

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

To: The Commission

**REPLY COMMENTS OF BELLSOUTH CORPORATION AND
BELLSOUTH INTERACTIVE MEDIA SERVICES, INC.**

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SUMMARY

BellSouth's position in this docket is very straightforward: since incumbent cable operators with market power clearly were the intended targets of the analog must-carry provisions of the 1992 Cable Act, any attempt to impose DTV must-carry obligations on cable overbuilders that enter the market with no subscribers and thus *lack* market power would raise serious constitutional concerns. Furthermore, since Congress adopted must carry to preserve the off-air availability of local news and other public interest programming for consumers who cannot afford or do not want cable service, the constitutional problem noted above is exacerbated by the lack of clarity regarding what if any public interest obligations will be imposed on DTV broadcasters.

The comments filed by various television broadcasters provide additional support for BellSouth's position. Specifically, the broadcasters have confirmed that their concerns about DTV must carry arise from the "bottleneck" or "gatekeeper" status that incumbent cable operators currently enjoy in the marketplace, an argument which has no applicability to cable overbuilders. Other evidence both in the record and elsewhere also confirms that the broadcasters have little idea as to how much of their digital content will consist of the local and other public interest programming that is the cornerstone of the must-carry statute. The record thus confirms that the Commission would enter a constitutional quagmire by imposing a DTV must-carry obligation on cable overbuilders at this time.

In addition, BellSouth submits that the comments filed by CEMA have grossly oversimplified the substantial technical difficulties associated with cable carriage of DTV signals. In essence, CEMA assumes that cable operators have the ability to simply "pass through" a DTV signal "as is" with no adverse effect on the consumer's ability to access cable programming through the set-top

box. As demonstrated herein and in the comments filed in this proceeding by Microsoft, this assumption is patently false, and is not a legitimate basis for imposing burdensome DTV carriage requirements on cable overbuilders at this time.

BellSouth also opposes the request by Gemstar International Group Limited that the Commission require all cable operators to pass through all unaffiliated electronic program guides irrespective of the resulting inconvenience to the subscriber. As in the case of DTV must carry generally, Gemstar's argument lacks merit to the extent that it assumes that overbuilders are "gatekeepers," and, as in the case of CEMA, overlooks the very real and substantial difficulties associated with pass through of digital signals. Finally, BellSouth reiterates its call for a specific Commission directive that the cable-controlled OpenCable working group finally be opened to all affected parties, so as to minimize the already substantial anticompetitive effects of the cable industry's deliberate exclusion of overbuilders from the OpenCable private standards-setting process.

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BellSouth Corporation and its subsidiary BellSouth Interactive Media Services, Inc. (hereinafter referred to collectively as "BellSouth") hereby submit their reply comments with respect to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.^{1/}

I. THE RECORD BEFORE THE COMMISSION DEMONSTRATES THAT DTV MUST-CARRY OBLIGATIONS SHOULD NOT BE IMPOSED ON COMPETITIVE MVPDs WHO DO NOT PERFORM A GATEKEEPING FUNCTION.

BellSouth's position in this docket is very straightforward. Both the text and the legislative history of the Cable Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") reflect that the statute's *analog* must-carry provisions were targeted at incumbent cable operators

^{1/} In its *Order* released on November 18, 1998 in this docket (DA 98-2342), the Commission extended the deadline for reply comments from November 24 to December 22, 1998. In view of the unique and substantial legal and technical issues raised in this proceeding, BellSouth has elected to file its reply comments on the original filing date to ensure expeditious consideration of the matters presented both in BellSouth's filings and in those of other similarly situated parties.

who have market power, not at cable overbuilders who have neither the ability nor the incentive to discriminate against local broadcasters.^{2/} Accordingly, any attempt to impose far more burdensome digital television (“DTV”) must-carry obligations on overbuilders would violate the well-settled principle that statutes should be interpreted in a manner that avoids substantial constitutional questions.^{3/}

The comments filed in this proceeding by various television broadcasters provide additional support for BellSouth’s position. For instance, the Arkansas Broadcasters Association asserts that DTV must-carry obligations are necessary to counteract cable’s “bottleneck” control over local distribution of video programming.^{4/} The Association for Maximum Service Television, Inc. (“MSTV”) has taken a similar view:

Cable operators remain vertically integrated and are becoming more horizontally integrated. They control the gateway to almost 70% of American television households and increasingly make significant inroads into local advertising markets. As a result of all these factors, they have strong incentives to exclude or disadvantage local television signals that compete for advertising, particularly when these signals might be of higher technical quality.^{5/}

^{2/} Comments of BellSouth Corporation *et al.*, CS Docket No. 98-120, at 6-8 (filed October 13, 1998).

