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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

CS Docket No. 98-120

To: The Commission

REPLY COMMENTS

LeSea Broadcasting Corporation ("*LeSea*"), by its attorneys, hereby submits its Reply Comments to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} The Communications Act of 1934, as amended (the "*Communications Act*"), requires Congress to adopt rules for the mandatory carriage of local digital television ("*DTV*") signals not just during the DTV transition, but in a fully digital environment as well. In implementing this congressional mandate, the Commission should adopt a streamlined regulatory scheme that balances the rights and burdens of local television stations -- especially independent stations -- with those of cable operators.

With this principle of fairness as a guide, LeSea strongly urges the Commission to require that cable operators carry one DTV signal and the corresponding analog signal of each local broadcast station that it now carries. Both of these signals would be carried on the basic programming tier, without material signal degradation. These obligations would commence

^{1/} *In the Matter of Carriage of the Transmissions of Digital Broadcast Stations*, Notice of Proposed Rulemaking, CS Docket No. 98-120, FCC 98-153 (rel. July 10, 1998) ("*Notice*").

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shortly after May 1, 2002, the date on which all commercial stations must begin transmitting a digital signal. At the end of the DTV transition, cable operators would, of course, only be required to carry a single DTV signal of each local broadcast station.

This regulatory scheme will ensure that independent local broadcast stations do not face cable carriage discrimination for either their analog or DTV signal during the transition and beyond. Accordingly, mandatory carriage for all local stations' chosen DTV signal will ensure that independent stations do not begin the digital era at a competitive disadvantage, as they were prior to implementation of analog must carry.

Background

LeSea is the licensee of eight full-service UHF stations and two low power television stations nationwide.^{2/} Each of LeSea's stations broadcast a mix of family entertainment, religious and locally-produced programs, including weekly public affairs programs, weekly religious program and local sports, including many high school contests.

LeSea is fully aware of the critical need for cable carriage. Prior to the passage of the 1992 Cable Act and the analog must carry regulations, LeSea's stations faced significant discrimination at the hands of local cable operators. Operators often dropped or refused to carry LeSea stations in favor of carrying other cable channels or local stations perceived to have greater audience support. This discrimination severely restricted their access to significant portions of their television markets resulting in reduced revenues, operating losses and the need

^{2/} LeSea owns the following stations: WHMB-TV, Indianapolis, Indiana; WHME-TV, South Bend, Indiana; WHNO-TV, New Orleans, Indiana; KWHB-TV, Tulsa, Oklahoma; KWHD-TV, Castle Rock, Colorado; KWHE-TV, Honolulu, Hawaii; KWHH-TV, Hilo, Hawaii; KWHM-TV, Wailuku, Hawaii; KWHS-LP, Colorado Springs, Colorado; and K69ET, Oklahoma City, Oklahoma.

to reduce or terminate community-oriented programming. At that time, the lack of access to more than 65% of the television households in each market and the concomitant revenue losses threatened the continued economic viability of the LeSea stations.

LeSea understands that the transition to a digital environment is inevitable. However, to prevent a repeat of the discrimination that occurred prior to the adoption of analog must carry, mandatory cable carriage of the DTV signal of all currently carried local televisions also must be inevitable. Congress and the Commission have directed broadcast licensees -- including LeSea -- to convert to digital and return their analog spectrum by December 31, 2006. Compliance with these commands likely will cost each local station upwards of \$1,000,000. For group owners such as LeSea, the cost will exceed \$15,000,000.

The Commission therefore has a corresponding obligation to protect this investment by assuring that each DTV signal will be carried by cable operators and reach the widest possible audience. Depriving LeSea and other independent stations of mandatory DTV cable carriage would deprive them of access to more than 65% of the television households in their markets, a staggering number considering that almost no one with access to cable is expected to purchase an over-the-air antenna to receive DTV signals not carried by their local cable operators. Quite simply, without the assurance of mandatory DTV cable carriage for all stations, there is simply little incentive for local stations to timely construct DTV facilities, for viewers to purchase sets and for programmers to develop digital programming.

