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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 4, 2001

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

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Dear Mr. Chairman and Commissioners:

I am writing you concerning several matters relating to digital television. First, I want to bring you up to date on the status of the studies that the broadcasting industry has been conducting on the technical standard for digital television in the United States. The testing phase of the studies managed by MSTV and NAB comparing reception by 8-VSB and COFDM receivers has been completed. The Steering Committee of the VSB/COFDM Project will receive the report on January 10. The following day, NAB and MSTV will convene an all-industry conference in Washington to review the conclusion of the studies, as well as other presentations concerning the choice of a technical standard. These studies include evaluations of the business and regulatory climates surrounding the transition to digital television.

On January 15 and 16, the NAB Television Board and the MSTV Board will meet jointly in California to discuss the studies and to reach a decision concerning the questions that have been raised about the DTV standard. I expect to report back to you as soon as possible thereafter concerning the outcome of those meetings. I hope that resolution of the questions about the DTV standard will re-energize the transition and create incentives for improvements in DTV receivers, new DTV programming, and other innovative uses of digital technology.

For the digital transition to continue and accelerate, there are steps that you must take as well. First, I understand that you may take up some of the issues raised in the DTV Biennial docket at your next meeting. Among those are a proposal to require a digital tuner in every new television receiver. As our comments in the DTV Biennial proceeding reflect, NAB strongly supports this proposal. Reaching the 85 percent digital penetration level that Congress required before analog television broadcasting comes to an end will require that new receivers be capable of handling digital signals. The All-Channel Receiver Act gives the Commission ample authority to adopt such a rule. And just as the Commission's rule requiring all sets to have a

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UHF tuner brought forth a flowering of UHF television stations, a rule requiring all sets to receive DTV signals will accelerate the transition and the ultimate return of the analog spectrum.

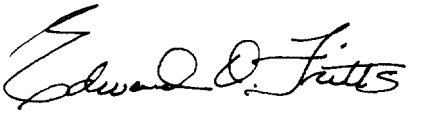
The other matter that you must resolve is must carry. It is now more than two years since the first digital stations went on the air. 167 digital stations are now broadcasting. No more than a handful of these stations, however, are carried on any cable system, and the absence of cable carriage is a significant deterrent to sales of digital receivers and investment in digital product. It is difficult to conceive of any step that the Commission could take to advance the digital transition that would be more productive than the adoption of a comprehensive digital must carry rule.

Congress in the 1992 Cable Act anticipated that there would be a need for must carry for digital television signals and that the rules it then adopted for an analog world would need to be revised for the changed circumstances of advanced television. It thus wisely directed the Commission – at the time the Commission adopted an advanced television standard – to make whatever changes would be necessary in the must carry rules to ensure carriage of advanced television signals.

While the Commission adopted a digital television standard in 1995, it did not issue a notice of proposed rulemaking on digital must carry until July 1998. The record in that proceeding closed in December 1998. Since the record closed, the two largest cable operators have merged (or proposed to merge) with other major telecommunications entities. These mergers not only present even greater incentives for decisions which would use gatekeeper facilities to disadvantage competitors – the precise concern Congress expressed in adopting the must carry regime, but they also have resulted in an acceleration of cable systems' adoption of digital technology. As AT&T's General Counsel conceded in testimony last year, the spread of digital cable systems eliminate any concern about cable capacity to carry both analog and digital television signals.

I understand that the Commission may take up a proposed decision which would further defer action on a digital must carry rule, but which would adopt various "rules of the road" concerning carriage of digital television stations. I strongly urge you not to follow this course. The facts and legal arguments concerning digital must carry were fully articulated in the comments that have been before you for two years. Nothing would be gained by further delaying a decision, certainly nothing that would be worth the harm to the progress of the transition that further delay will engender. Broadcasters believe that the Cable Act clearly and unmistakably requires the carriage of digital television signals by cable systems in addition to analog signals. The constitutional arguments in favor of digital must carry are, if anything, stronger than the arguments that lead to the Supreme Court's 1997 decision upholding must carry.

I recognize that there may be some questions about the way in which cable systems will transport digital signals and the impact of digital must carry on smaller cable systems that have not upgraded substantially since must carry was adopted. As NAB made clear in our comments, we would have no objection to appropriate transitional rules. Further delay in reaching a decision about digital must carry will not, however, add to the Commission's ability to craft such rules. Therefore, I urge you to adopt a decision requiring cable systems to carry the digital signals of local television stations in their market.

As Dale Hatfield, the former Chief of the Commission's Office of Engineering Technology, remarked in a letter to Congress, achieving the transition to digital television will require the active participation of all participants in the television industry. Broadcasters will do their part to lead the way. But they cannot do it alone. I urge you to take the steps needed today to keep the digital transition on track.

Respectfully submitted,