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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of:	)	
	)	
Carriage of Digital Television Broadcast Signals	)	CS Docket No. 98-120
	)	
Amendments to Part 76 of the Commission's Rules	)	
	)	
Implementation of the Satellite Home Viewer Improvement Act of 1999:	)	
	)	
Local Broadcast Signal Carriage Issues	)	CS Docket No. 00-96 /
	)	
Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals	)	CS Docket No. 00-2

TO: The Commission

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

Arizona State University, Benedek Broadcasting Corporation, Midwest Television, Inc., and Raycom Media, Inc. (licensees and owners of the sixty-five commercial and noncommercial television stations listed in Appendix A) (the "Broadcast Group"), hereby seek reconsideration of certain aspects of the Commission's *First Report and Order* in the above-captioned proceeding ("*Order*").<sup>1</sup> In particular, the Broadcast Group urges the Commission to reconsider its conclusion that the Communications Act of 1934, as amended (the "Act") does not compel transitional digital cable carriage requirements, and its decision to narrowly interpret the term "primary video" to mean only a single stream of video programming. These decisions conflict with congressional directives to impose DTV cable carriage requirements upon adoption of a DTV standard and to facilitate a timely transition to DTV. The Broadcast Group also urges the Commission to clarify its material degradation requirements to ensure that consumers receive the

<sup>1</sup> FCC 01-22 (rel. Jan. 23, 2001).

same quality of DTV service through cable as they would receive over the air, to mandate carriage of all program and system information protocol (“PSIP”) information, and to otherwise modify its decisions to facilitate – rather than undermine – the DTV transition.

**I. THE COMMISSION SHOULD ENSURE THAT CABLE SUBSCRIBERS HAVE ACCESS TO THE FULL COMPLEMENT OF FREE DTV SERVICES DURING THE TRANSITION.**

Cable carriage of DTV signals is essential to the success of the DTV transition. Without carriage during the transition, the seventy percent of television viewers that subscribe to cable effectively will be deprived of the innovative digital services that they otherwise would receive from local broadcasters. In the *Order*, the Commission itself acknowledges (though vastly understates) the importance of cable carriage to the transition,<sup>2</sup> and yet declines to establish transitional DTV carriage requirements. Carriage of digital signals is mandated by the Act and is critical to stimulating consumer interest and investment in DTV, without which the DTV transition will indefinitely stall. Like other broadcasters, the Broadcast Group is committed to and has invested heavily in the DTV transition. But these investments cannot bear fruit unless the Commission ensures that broadcasters, equipment manufacturers, *and cable operators* each play their essential role in the transition.

**A. The Act Mandates Carriage Of Qualified Local Broadcasters’ Digital Television Signals During The Transition.**

In the *Order*, the Commission acknowledges that “section 614(a) [of the Act], which imposes carriage obligations on cable systems, does not distinguish between digital and analog signals” and “[t]hus, when a television station seeks carriage, the cable system must-oblige regardless of whether the signal is in an analog or digital format.”<sup>3</sup> Moreover, the Commission concedes that “digital broadcast signal carriage fits within the express requirement of section

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<sup>2</sup> *Order* ¶ 4 (“cooperation and participation by the cable industry during the transition period would further the successful introduction of digital broadcast television”).

<sup>3</sup> *Id.* ¶ 15.

614(a) and thus is ‘expressly authorized.’”<sup>4</sup> With respect to noncommercial stations, the Commission similarly notes that “[s]ection 615(a) does not distinguish between digital and analog signals with regard to the ‘signals’ that must be carried”<sup>5</sup> and finds that “the digital signals of NCE stations are to be treated like their commercial counterparts for cable carriage purposes.”<sup>6</sup> Notwithstanding these findings, the Commission concludes that the Act does not compel carriage of broadcasters’ digital signals during the transition (except in rare instances where a station operates only in digital mode, and therefore does not have an analog signal entitled to carriage).<sup>7</sup> The Broadcast Group urges the Commission to reconsider this conclusion, which is inconsistent with congressional intent and, indeed, its own findings with respect to the statute.

