

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission’s Rules)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association¹ hereby submits comments on the *Fifth Further Notice of Proposed Rulemaking* (“*Notice*”) in the above-captioned proceeding.² The *Notice* seeks comment on the Commission’s tentative conclusion to extend the high definition (“HD”) carriage exemption for small cable systems.³ The HD carriage exemption provides relief to a limited universe of cable systems, namely “small cable systems with 2,500 or fewer subscribers that are not affiliated with a cable operator serving more than 10 percent of all MVPD subscribers, and those with an activated channel capacity of 552 MHz or less,” from a requirement to carry and HD broadcast signal in HD.⁴ We agree with the Commission’s tentative conclusion that “the public interest would be served by extending the HD carriage exemption for three years, or until June 12, 2018.”⁵

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 80 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$230 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 28 million customers.

² See *In re Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules, Fifth Further Notice of Proposed Rulemaking*, CS Docket No. 98-120, FCC No. 15-29 (rel. Mar. 12, 2015). (“*Notice*”).

³ See *id.* ¶ 1.

⁴ *Id.* ¶¶ 2-3.

⁵ *Id.* ¶ 1.

DISCUSSION

In extending the exemption in 2012, the Commission explained that the same financial and capacity constraints it recognized four years before for these small systems continued to exist, so it provided them “additional time to upgrade and, where necessary, expand their systems to come into full compliance with the material degradation provisions.”⁶ The Commission recognized that “requiring small systems to comply with the HD carriage requirement would result in these systems dropping existing channels or shutting down.”⁷ As detailed in the ACA Petition, circumstances for some small cable systems have not changed in the past three years – for that limited group, an exemption from a requirement to carry an HD broadcast television station in HD remains essential today and should be extended.⁸

The universe of small systems that qualify for the exemption (and the number of subscribers those systems serve) is small and has continued to decline as systems convert to digital and launch HD services, are consolidated with other systems, or are shut down. For example, according to NCTA estimates, only 2,110 systems (1,571 fewer systems than in 2011) qualify for (but do not necessarily take advantage of) the exemption because they serve 2,500 or fewer subscribers and are not affiliated with an operator serving more than 10 percent of all MVPD subscribers.⁹ These systems serve 1,309,000 subscribers – over one million subscribers

⁶ *Id.* ¶ 3 & n.11 (citing *In re Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fifth Report & Order, 27 FCC Rcd 6529 ¶¶ 21-22 (2012) (“*Fifth Report & Order*”).

⁷ *Fifth Report & Order* ¶ 21.

⁸ *See Notice* ¶ 4 (reporting that ACA asserts that the exemption “is still needed to protect a small number of systems and their subscribers from the potential costs and service disruptions that would result from immediate compliance with an HD carriage requirement”) (citing American Cable Association (“ACA”) Petition for Rulemaking at 2 (Jan. 27, 2015) (“*ACA Petition*”).

⁹ NCTA analysis of Nielsen and SNL Kagan Media Census data. In 2011, there were 3,681 such systems. *See* NCTA Comments, CS Dkt. No. 98-120, at 23 (filed Mar. 12, 2012) (“*2012 NCTA Comments*”).

fewer than that group represented in 2011.¹⁰ There is every reason to expect this trend to continue over the next three years. But, for some of the small systems that remain, reliance on the HD carriage exemption is critical.

Many small systems serve a small customer base, are located in rural communities characterized by small populations, few homes per mile, low activated bandwidth capacity, and in some cases, geographic isolation.¹¹ These systems have evaluated the needs and demands of their subscribers, and the costs and benefits of fully transitioning to digital. They face ubiquitous competition from HD-capable DBS providers. If they have not yet upgraded, it is because in the current environment there is no business case for upgrading given their limited customer base and their inability to obtain a sufficient return on investment.

Without the exemption, operators of small cable systems would be forced to incur significant expenses at each headend to enable them to provide broadcast HD signals. As explained in its petition, ACA “has found that very little has changed since 2012 to alter the conclusion reached by the Commission that the exemption is necessary to protect small system operators and consumers from the potential costs and service disruptions that immediate compliance would engender.”¹²

Forcing such operators to incur uneconomic investments to upgrade to carry HD broadcasts would undermine their viability and their ability to compete.¹³ Given the small

¹⁰ NCTA analysis of Nielsen and SNL Kagan Media Census data. In 2011, these systems served almost 2,346,000 subscribers. *See 2012 NCTA Comments* at 24.

¹¹ Applying reporting requirements to “track each system’s progress for coming into compliance” would be burdensome for the resource-strapped systems relying on the exemption and would not help to spur their transition to digital or otherwise facilitate compliance. *See Notice* ¶ 14.

¹² *ACA Petition* at 2-3; *see also id.* at 14 (explaining that, “if required to transmit must-carry signals in HD, many small systems will be forced to incur costs that either will be difficult to absorb or will need to be passed through to their customers”).

