

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

In the Matter of)
) MM Docket No. 00-39
Review of the Commission's)
Rules and Policies Affecting the)
Conversion to Digital Television)

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

The National Cable Television Association ("NCTA") hereby opposes the Petition for Reconsideration of the Digital Television Biennial Review Order filed by the Association for Maximum Service Television ("MSTV"), the National Association of Broadcasters ("NAB"), and the Association of Local Television Stations ("ALTV") in the above-captioned proceeding.¹

NCTA is the principal trade association of the cable television industry, representing the owners and operators of cable systems serving over 90 percent of the nation's cable television households.

The Commission's DTV Biennial Review Order resolved various procedural and operational issues pertaining to broadcast stations' transition to digital broadcasting. MSTV, NAB, and ALTV seek reconsideration of certain aspects of the Order relating to the replication of DTV facilities, DTV receiver thresholds, and channel election on the grounds that they "disproportionately and unfairly burden broadcasters without advancing the goals of a speedy and

¹ Report and Order and Further Notice of Proposed Rulemaking, Review of the Commission's Rules and Policies Affecting the Conversion of Digital Television, MM Docket No. 00-39, FCC 01-24, released January 19, 2001 ("DTV Biennial Review Order").

effective digital roll-out."² Petitioners argue that the Commission's decisions will "further slow or stymie the transition" and may "impose hardships on certain broadcasters."³

NCTA takes no position on the merits of the Commission's DTV Biennial Review decisions or the issues raised in the broadcast associations' reconsideration petition. NCTA only seeks to set the record straight regarding the broadcasters' self-serving and disingenuous statements about the cable industry's role in the digital transition. NCTA hopes the Commission will not be distracted by the broadcasters' efforts to shift the blame to other industries for their inability to meet Commission deadlines and other requirements.

The petitioners generally argue that "broadcasters cannot accomplish the DTV transition on their own," and that "the digital transition cannot move forward without contributions from many industries that so far have been slow to materialize."⁴ They also assert that the FCC's DTV Biennial Review decisions "both exacerbate and are exacerbated by" the Commission's digital must carry decision, which "threatens to substantially slow or derail the DTV transition."⁵ Petitioners further claim that the Commission focussed on DTV build-out requirements and other deadlines for broadcasters in order to implement the Congressional 2006 timetable, but took "few or no steps" on other fronts essential to the accelerated transition, such as cable carriage and cable compatibility.⁶

At another point the petitioners express their disdain for "the almost complete absence of progress by other essential industries" on the digital transition. And, incredulously, they berate

² Petition at 1.

³ Petition at 3.

⁴ Petition at 4 and 16.

⁵ Petition at 3.

⁶ Petition at 5.

the Commission's "fragmented approach to digital transition issues," whereby "broadcasters alone are being required to meet numerous and burdensome requirements, while other industries whose cooperation is essential to the transition face few if any constraints and continue to drag their feet."⁷

Reading all of this, one would hardly guess that the broadcasters asked the government for a second 6 MHz channel of valuable spectrum (worth \$70 billion) to make the transition – and received it free of charge. Now that the obligation to make the transition is real, they seek to lay blame for their own failure to meet the conversion timetable on the cable industry, the consumer electronics industry and the Commission. The petitioners attribute their difficulties not to themselves but to vague claims that broadcasters face "cable compatibility problems, technical obstacles, and no assurance that the 70% of their viewers who receive their service over cable will in fact have access to their digital signals."⁸ These assertions are baseless.

First, with regard to digital must carry, the Commission has resolved, at least tentatively, cable's carriage obligations with regard to digital broadcast channels. The Commission tentatively concluded that imposing a mandatory dual analog-digital carriage requirement on cable systems would be unconstitutional.⁹ The Commission found, based on the existing record evidence, that digital must carry would burden cable operators' First Amendment interests substantially more than is necessary to further the government's interest in preserving over-the-air broadcast television.

⁷ Petition at 17.

⁸ Petition at 8.

⁹ First Report and Order and Further Notice of Proposed Rulemaking, Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120, ¶3, released January 23, 2001.

