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Lowell W. Paxson / Chairman

September 25, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William E. Kennard
Commissioner Susan Ness
Commission Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Digital Must Carry (CS Docket No. 98-120)

Dear Chairman Kennard and FCC Commissioners:

As Chairman of Paxson Communications Corporation ("Paxson"), the owner of the largest television station group in the United States and the creator of the 7th over-the-air broadcast network (PAXTV), you have heard from me on numerous occasions regarding the importance of digital must carry. In the Commission's two-year old proceeding regarding mandatory carriage rights for digital television broadcast signals (CS Docket No. 98-120) Paxson filed comments on October 13, 1998 and reply comments on December 22, 1998 urging the FCC to act swiftly to implement full digital must carry. In the Commission's ongoing efforts to complete the auction of the 700 MHz spectrum, (WT Docket No. 99-168), Paxson has filed comments and reply comments noting the linkage between the FCC adoption of full digital must carry rights and the FCC's ability to auction the 700 MHz spectrum.

Paxson has also filed comments and reply comments in the FCC's current rulemaking (CS Docket No. 00-96) concerning the broadcast signal carriage obligations of direct-to-home satellite providers pursuant to the Satellite Home View Improvement Act of 1999. Digital must carry rights of broadcast stations will also be a topic addressed in comments to be filed in the FCC's Notice of Inquiry regarding competition in the market for the delivery of video programming (CS Docket No. 00-132).

In addition to these general rulemaking proceedings and FCC inquiries, there are two cases currently pending before the FCC's Cable Services Bureau directly involving digital must carry issues. The first involves WHDT-DT, Stuart, Florida which is a digital-only broadcast station requesting must carriage rights on cable systems in its market which the cable entities have denied. Paxson filed comments in this proceeding (CSR-5562-Z) and the matter is now before the Bureau for decision. The second involves Paxson's digital television station in Chicago, WCPX-DT. Paxson's request for carriage of its digital signal on Chicago area cable systems was denied and Paxson filed Complaints for Carriage with the FCC on September 11, 2000. The Cable Services Bureau is now under the statutory deadline of 120 days to act.

I have summarized the pending matters involving digital must carry to highlight for the Commission the increasing importance of such must carry rights both on an individual television station basis and for the entire broadcast industry. **The issue will not go away and urgently requires Commission action.**

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In reviewing the many comments and pleadings that have been filed with the FCC on DTV must carry, Paxson noted several issues that the FCC will have to address:

> First, Paxson does not advocate dual must carry for a station's analog and digital signals. We believe the law guarantees carriage of either the digital or the analog signal of a television station with the choice to be made by the station as provided by the 1992 Cable Act.
>
> Second, Paxson's digital must carry plan calls for carriage of all of a station's multi-cast DTV signals which is fully consistent with the 1992 Cable Act. While some commentators have focused on the cable operator's obligation to carry the "primary video" of a local commercial television station that language was intended by the 1992 Cable Act to differentiate between programming and non-programming material. It was not intended as a limitation on cables' obligation to carry all of the programming provided by a television station. The 1992 Cable Act made it clear that "the cable operator shall carry the entirety of the program schedule of any television station carried on the cable system . . ."; whether this is a single program in the analog world or multiple programs in the digital world.

The FCC has been drifting towards the proper resolution of the digital must carry issue for some time, but it needs to step forward and finish its work. The premise for full digital must carry is the 1992 Cable Act and that premise has been accepted by the FCC. In its Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-168, the FCC stated:

> **We wish to clarify that cable systems are ultimately obligated to accord 'must carry' rights to local broadcasters' digital signals . . .**

The 1992 Cable Act was intended to cover not only analog must carriage but also recognized the transition to digital must carry, prompting the FCC to note:

> **Nothing in Section 614 of the Communications Act [1992 Cable Act], the 'must carry' provision, limits that obligation to analog commercial television.**

Or, we would add, that qualifies digital must carry to require turning in the analog spectrum or the end of the DTV transition or otherwise attempts to limit the full and immediate applicability of must carry to digital television.