¹³ To our knowledge, systems relying on the exemption have not “received complaints from subscribers about the absence or amount of HD programming available to them.” *See Notice* ¶ 12.

customer base over which to spread these costs, regulatory mandates to upgrade a system serving fewer than 2,500 subscribers could represent “the last straw” in an operator’s decision to continue operating a system. As the Commission has pointed out, “the loss of a small cable system could mean the effective loss of all MVPD service for some customers,” and, “in some areas, due to poor over-the-air reception, the loss of a small cable system could mean the loss of any access to some or all broadcast signals as well.”¹⁴ In light of that reality, it is plainly in the public interest to maintain the exemption for systems serving 2,500 or fewer subscribers for another three years.¹⁵

Likewise, the Commission should continue to exempt cable systems with a capacity of 552 MHz or less. Small capacity systems are typically channel-locked, and must maximize the use of the capacity available in order to remain competitive with the much higher-capacity DBS providers. Devoting any additional bandwidth for HD carriage would incur steep opportunity costs, including putting at risk any plans to introduce faster broadband service, or, for some small systems, providing broadband access service at all.¹⁶ Operators of these capacity-constrained systems already have a strong marketplace incentive to upgrade where they can, because upgrades would allow them to offer a wider variety of video and non-video services in an

¹⁴ *Fifth Report & Order* ¶ 21.

¹⁵ We see no reason for the Commission to depart from the current subscriber threshold. *See Notice* ¶ 10 (seeking comment on the current definition of “small system”). In establishing the threshold, the Commission held that “[i]n systems with 2,500 or fewer subscribers, the cost-per-subscriber could be *significant*, even if costs were borne in part by analog subscribers” *In re Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fourth Report & Order, 23 FCC Rcd 13618 ¶ 9 (2008) (emphasis added). As reported in the *ACA Petition*, “[t]oday, the circumstances that justified the HD carriage exemption and its initial extension, particularly the lack of available financial resources to purchase the necessary equipment, have not improved.” *ACA Petition* at 12.

¹⁶ As NCTA noted previously, such a requirement would “undermine one of the cable industry’s true success stories – deploying, in many cases for the first time, broadband access to rural America. *See 2012 NCTA Comments* at 27. Moreover, it would undermine the Commission’s goals to increase broadband service in rural areas. *See id.* at 27-28 & n.32.

intensely competitive MVPD marketplace. But, financial realities are such that cable operators relying on the exemption cannot cost-justify upgrading their systems for now.

Finally, we agree with ACA that, for the limited subset of analog-only systems, the Commission should confirm that such systems are not subject to the HD carriage requirement because such carriage is technically infeasible.¹⁷ If the Commission decides that such systems are subject to the HD carriage requirement, it should grant a permanent exemption to such systems. As NCTA has previously explained, it would make no sense to repeatedly require such systems – which, by NCTA’s estimation serve slightly more than one half of one percent of basic cable subscribers¹⁸ – to expend resources to pursue additional waivers when the economics make it impractical for them to upgrade to digital.

* * *

As ACA notes, the number of cable systems relying on the exemption “is declining and will continue to decline over the next three years.”¹⁹ Overall, the cable industry continues to work toward a full transition to digital, including the upgrading of small cable systems.²⁰ Over

¹⁷ See *ACA Petition* at 16-17; *Notice* ¶ 15.

¹⁸ Based on NCTA’s analysis of SNL Kagan data, analog-only cable systems serve approximately 293,000 subscribers – representing 0.55% of all basic cable subscribers. See SNL Kagan, *U.S. Cable Industry Benchmarks* (reporting a total of 53.7 million basic cable subscribers as of April 1, 2015).

¹⁹ *ACA Petition* at 15.

²⁰ See, e.g., *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, MB Dkt. No. 14-16, FCC 15-41 ¶ 93 (rel. Apr. 2, 2015) (reporting that Comcast and Time Warner Cable systems provide at least 750 MHz capacity and that Charter systems provide at least 550 MHz capacity); Mari Silbey, *Charter Completes Digital Transition*, Light Reading, Dec. 9, 2014 (indicating that Charter completed its transition to digital in a little over a year), available at <http://www.lightreading.com/video/video-services/charter-completes-digital-transition/d/d-id/712505>; Jeff Baumgartner, *Cox All-Digital Wave Reaches More Markets*, Multichannel News, Mar. 19, 2015 (explaining that spectrum reclaimed in Cox’s transition to digital will be used to increase the operator’s “digital TV channel offerings, expand its VOD service and free up spectrum for DOCSIS 3.1”), available at <http://www.broadcastingcable.com/news/technology/coxs-all-digital-wave-reaches-more-markets/138927>; Mike Robuck, *Vyve Announces Faster Data Tiers*, CED, June 23, 2014 (noting that Vyve announced its “analog-to-digital project” in early 2014 and that going to all-digital would release bandwidth that would allow it to “offer more HD channels and faster DOCSIS 3.0 speeds”), available at <http://www.cedmagazine.com/news/2014/06/vyve-announces-faster-data-tiers>.

time, as the cable plant is fully upgraded, the HD carriage issue will resolve itself for systems serving the vast majority of subscribers. In the interim, the limited exemption remains “necessary to protect the viability of small systems and their service to rural and smaller market consumers.”²¹

CONCLUSION

The Commission should continue to provide small systems necessary flexibility and extend the HD carriage exemption for another three years.

Respectfully submitted,

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²¹ *Fifth Report & Order* ¶ 20.