

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 99-363

In the Matter of:)
)
Implementation of the Satellite Home)
Viewer Improvement Act of 1999)
)
Retransmission Consent Issues)

**COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION
ON SECTION III OF THE NPRM**

The National Cable Television Association ("NCTA"), by its attorneys, hereby submits its comments on Section III of the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding. This aspect of the Notice addresses FCC implementation of the amendments to Section 325(b) of the Communications Act regarding a local television station's election between retransmission consent and must carry.

INTRODUCTION

Satellite carriers that choose to provide local signals will be subject to mandatory carriage of all local signals within a market after a transition period. As of January 1, 2002, local commercial broadcasters in those markets will, therefore, have the same two options with respect to DBS as they now have for cable – either carriage pursuant to retransmission consent or pursuant to must carry.

In providing local commercial stations with these same rights with respect to DBS as they currently enjoy for cable television carriage, Congress directed the Commission to adopt regulations that "establish election time periods that correspond with those regulations adopted

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under subparagraph (B) of this paragraph.”¹ The Commission’s rules adopted in this proceeding should not impede even-handed competition between satellite carriers and cable operators in the carriage of local broadcast signals and should not permit local broadcasters to affect this competition adversely through manipulation of the election process.

DISCUSSION

The Notice asks generally about the applicability of the cable retransmission consent rules, found in Section 76.64, to satellite carriers. And it highlights two aspects of those rules – timing of the elections and the uniformity of elections between cable and DBS – that we discuss below.

First, the Notice asks whether broadcasters should be required to make their elections with respect to satellite carriers at the same time as they make their elections for cable operators.² Currently, broadcasters make triennial elections between must carry and retransmission consent with respect to cable operators. The most recent election occurred on October 1, 1999, and became effective for carriage arrangements beginning January 1, 2000. The next election for cable occurs October 1, 2002, for carriage beginning January 1, 2003.

The amendments to Section 325(b) require the Commission to adopt regulations to establish an election period for satellite carriers that corresponds to the election period for cable systems. Since satellite carriers’ must carry obligations take effect during the middle of cable’s current three-year election period (January 1, 2002), the initial election by a local broadcaster for satellite carriage cannot be synchronized with its next cable election -- and would apply only to

¹ 47 U.S.C. §325(3)(c)(i). Subparagraph (B) contains the requirement that “television stations, within one year after the date of enactment of the [1992 Cable Act] and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station’s election shall apply to all such cable systems.”

² Notice at ¶¶12-13.

satellite carriers.³ The Commission, however, should adopt rules that ensure that the election schedules correspond as soon as possible. Accordingly, after an initial “satellite only” election on October 1, 2001, for carriage beginning on January 1, 2002, FCC rules should require broadcasters to elect both for cable and satellite carriage on October 1, 2002 for carriage beginning on January 1, 2003, and every three years thereafter.

The Notice also seeks comment on the “consistent election” requirement.⁴ Section 325(b)(3) and the FCC’s implementing regulations⁵ currently dictate that broadcasters must make the same election between must carry and retransmission consent for cable systems with overlapping franchise areas. This provision ensures that a local broadcaster’s choice between must carry and retransmission consent does not unfairly affect competition between competing cable operators.⁶

The Notice asks whether to extend this consistent election obligation “in the context of any election cycle in which satellite carriers participate.”⁷ Because satellite carriers will now provide local broadcast stations to customers in the same geographic areas as cable operators, it makes just as much sense to apply this consistent election requirement to local broadcasters’ dealings with competing MVPDs. Such a requirement is necessary to prevent the must carry/retransmission consent regulatory scheme from unfairly disadvantaging one competitor over another.

³ Id. at ¶13.

⁴ Id.

⁵ 47 C.F.R. §76.64(g).

⁶ See generally S. Rep. No. 102-92, 102d Cong. 1st Sess. 83 (1991) (limiting broadcaster choice to a uniform election “in situations where there are competing cable systems serving one geographic area....”)

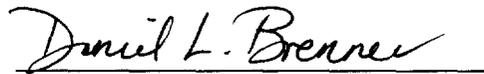
⁷ Notice at ¶13.

We recognize that under the existing rules, a local television station's election might differ as to the separate cable systems serving non-overlapping franchise areas throughout a local station's market. In those situations, it would make sense for a satellite carrier competing with different cable systems in a particular market to be subject to the same election as each of those cable systems. The burden should be on proponents of a different approach to show why any difference would be warranted.

CONCLUSION

While local broadcast stations have a choice between must carry and retransmission consent, the Commission should ensure that their exercise of that choice does not become a means to interfere with fair competition between MVPDs. The best way to achieve that goal is to adopt retransmission consent/must carry election rules that operate, to the maximum extent feasible, in the same fashion for both cable systems and satellite carriers.

Respectfully submitted,



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February 1, 2000