Apart from the constitutional infirmities with a dual carriage regime, NCTA continues to believe that the complex transformation of television from analog to digital should be resolved through market forces, not through government intervention. Broadcasters are experiencing various obstacles in meeting the 2006 conversion deadline, including build-out problems, over-the-air reception problems, and lack of programming and digital business plans.¹⁰ But, as we have shown in the digital must carry proceeding, government-mandated cable carriage of duplicative broadcast programming will not drive the transition.¹¹

Second, with regard to alleged "cable compatibility problems", the petitioners simply ignored agreements reached over a year ago between the cable and consumer electronics industries aimed at ensuring a smooth transition to digital. On February 23, 2000, the Consumer Electronics Association ("CEA") and NCTA announced two voluntary technical agreements to facilitate compatibility between cable systems, set top boxes and DTV sets. The first agreement sets forth the technical requirements for the network interface specifications that permit direct connection of consumer digital receivers to cable television systems. The second agreement spells out how systems will transmit Program and System Information Protocol ("PSIP") data – the raw material provided by broadcasters and cable programmers that is used to make up electronic program guides created in a TV set. Taken together, these agreements enable manufacturers to proceed with the production of digital TV receivers to allow consumers to receive DTV programming and services over cable systems.

¹⁰ See e.g. "Transition to digital TV is still fuzzy", USA Today, March 15, 2001; "Digital Television Derailed: Trouble with Standards, Programming Delays Rollout", Electronic Media, July 17, 2000.

¹¹ See NCTA Comments and Reply Comments, Carriage of the Transmissions of Digital Television Broadcast Stations, CS Docket No. 98-120, October 13, 1998 and December 22, 1998.

The only "technical obstacles" to which the petitioners allude to are broadcast not cable-oriented. In fact, the broadcasters have been stymied by nagging concerns over the 8-VSB digital transmission standard. Numerous broadcasters have urged a review of the FCC's standard in favor of an alternative modulation method, COFDM. This uncertainty caused television set manufacturers to delay the rollout of DTV sets. Although the Commission reaffirmed the 8-VSB modulation system last January, the entire broadcast industry is still not united behind the 8-VSB standard.¹² Some broadcasters still question the testing methodology and continue to believe that COFDM is a better standard.¹³ Cable has nothing to do with this dispute.

Third, the assertion that cable operators are "dragging their feet" in promoting the digital transition is belied by the facts. The cable industry – with no government mandate or subsidy – has spent \$42 billion since 1996 to provide its customers with new digital services.¹⁴ Cable companies are upgrading their plant and deploying digital video compression technology in order to offer dozens of new digital video services and high-speed data services. Program networks have already launched approximately 60 new digital channels offering consumers additional choice and program diversity. And HBO, Showtime, A&E, Discovery and other networks are producing high definition programming.

Cable operators are moving forward on other fronts to ensure cable customers have access to new and unique digital services. They are negotiating retransmission consent agreements to make digital broadcast programming available to cable customers. And, as noted above, they are

¹² DTV Biennial Review Order at ¶¶88-92.

¹³ "DTV Data is Called Invalid," *Broadcasting & Cable*, February 5, 2001 at 38.

entering into voluntary agreements with the consumer electronics industry to ensure digital TV sets work with cable systems.

Customers are responding to cable's investment in digital technology. To date, nearly 10 million customers have signed up for digital cable offerings utilizing advanced digital set top equipment. Broadcasters want the government to give them large blocks of cable's newly expanded channel capacity for carriage of redundant versions of their analog channels. But cable operators intend to deliver a wide array of programming and advanced services, including digital broadcast channels, consistent with customer demand.

CONCLUSION

¹⁴ See e.g. Testimony of Michael Willner, President and CEO, Insight Communications, Digital Television; A Private Sector Perspective on the Transition," before Subcommittee on Telecommunications and the Internet, House Energy and Commerce Committee, March 15, 2001.

Broadcasters may have encountered roadblocks on their way to converting to digital. But they embarked on this journey at their own request, jumpstarted by a government grant of a second free channel of valuable spectrum. Neither the cable industry nor any other industry has stood in the way of their transition. Broadcasters should stop blaming others and take responsibility for making their transition to an over-the-air digital service successful.

NCTA urges the Commission in reviewing the MSTV/NAB/ALTV Reconsideration Petition to give no weight to the petitioners' attempt to divert attention away from the merits of their own action or inaction in converting to digital.

Respectfully submitted,

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