^{3/} *Id.* at 12-14.

^{4/} Comments of the Arkansas Broadcasters Association, CS Docket No. 98-120, at 5 (filed Oct. 13, 1998).

^{5/} Comments of the Association of Maximum Service Television, Inc., CS Docket No. 98-120, at 16 (filed Oct. 13, 1998); *see also* Comments of the National Association of Broadcasters, CS Docket No. 98-120, at 7 (filed Oct. 13, 1998) (“[P]recluding cable’s expected exercise of its gatekeeper power with regard to DTV signals is as necessary to preserve free over-the-air television service as it was with regard to NTSC.”); Comments of The Named State Broadcasters Associations, CS Docket No. 98-120, at 6 (filed Oct. 13, 1998) (“Only by requiring that the cable systems, which have a bottleneck on the access to two-thirds of American television households, carry these signals will the service be able to develop”); Comments of Granite Broadcasting Corporation, CS

(continued...)

As demonstrated in BellSouth's initial comments, none of these assertions apply to cable overbuilders. The simple fact is that a cable overbuilder is not a "bottleneck"; rather, over time a cable overbuilder *relieves* the bottleneck conditions which the broadcasters allege to be the legal and factual foundation for DTV must carry.^{6/} While it is true that cable overbuilders compete to some extent with local broadcasters for advertising dollars, their competitive share of those dollars is miniscule and, significantly, they must compete with incumbent cable operators for those same dollars.^{7/} Cable overbuilders thus gain no material advantage by refusing to carry local broadcast stations (analog or digital), particularly where, as in the case of BellSouth, the overbuilder is not vertically integrated and thus has no programming investments to protect. For these reasons alone, any imposition of a DTV must-carry requirement on cable overbuilders would be constitutionally suspect.

Moreover, Congress's findings in support of analog must-carry obligations were tied closely to the fact that broadcasters are a valuable source of local news and public affairs programming;

^{5/} (...continued)

Docket No. 98-120, at 4 (filed Oct. 13, 1998) (stating that "[c]able operators . . . have come to serve as a 'bottleneck' or 'gatekeeper'," and that "cable operators will have an even greater gatekeeper role in the transition to digital television"); Comments of Entravision Holdings, LLC, CS Docket No. 98-120, at 4-5 (filed Oct. 13, 1998) (quoting *Turner II* for the proposition that local cable operators often "possess a local monopoly over cable households," and thus exercise "control over most (if not all) of the television programming that is channeled into the subscriber's home"); Comments of the Consumer Electronics Manufacturers Association, CS Docket No. 98-120, at 12 (filed Oct. 13, 1998) ("Cable's use of its "gatekeeper" position to limit access to high definition signals would result in consumer confusion and remove incentives for a rapid transition . . .").

^{6/} See BellSouth Comments at 3-4.

^{7/} *Id.* at 9. Indeed, a cable overbuilder with no or few subscribers is at a decided economic disadvantage vis-a-vis local broadcasters and incumbent cable operators who already enjoy marketwide distribution of their product and thus are far more attractive as an advertising medium to national and local businesses. *Id.* at 9-10.

indeed, the preservation of such programming is the “substantial government interest” which sustains the entire must-carry statute.^{8/} Again, BellSouth submits that the lack of clarity regarding DTV service obligations further exacerbates the constitutional problem described above, since the Commission cannot yet establish a relationship between DTV must carry and the continued availability of local, off-air public service programming for those unable or unwilling to subscribe to cable.

In sum, it is undisputed that BellSouth and other cable overbuilders operate in a fully competitive environment, and thus have every incentive to carry DTV signals voluntarily if that is what subscribers demand.^{9/} Indeed, the record before the Commission reflects that even incumbent cable operators, who are the intended targets of both analog and DTV must carry, also are successfully negotiating voluntary DTV carriage agreements with local broadcasters.^{10/} Under these circumstances, there is no public interest basis for the Commission to preempt the efficiencies of the marketplace in favor of imposing yet another layer of carriage regulations on cable’s competitors. Accordingly, BellSouth once again urges the Commission to remain on a pro-competitive, deregulatory course and refrain from imposing any DTV must-carry obligations on cable overbuilders at this time.