The FCC has very specifically recognized broadcasters' must carry rights and that these must carry rights apply equally to analog or digital broadcasting. In previous decisions, the FCC has also recognized and endorsed the must carry rights of new broadcast analog stations and has specified a procedure for new broadcast stations to make the must carry "election". Such an election is as applicable to digital stations as it is to analog stations and these digital must carry rights are not conditioned upon the

return or abandonment of a station's analog spectrum. The timing of that must carry election is up to the broadcaster. If the Commission will remember this, then the discussion of the DTV transition and the return or abandonment of analog spectrum, can only be seen as immaterial as far as digital must carry is concerned. The rights of must carry belong to the broadcaster and are without conditions under the 1992 Cable Act.

Paxson made the must carry election for its Chicago digital television station and chose digital must carry over carriage of its analog station. Recognizing cable's limitations with analog capacity and its growing digital capacity, Paxson requested carriage of its primary digital signal on the analog portion of the Chicago cable systems with its additional channels of free over-the-air programming carried on the cable digital set-top boxes. While some have challenged our must carry proposal as a "complicated scheme for sweetening its incentive to vacate the 700 MHz band," Paxson would only note that of its 67 existing television stations, only 18 are in the 60-69 band. Paxson believes that its must carry proposal should be applicable to all of PCC's television stations whether or not they are in the 60-69 band and, in fact, should
be fully applicable to all of PAXTV's non-owned affiliates. Paxson intends to build multiple channels of its family-friendly programming and implementation of its full digital must rights is essential to this plan.

In passing the 1992 Cable Act, Congress knew it was important to establish full must carry rights as an alternative to retransmission consent. The FCC is fully aware that most broadcasters will not gain carriage through negotiations with cable operators and exercise by the stations (in this case digital stations) of their must carry rights is the only way to guarantee carriage. While CBS and Time Warner may reach agreement and NBC and Fox may reach agreement with AT&T, the majority of television stations not owned by the four major networks will be left at the mercy of cable without the availability of must-carry implementation. PAXTV's owned and operated stations as well as affiliated stations do not have the power to negotiate meaningful retransmission consent agreements with the major cable operators. It is interesting to note, however, that the major networks that have been able to reach digital retransmission agreements with cable MSO's have negotiated for a guaranteed 2 MHz of spectrum on the cable systems' digital boxes. PAXTV's must carry proposal seeks the same basis result and PAXTV submits that it should receive nothing less via a must carry plan.

Paxson is well aware that over time all cable systems will convert 100% to digital boxes and the opportunity to develop additional programming networks will be greatly enhanced. At the present time, there are no digital television receivers in the market place. Broadcasters, such as Paxson and networks such as PAXTV have no way into the home through over-the-air reception and must rely on digital cable and digital satellite to deliver their digital signals. Without this delivery mechanism via must carry there is no digital television system in America.

Paxson has followed the rules adopted by the FCC in compliance with the 1992 Cable Act and affirmed by the FCC in its 700 MHz spectrum auction document. Paxson has presented the FCC and cable operators with a quick, simple and reasonable digital must carry plan: Carriage of the primary digital signal in place of the station's analog signal on the cable system's basic analog tier service; carriage of the station's multicast signals on no more than 2 MHz of the cable systems digital tier;

conversion of all of the station's signals to the digital tier upon 85 percent digital penetration by the cable system; and, utilization of the PSIP mapping protocol for easy navigation of the primary and multicast signals.

The Commission has been provided with a clear blueprint for resolving the many DTV must carry proceedings and cases now before it. The 1992 Cable Act established the broadcasters' right to elect must carry and that plan can now be tailored, without substantial effort, to the digital world. The Commission needs only to "establish technical standards" for the carriage of broadcasters' digital signals and the PAXTV must carry proposal provides substantial guidance. It is time for the FCC to act and issue its decisions guaranteeing full digital must carry rights for broadcasters on cable systems, on direct-to-home satellite providers and on all multi-channel video providers such as the fast growing broadband DSL. If the FCC will simply act as required by the 1992 Cable Act and then stand back, the digital revolution will occur.

This FCC has been governing the DTV transition for the last four years and much remains to be done. We urge you not to leave crucial decisions on the transition to the next Commission. This vitally important digital transition and the equally important band-clearing and 700 MHz auction have stated on your watch and they are your issues to complete. Too much is at stake to wait for next year or for the next Commissioners.

Very truly yours,

Lowell W. Paxson
Paxson Communications Corporation