Discussion

I. The Commission Is Required To Adopt DTV Must Carry Rules.

The Communications Act requires the mandatory carriage of local television stations' DTV signals. Section 614 of the Cable Television Consumer Protection And Competition Act of 1992 (the "*1992 Cable Act*") provides that cable operators "shall carry . . . the signals of local commercial television stations . . ."^{3/} The term "local commercial television station" encompasses "any full power broadcast station . . . licensed and operating on a channel regularly assigned to its community by the Commission."^{4/} Because a local television station's DTV signal plainly falls within these definitions, the Communications Act unambiguously requires some form of DTV must carry.

Indeed, Congress specifically addressed the carriage of DTV signals in the 1992 Cable Act, directing the Commission to "initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards."^{5/} Clearly, the provision does not order the Commission to assess whether such carriage is necessary, only to modify its existing carriage standards to accommodate digital television signals. Moreover, there is no specific exclusion from the must carry requirements in the 1992 Cable Act for DTV signals even though Congress was aware of the transition and easily could have exempted those signals from the must carry rules. In short,

^{3/} See 47 U.S.C. § 534(a) (codifying Section 614 of the 1992 Cable Act).

^{4/} 47 U.S.C. § 534(h)(1)(A).

^{5/} 47 U.S.C. § 534(b)(4)(B) (Section titled ADVANCED TELEVISION).

applicable law commands the Commission to retain mandatory cable carriage during the DTV transition and into the fully-digital era.

II. Mandatory Carriage Should Begin On May 1, 2002, Or Soon After.

In the Notice, the Commission proposed six different options for implementing mandatory carriage during the transition period. LeSea believes that “The Deferral Proposal,” under which must carry would be delayed for a given period, most equitably balances the competing interests of cable operators, network affiliates, independent stations and consumers.

The Commission’s rules provide that all commercial broadcast stations must begin transmitting a digital signal by May 1, 2002. This date consequently provides an apt triggering event for local stations’ must carry rights. Prior to that date, only affiliates of Fox, ABC, NBC and CBS in the top 30 television markets are required to broadcast digitally. While these stations may reach a majority of the television homes nationwide, they account for only 120 of the 1215 commercial television stations nationwide.^{6/} Promulgating rules that enable these stations to obtain mandatory carriage before all other stations are even required to broadcast a DTV signal would unfairly tilt the competitive balance toward these larger, network-affiliated stations would fundamentally disadvantage independent stations such as those owned by LeSea, by allowing cable operators to meet their must carry capacity with only network stations and to refuse to carry (or drop) independent and religious stations.

^{6/} Broadcast Station Totals As of September 30, 1998 found at http://www.fcc.gov/Bureaus/Mass_Media/News_Releases/1998/nrmm8035.txt.

As the Commission recognized in the *Notice*, a deferred must carry roll-out will engender important public interest benefits. Broadcasters and cable operators will have the opportunity to develop workable business models for the digital era. There will be sufficient time for cable systems and broadcasters to resolve transmission, compatibility and other technical issues. A delayed trigger also will give cable operators ample time to upgrade their technology and channel capacity to accommodate the increased number of must carry signals.

Furthermore, delaying the must carry trigger until May 1, 2002, will dovetail nicely with the first all-digital must carry election in October, 2002. Similarly, with the first simulcast benchmark scheduled for 2003, there is an increased likelihood that by 2002 stations and programmers will have made substantial progress to fulfilling this obligation, ensuring that there is DTV programming to fill the must carry channels.

III. The Commission Should Simplify Aspects Of DTV Must Carry.

In addition to devising fair rules for carriage, the surest way to ease the transition to the mandatory carriage of both analog and DTV signals is to simplify the requirements applicable to cable operators and broadcasters. Specifically, the Commission should adopt streamlined rules regarding the number of stations required to be carried, the nature of material that must be carried and channel positioning issues.