^{8/} BellSouth Comments at 11; *see also* Pressman, “Cable Objects To Digital Television Proposals,” *Multichannel Online* (Nov. 9, 1998) (quoting Norman Ornstein, co-chairman of the Gore Commission on DTV public interest obligations, as stating that “[t]he circumstances under which we believe that must-carry would be in the public interest . . . would be if it is clear that there are some guarantees that there will be some public interest standards met.”).

^{9/} *See, e.g.*, Comments of Ameritech New Media, Inc., CS Docket No. 98-120, at 15 (filed Oct. 13, 1998).

^{10/} *See, e.g.*, Comments of Tele-Communications, Inc., CS Docket No. 98-120, at 12 (filed Oct. 13, 1998); Comments of MediaOne, Inc., CS Docket No. 98-120, at 7-8 (filed Oct. 13, 1998).

II. CEMA HAS GROSSLY OVERSIMPLIFIED THE TECHNICAL IMPEDIMENTS TO DTV MUST CARRY.

The Consumer Electronics Manufacturers Association (“CEMA”) disputes the notion that there are substantial technical impediments to DTV must carry at this time. In essence, CEMA argues that (1) cable operators have more than sufficient channel capacity with which to add digital television signals;^{11/} (2) to the extent that channel capacity problems exist, they can be addressed simply by carrying DTV signals on less than a full 6 MHz channel; (3) DTV receivers are capable of decoding all DTV formats without assistance from the cable set-top box, and thus it is not necessary for cable operators to do anything other than merely pass through the DTV signal on its “assigned frequency”;^{12/} and (4) it is a relatively simple matter for cable systems to pass through a digital broadcaster’s vestigial sideband (“VSB”) signal, either by leaving the signal untouched or remodulating it through the set-top box.^{13/}

BellSouth believes that CEMA’s arguments have been addressed effectively in Microsoft’s comments in this proceeding, and BellSouth thus will not reiterate Microsoft’s position here.^{14/} BellSouth herein responds to CEMA’s comments only to further highlight how CEMA has grossly oversimplified the technical issues associated with DTV must carry, and how CEMA’s proposals would cause substantial inconvenience to BellSouth’s subscribers.

^{11/} CEMA Comments at 14-15, 16.

^{12/} *Id.* at 12.

^{13/} *Id.* at 13; *see also* Comments of Thomson Consumer Electronics, Inc., CS Docket No. 98-120, at 20 (filed Oct. 13, 1998) (the “Thomson Comments”).

^{14/} *See Ex Parte* Letter from Microsoft Corporation re: CS Docket No. 98-120 (filed Oct. 7, 1998); Comments of Microsoft Corporation, CS Docket No. 98-120 (filed Oct. 13, 1998).

First, CEMA is plainly wrong when it generalizes that most cable operators have or will soon have vacant channels available for carriage of DTV stations, or that it is otherwise a relatively simple matter for cable overbuilders to add DTV stations to their channel lineups. Certainly in BellSouth's case, CEMA assumes too much: virtually all activated channels on BellSouth's systems are occupied by other video programming services, and thus BellSouth could not add new DTV signals to its carriage lineups without either making substantial investments towards increasing its channel capacity or dropping programming services that consumers demand. In either case, the imposition of DTV carriage requirements on cable overbuilders could give rise to substantial consumer dissatisfaction with local stations as well with the overbuilders themselves, a result which the Commission presumably wants to discourage in this proceeding.

Moreover, as a general matter cable operators do not "warehouse" bandwidth; rather, any unused bandwidth is devoted to providing, for example, the interactive services and high-speed Internet access that consumers have now come to demand. Nor is it feasible for BellSouth to circumvent the problem by compressing 6 MHz, 8VSB off-air channels into 3 MHz using 16VSB.^{15/} Here CEMA's proposal is flawed in at least two respects. First, CEMA fails to recognize that the entirety of a cable system (*e.g.*, headends, diagnostic and monitoring equipment and STBs) is designed to operate with the standard 6 MHz channel size. Second, in order to deliver a signal compatible with a subscriber's DTV receiver, the system's STBs would have to be capable of (1) receiving 16VSB channels in addition to QAM channels, and (2) converting 16VSB, 3 MHz channels into 8VSB, 6 MHz channels. In BellSouth's case, the required reconfigurations of its cable systems would be tantamount to a top-to-bottom modification of *all* of its signal processing

^{15/} CEMA Comments at 17-18.

equipment for the benefit of a relatively small number of DTV signals that only a very small number of subscribers will be able to receive.^{16/} Accordingly, there is little merit to CEMA's suggestion that DTV must carry would not be disruptive to cable operators or, more importantly, their subscribers.

