on a standard television set. While the character and variety of the programming services broadcast by local DTV stations will certainly change from the one-picture-with-sound-and-minimal-enhancements programming

that characterizes Analog TV towards a greater depth and multiplicity of offerings (that is, after all, the promise of DTV), the must-carry/retransmission consent carriage obligations should remain substantively unchanged.

Pegasus suggests therefore that the Commission enact DTV must carry/retransmission consent rules providing:

- i) Cable systems will be required to transmit the entire, undegraded bit-stream content of broadcasters' 6 MHz DTV channel;³ and
- ii) Cable systems will be required to deliver that undegraded bit-stream to each subscriber's television set in a form substantively indistinguishable from what would result from an over-the-air signal from the same station.

This will give DTV stations the ability to explore the potential of digital technology and to develop audiences for any new services enabled by digital technology without having their efforts subject to the potentially arbitrary judgement of cable operators that such services are not "integral" to their DTV signals. It will also avoid entangling the Commission in a time-consuming and market-frustrating determination of what material is "integral" or "program-related" and must be carried, and what is not and therefore may be denied carriage. Pegasus notes that Congress itself has recognized, that "given the dynamic nature of the [digital] data flow, these services probably cannot be separated or segmented". (Communications Act of 1995, House Report on H.R. 1555, Report

³ The Commission expresses its reservations that it has the authority to order the carriage of the entire 6 MHz channel in light of the language of Section 336 of the Act which provides that "no ancillary or supplemental service shall have any right to carriage under Section 614 or 615". However, this provision does not prohibit the Commission from ordering that the entire 6 MHz digital channel is entitled to carriage, instead only prohibiting the mandatory carriage of the ancillary and supplemental services standing alone. The legislative history cited above makes clear that Congress recognized that ancillary and supplemental services will be indivisible from the main signal of the station. The House Report goes on to state that a station may broadcast such services when no primary broadcast signal is being broadcast, particularly during the early years of the digital transition. It is such independent transmissions which are not themselves entitled to independent carriage absent a primary broadcast signal.

No. 104-204 at p.116.)

Conclusion

For the reasons set forth above, Pegasus respectfully requests that the Commission adopt the proposals set forth herein.

Respectfully Submitted,

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