A. Carriage Obligations.

The Communications Act requires cable systems with more than 12 useable channels to set aside one-third of their capacity for use by qualifying local broadcast stations.^{2/} When a

^{2/} 47 U.S.C. § 534(b)(1)(B).

cable operator has reached its maximum, it has the freedom to choose which stations to carry.^{8/} Barring congressional changes to this provision, the Commission's must carry rules must abide by this restriction. However, if this restriction is interpreted to permit cable operators to refuse to carry the DTV signals of independent stations in favor of carrying both the analog and digital versions of the operator's preferred local stations or other cable channels, licensees such as LeSea will face enormous competitive disadvantages. These competitive disadvantages could be insurmountable for smaller stations that will have expended huge sums of money in making the transition to digital.

The Commission may dodge this obstacle by requiring cable operators to increase their capacity so that they are technically capable of carrying the analog signal and one digital signal (of the broadcasters' choice) of each local broadcast station in its market. These two signals would be the station's "primary video."^{9/} Requiring cable operators to increase their capacity -- and providing a three-year period in which to do so -- is eminently reasonable given cable operators' power to act as a local "bottleneck" and given the substantial expenditure of time and money that broadcasters must undertake in order to transition to a digital world.

The simplicity of this requirement has several appreciable public interest benefits. Cable operators will know immediately what modifications they will need to make to their systems in order to carry approximately twice the number of stations currently carried. Broadcasters will have the certainty of knowing that both of their signals will be carried until their analog spectrum must be returned, at which time cable operators will carry only the broadcasters' chosen DTV

^{8/} 47 U.S.C. § 534(b)(2).

^{9/} *Notice*, at ¶ 71.

signal. And, viewers will have the assurance that all local television signals will continue to be carried during the digital transition period and beyond.

B. No Material Degradation and Duplication.

The Communications Act also imposes on cable operators an obligation to carry a local broadcast signal without “material degradation.”^{10/} This provision must be read to encompass the carriage of a DTV signal, regardless of the transmission standard (e.g., 1080I), and without modification, conversion or reformatting of that signal. The requirement would, of course, apply only to the one DTV signal that each local broadcast station may designate for mandatory carriage.

The Commission also must determine that the transmission of the same programming over both an analog and digital channel does not constitute duplicate programming exempted from the mandatory carriage rules by Section 534(b)(5) of the Communications Act. Any other construction would be absurd in light of the Commission-imposed requirement that broadcaster’s simulcast their analog programming on at least one digital channel.

C. Tier and Channel Positioning.

Ensuring that free over-the-air broadcast television remains accessible to the greatest number of viewers necessarily requires that cable operators carry all broadcast stations -- digital and analog -- on the basic tier, as set forth in Section 543(b)(7)(A)(i) of the Communications Act. In order to minimize disruption to existing channel lineups, the Commission should require that DTV signals be carried either on a channel adjacent to the station’s existing analog signal.

^{10/} 47 U.S.C. § 534(b)(4)(A).

Alternatively, DTV signals could be carried as a separate block of channels in the basic tier in the same order as existing analog stations. This will enable consumers to locate both the analog and digital versions of their favorite channels throughout the transition.

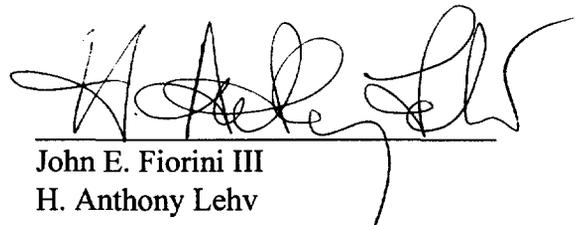
Conclusion

The transition to DTV should not impose more burdens than necessary on any party. Mandatory carriage of one analog and one broadcaster-designated DTV signal of each local station beginning on May 1, 2002, comes closest to achieving this balance. Simplified rules regarding material signal degradation and channel positioning on the basic tier will ensure that the competitive problems solved by Congress in the 1992 Cable Act for analog must carry are addressed in the transition to DTV and beyond. Most importantly, however, these rules would be fair and would prohibit discrimination against small independent stations such as those operated by LeSea.

Respectfully Submitted,

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