Second, none of BellSouth's set-top converter boxes ("STBs") are capable of receiving, processing or displaying a VSB-modulated digital signal. As is the case with many cable television systems, BellSouth's STBs instead are configured for quadrature amplitude modulation ("QAM").^{17/} In a QAM-modulated system, any attempt to "pass through" a VSB signal effectively renders that signal inaccessible via the subscriber's remote control device due to the inability of the set-top box to understand the information in the VSB data stream.^{18/} In effect, this would require a cable subscriber to use two different remote control devices for the same television set, *i.e.*, one to access the QAM-modulated analog channels and the other to access the VSB digital signals which have been "passed through" the set-top box. The resulting inconvenience in no way serves the best

^{16/} Furthermore, CEMA's assumption appears to be that by passing through a digital VSB signal on, for example, off-air channel 57, the cable system will enable the subscriber to view that signal on cable channel 57. This assumption ignores the inequality of cable and off-air frequencies above channel 13. Many DTV channels have been assigned higher UHF frequencies that do not have a physically identical position on a cable system (*i.e.*, off-air channel 57 is not cable channel 57). QAM-modulated cable systems are able to facilitate on-channel carriage of analog UHF signals via electronic program guide ("EPG") applications that virtualize the channel for on-channel positioning. In the pass through scenario, however, the cable system's EPG application cannot read the information in the VSB signal's data stream, and thus is unable to virtualize the channel for carriage on its assigned UHF frequency. In other words, CEMA ignores the simple fact that a QAM-modulated cable system cannot pass a VSB signal to the subscriber on a frequency that matches the signal's off-air assignment.

^{17/} BellSouth Comments at 18-19.

^{18/} Such information would include any Program System Information Protocols (PSIP) data that enable television sets to automatically pair an analog channel with its corresponding DTV channel.

interests of consumers who quite rightly have come to demand that cable operators *simplify* the task of locating and tuning to television programs.

Furthermore, CEMA makes no mention of the fact that “pass through” from an STB that is configured for Channel 3 or Channel 4 output is possible only when the STB is turned off; any attempt to output the DTV Channel 3 or 4 while the STB is turned on will invalidate the channel positioning information in the VSB data stream and thereby make it extremely difficult for the subscriber to locate the signal on his or her television set. This adds yet another level of inconvenience to the customer experience by requiring the customer to switch remotes *and* deactivate the STB in order to receive DTV channels.^{19/}

Finally, CEMA suggests that it would be possible for a QAM-modulated system to achieve *de facto* pass through by converting the off-air VSB signal to QAM at the cable headend, receiving and processing the signal as such in the STB, and then remodulating the signal back to VSB in the STB for output to the subscriber’s DTV receiver.^{20/} While this is a technically feasible solution that avoids some of the adjacent channel transmission issues discussed above, it would require BellSouth to add a wideband VSB modulator to each of its STBs, an extremely expensive process that will increase the cost of service to the consumer with no concomitant benefit if the consumer cannot

^{19/} Other technical problems arise from “passing through” VSB-modulated channels that are interspersed with QAM-modulated channels. The inherent technical differences between digital VSB and analog QAM channels requires a cable system to deploy guardbands between each channel type to prevent adjacent channel noise and distortion effects that may render the channels unusable. Ordinarily, this is achieved by placing analog channels in a low-frequency range (*e.g.*, 50-550 MHz) and digital channels in a high-frequency range (*e.g.*, 550-750 MHz). This solution is unavailable in the pass through scenario, which requires VSB channels to be carried “as is” even where they are located in the lower frequency range.

^{20/} CEMA Comments at 13.

afford or otherwise chooses not to own a DTV receiver. In addition, CEMA's remodulation solution does not eliminate the channel assignment or "case of use" problems discussed above, rendering the subscriber's cable service more costly *and* more inconvenient. Clearly, this is not a formula that serves the best interests of consumers or cable overbuilders seeking to provide the highest quality service in a fully competitive market.

III. THERE IS NEITHER A LEGAL NOR A TECHNICAL BASIS FOR THE COMMISSION TO REQUIRE CABLE OVERBUILDERS TO PASS THROUGH UNAFFILIATED EPGs.

