

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

In the Matter of)	
)	CS Docket No. 00-96
Implementation of the Satellite Home)	
Viewer Improvement Act of 1999)	
)	
Broadcast Carriage Issues)	

COMMENTS OF HOME BOX OFFICE

Home Box Office (“HBO”), a Division of Time Warner Entertainment Company, L.P., by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking (“Notice”), released in the above-captioned proceeding on June 9, 2000.^{1/} The Commission’s Notice seeks comments on the “appropriate rules” needed to implement Section 338(a)(1) of the Communications Act regarding the retransmission by satellite carriers of signals of local television broadcast stations.^{2/}

HBO’s comments focus on two of the issues raised in the Notice: (1) whether the Commission should adopt technical parameters to define “material degradation” in connection with the retransmission of television broadcast signals by satellite carriers; and (2) whether the Commission should adopt a dual carriage rule requiring satellite carriers to retransmit both the analog and digital signals of local broadcasters during the transition to digital television. As explained below, the Commission’s adoption of technical standards for satellite retransmission of broadcast signals is premature, and any attempt by the Commission to impose dual signal carriage requirements during the digital television transition period would exceed the Commission’s statutory and constitutional authority.

^{1/} FCC 00-195.

^{2/} Notice ¶ 2.

I. Material Degradation

Section 338(a) requires the Commission to enact “must carry” regulations for satellite carriers that are “comparable” to must carry requirements for cable operators under Sections 614(b)(4) and 615(a)(2).^{3/} As part of the cable must carry requirements, cable operators are compelled to retransmit the signals of local commercial and noncommercial stations without “material degradation.” “Material degradation” as it applies to cable retransmission is determined by the application of specific, detailed technical standards outlined in the Cable Technical Report and Order and contained in the FCC’s rules.^{4/}

As noted by the Commission in this Notice, cable and satellite carriers are dissimilar in many respects, not the least of which is the fact that cable operators retransmit broadcast signals in an analog format, while satellite carriers provide digital retransmission. Therefore, when considering the adoption of satellite technical standards that are “comparable” to those for cable, the Commission cannot simply apply pre-existing detailed specifications. Instead, the Commission must assess satellite retransmission technical standards in the context that exists in the marketplace, where satellite retransmissions, and the digital formats that are used for those retransmissions, are relatively new.

For the reasons set forth below, HBO submits that the Commission should eschew detailed standards for satellite retransmission of broadcast signals and instead adopt only general obligations that satellite carriers avoid “material degradation” to the broadcast signals they retransmit.

HBO believes this is the right approach for several reasons. First, there is no evidence that the quality of broadcast retransmission by satellite carriers has been a problem. Accordingly, although material degradation is an important concept, the Commission should not establish detailed rules without sufficient justification.

^{3/} See 47 U.S.C. § 338(g).

^{4/} See 7 FCC Rcd 2021 (1992); see also 8 FCC Rcd 2965 (1993).

Second, unlike cable analog retransmission, where the FCC had a long history of experience with technical standards before adopting material degradation rules, digital transmission is relatively new. The Commission is not, therefore, in a position to craft detailed specifications to govern the digital future.

Third, because of rapid advances in digital technology, there is significant danger that any standards adopted today would quickly be obsolete, or worse, would prevent beneficial changes in transmission parameters as technology improves. This point is illustrated through HBO's recent experiences with digital transmission.

In 1993, HBO became the first television network to transmit its programming via satellite in a digital format. At that time, based on what HBO subjectively determined was the appropriate picture quality for its services, it limited its compression ratio per 36 MHz satellite transponder to 4 to 1. Because of improvements in technology, HBO has gradually increased its compression ratio while maintaining the same subjective picture quality it established in 1993. As a result, by this fall, HBO will be transmitting 16 digital services within the same 36 MHz transponders, without sacrificing quality at all.

Thus, HBO has continued to maintain its internal picture quality standards while continuing to take advantage of improving technology. The adoption of strict technical rules now to define "material degradation" for digital retransmission would not provide satellite carriers with a similar flexibility to respond to a rapidly evolving technology landscape. Thus, the FCC should do no more at this time than adopt a rule requiring retransmission of local signals by satellite carriers without "material degradation." If issues regarding quality arise in the future, the Commission can more appropriately deal with them on a case by case basis.

II. Digital Must Carry

Section 338(g) of the Communications Act also requires the FCC to adopt rules comparable to those for cable with respect to carriage of digital signals of local broadcasters. However, as HBO and other parties demonstrated in connection with the digital must carry cable

proceeding, the Commission's authority to impose digital must carry requirements cannot survive statutory or constitutional review.^{5/} The governmental interests underlying the cable analog must carry requirements set forth in Section 614 of the Communications Act were the subject of exhaustive articulation and scrutiny both in Congress and before the Supreme Court. In contrast, there is absolutely no factual predicate for finding sufficient governmental interests to justify intrusion on cable operators' and cable programmers' First Amendment rights through digital must carry. For the same reasons that HBO articulated in the cable digital must carry proceeding, the FCC should adopt a "no carriage option" for satellite carriers' retransmission of the digital signals of local broadcasters during the transition from analog to digital television broadcasting.

^{5/} See, e.g., Comments of Home Box Office and Turner Broadcasting System, Inc., CS Docket No. 98-120 at 13-17 (Dec. 22, 1998).

CONCLUSION

For the foregoing reasons, HBO urges the Commission to adopt rules that define “material degradation” for satellite carriers in general terms without detailed technical standards and to adopt the “no carriage option” with respect to the retransmission by satellite carriers of the digital signals of broadcasters during the digital transition period.

Respectfully submitted

**HOME BOX OFFICE, a Division of
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