Section 336(b)(3) of the Telecommunications Act of 1996 (the "1996 Telecom Act") provides that "no ancillary or supplementary service shall have any right to carriage" under the must-carry provisions of the 1992 Cable Act.^{21/} Nonetheless, Gemstar International Group Limited ("Gemstar"), a developer and provider of EPG technology and services, has argued that the Commission can and should require all cable operators to pass through any EPG supplied by a broadcaster or other unaffiliated entity.^{22/} In support, Gemstar contends that (1) the Commission has full authority to take such action under Section 614(b)(4)(B) of the 1992 Cable Act and Sections 336 and 629 of the 1996 Telecom Act,^{23/} and (2) there are no technical impediments which prevent a cable operator from passing through an unaffiliated EPG "as is."^{24/} For the reasons set forth below, Gemstar's arguments, as least as applied to cable overbuilders, are without merit and should be rejected.

^{21/} 47 U.S.C. § 336(b)(3).

^{22/} Comments of Gemstar International Group Limited and Starsight Telecast, Inc., CS Docket No. 98-120, at 5-6 (filed Oct. 13, 1998).

^{23/} *Id.* at 14-17.

^{24/} *Id.* at 18.

First and foremost, Gemstar's legal argument rests entirely on the assumption that all cable operators are gatekeepers and thus have both the ability and the incentive to "strip away" any unaffiliated EPGs before they reach the subscriber:

Cable operators cannot be allowed to be the gate keeper of unaffiliated EPGs any more than they are allowed to discriminate against the unaffiliated programming that the guides make accessible to viewers. To preclude gatekeeper action, the Commission need only require non-interference with the pass-through of EPG data that is already contained in broadcast signals^{25/}

As discussed extensively in BellSouth's initial comments and in these reply comments, BellSouth is not a "gatekeeper," and because it operates in a fully competitive environment, BellSouth has every incentive to carry unaffiliated EPGs or any other services consumers demand. Not coincidentally, Gemstar cites nothing to the contrary in its comments. For these reasons, Gemstar's legal theory has no applicability whatsoever to cable overbuilders.

Moreover, there is little question that the Commission itself considers EPGs to be "ancillary or supplementary" services which, under Section 336, have no mandatory carriage rights. In its *Fifth Report and Order* establishing its current DTV transition schedule, the Commission stated that:

Consistent with precedent that has treated telecommunications services provided by an NTSC station *other than the regular television program service* as ancillary, we will consider as ancillary and supplementary any service provided on the digital channel *other than free, over-the-air services*.^{26/}

^{25/} *Id.* at 14. Gemstar goes so far as to cite the Congressional findings in the 1992 Cable Act which indicate that incumbent cable operators with market power, and not cable overbuilders, were the intended targets of must carry. *Id.* at 12, quoting 1992 Cable Act §§ (a)(15) and H.R. Conf. Rep. No. 102-862, 102d Cong. 2d Sess. at 1 (1992).

^{26/} *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12821 (1997) (footnotes omitted). The Commission has indicated that ancillary or supplementary services "could include, *but are not limited to*, subscription television programming, computer software distribution, data transmissions, teletext, interactive services, (continued...)

Accordingly, contrary to what is suggested in Gemstar's comments, there is no legal basis for the Commission to give EPGs any greater carriage rights than any other "ancillary or supplementary service" that must obtain carriage through private negotiations with individual cable operators.

Gemstar also appears to give little credence to the Commission's observation that "electronic program guides [EPGs] and other interactive set top features may not work with [digital] signals that are not processed by the set top box."^{27/} As noted in BellSouth's initial comments, this is exactly the case with respect to BellSouth's cable systems.^{28/} BellSouth's headends and STBs support a variety of different EPGs and interactive applications. However, each of the EPGs that are available on BellSouth's systems has been precisely configured to operate with the specific STB operating system and headend servers that BellSouth deploys in each of its markets. To BellSouth's knowledge, at the present time there is no viable technology that would generically support any broadcaster-supplied EPG or data service that has not been designed specifically to operate with BellSouth's systems.

What this means, in effect, is that a broadcaster-supplied EPG that has not been configured to operate with BellSouth's system cannot access any content on the system other than that provided on the broadcaster's own DTV channel. Furthermore, the broadcaster's EPG would not be able to control BellSouth's STBs for purposes of channel tuning or access control, nor would it be aware of BellSouth's channel lineup information. This scenario would force the subscriber to endure the

^{26/} (...continued)
audio signals, and any other services that do not interfere with the required free service." *Id.* (emphasis added).

^{27/} *NPRM* at ¶ 27.

^{28/} BellSouth Comments at 21-22.

inconvenience of the “dual remote” problem described above, something a cable overbuilder cannot afford if it intends to offer a quality of service over and above that of the incumbent cable operators with which it must compete.

In sum, there is no legal or factual basis for Gemstar’s argument in the context of cable overbuilds, nor has there been any directive from Congress which even suggests that cable overbuilders should otherwise be required to pass through unaffiliated EPGs regardless of the resulting inconvenience to subscribers. There also is no evidence in the record which indicates that cable overbuilders are behaving in an anticompetitive manner toward suppliers of unaffiliated EPGs. Accordingly, the Commission should leave the issue of EPG carriage to private negotiations between overbuilders and unaffiliated EPG suppliers, which is the most sensible and administratively efficient solution in a fully competitive marketplace.

IV. THE COMMISSION SHOULD TAKE WHATEVER ACTIONS ARE NECESSARY TO ENSURE THAT THE OPENCABLE PROCESS IS IN FACT OPEN TO ALL AFFECTED PARTIES.

As discussed in the Commission’s *Notice of Proposed Rulemaking* in this proceeding and in its recent *Report and Order* implementing the “navigation devices” provisions of the Telecommunications Act of 1996, the Commission is relying entirely on private industry standards-setting efforts, particularly the CableLabs “OpenCable” working group, to resolve the critical technical issues described in the preceding section.^{29/} OpenCable, however, is not open to everyone: as noted in BellSouth’s initial comments in this docket, BellSouth continues to be excluded from

^{29/} See NPRM at ¶ 28; *Implementation of Section 304 of the Telecommunications Act of 1996 - Commercial Availability of Navigation Devices*, CS Docket No. 97-80, FCC 98-116, at ¶ 14 (rel. June 24, 1998) (the “*Section 629 R&O*”).

CableLabs' "OpenCable" working group, solely because BellSouth competes with the incumbent cable MSOs who control the OpenCable process.^{30/}

The record before the Commission in this docket reflects that the private standards-setting process is proceeding at an aggressive pace, as it must given the timeframes that incumbent cable operators committed to the Commission's navigation devices proceeding.^{31/} Moreover, it is equally clear that much work remains to be done in order to establish a consensus among all affected parties as to what standards are technically and economically feasible at this time.^{32/} As industry discussions proceed without the participation of BellSouth and other competitors to cable, there is an ever increasing risk that BellSouth will be forced to comply with technical standards that it will not have even seen prior to the deadlines agreed to by incumbent cable operators. BellSouth reiterates that the basic unfairness of this situation, particularly when viewed in the context of the incumbent MSOs' economic incentive to develop technical standards that are unacceptable to their competitors, demands that the Commission direct OpenCable to admit cable's competitors to its standards-setting process immediately.

V. CONCLUSION.

Above all else, it is the best interest of the *consumer* which must be given the greatest priority in this proceeding. It is the *consumer* who will lose if BellSouth is forced to drop essential

^{30/} BellSouth Comments at 20. Attached as Exhibit 1 to BellSouth's Comments is a letter dated September 15, 1998 from BellSouth's undersigned counsel to Mr. William T. Scheyler, Chairman of OpenCable, in which BellSouth formally requested that it be allowed to participate in the OpenCable standards-setting process. To date BellSouth has not received any response to that correspondence.

^{31/} See Section 629 R&O at ¶ 77.

^{32/} See CEMA Comments at 20-21; Thomson Comments at 21-23.

local analog television signals in favor of digital signals which only a select number of viewers are able to receive, and which may offer a smaller quantity of public service programming. It is the *consumer* who will lose if the Commission adopts DTV carriage rules that ignore the unique and significant technical obstacles to cable carriage of DTV signals and render cable television service more difficult to use. And it is the *consumer* who will lose if the Commission's DTV carriage rules force cable overbuilders to divert limited resources toward making expensive and time-consuming modifications to their systems for the benefit of only a small number of subscribers. The interests of consumers are even further disserved where cable overbuilders are required to comply with technical standards developed under an OpenCable process that in fact is closed to competitive providers. None of these potential harms is even remotely consistent with what the Commission is trying to achieve in this proceeding, and thus BellSouth once again urges the Commission to remain on its pro-competitive, deregulatory course and refrain from imposing any DTV must-carry obligations on cable overbuilders at this time.

Respectfully submitted,

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