As the Commission finds, the Act’s cable carriage requirements apply on their face to both digital and analog broadcast signals and obligate cable operators to carry all local broadcast stations requesting carriage up to the statutory capacity cap. Moreover, Congress expressly directed the Commission to adapt the cable carriage rules to “ensure cable carriage” of DTV signals.<sup>8</sup> By the time Congress enacted the carriage requirements in October 1992,<sup>9</sup> it was established that broadcasters would operate with both analog and digital signals during the DTV transition (then expected to last up to fifteen years).<sup>10</sup> Recognizing that carriage would be

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 21.

<sup>6</sup> *Id.* ¶ 22.

<sup>7</sup> *Id.* ¶ 14. The Commission refers to the simultaneous carriage of a broadcaster’s analog and digital television signals as “dual carriage.” The Commission properly rejected the arguments of “those commenters who say that the statute forbids dual carriage.” *Id.*

<sup>8</sup> 47 U.S.C. § 534(b)(4)(B).

<sup>9</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (codified at 47 U.S.C.).

<sup>10</sup> The *Second Report and Order* in the DTV proceeding, adopted May 8, 1992, established the framework under which the Commission would assign transitional paired DTV channels to broadcasters and repossess an unused channel when the transition to DTV was complete (a continued...)

essential for broadcasters' DTV signals, as it was for analog signals, Congress directed the Commission to adopt DTV carriage requirements "[a]t such time as the Commission prescribes modifications of the standards for television broadcast signals" – not years into or at the close of the DTV transition.<sup>11</sup> It would make no sense for Congress to require the immediate initiation of a proceeding to "ensure cable carriage" of DTV signals if it intended those rules to take effect only some ten to fifteen years into the future, after analog signals were no longer transmitted.<sup>12</sup>

In clearly mandating the Commission's adoption of digital carriage rules to apply during the transition, Congress did not foreclose, and in fact expected, the Commission to make adaptations to those existing analog rules to take into account various factors, including the burden on cable systems' capacity. That issue of how to craft the transitional, digital carriage requirement is within the scope of the *Further Notice of Proposed Rule Making* in this docket. The Broadcast Group believes that in that proceeding, the Commission can readily design transitional, digital rules that, through phase-in features, exemptions for smaller systems and sensitivity to special circumstances, will achieve cable's participation in the transition while limiting regulation to reasonable circumstances where market forces are not adequate for achieving congressional objectives. The purpose of this petition is to demonstrate that the Commission is not free to interpret the congressional mandate as optional.

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fifteen year period was established). *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (Second Report & Order)*, 7 FCC Rcd 3340 (1992).

<sup>11</sup> 47 U.S.C. § 534(b)(4)(B).

<sup>12</sup> The Conference Report accompanying the 1992 Cable Act supports this reading of the statute: "Subsection (b)(4)(B) provides that, *when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast high definition television (HDTV), it shall conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified standards in accordance with the objectives of this section.*" H.R. Conf. Rep. No. 102-862 at 67 (1992) (emphasis added).

**B. The Commission Adopted An Overly-Narrow Interpretation Of “Primary Video,” Which Should Be Interpreted To Include All Of The Free Video Services In The Digital Signals Of Qualified Local Television Stations.**

Section 614(b)(3)(A) of the Act requires carriage of a local station’s “primary video, accompanying audio, and line 21 closed caption transmission . . . and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers.”<sup>13</sup> “Largely parallel provisions are contained in Section 615 relating to the carriage of noncommercial stations.”<sup>14</sup> In the *Order*, the Commission interprets the term “primary video” to include only a single stream of video programming.<sup>15</sup> The Commission thus concludes that “to the extent a television station is broadcasting more than a single video stream at a time, only one of such streams of each television station is considered ‘primary.’”<sup>16</sup> The Commission’s restrictive interpretation of the Act would undermine the development of free, over-the-air DTV services, contrary to the intent of the statute.

The term “primary” should be read to mean the main service provided by broadcast television stations – free, over-the-air video programming service. Whether that service is provided in a single stream of programming or through multiplexing, it (as distinguished from subscription programming or ancillary and supplementary services) constitutes the “primary,” core, free video service traditionally provided by television stations to consumers. This interpretation of “primary video” is consistent with Congress’s intent to ensure that cable subscribers receive the free video service offered by broadcasters over the air. The narrow definition adopted by the Commission would undermine this goal.

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<sup>13</sup> 47 U.S.C. § 534(b)(3)(A).

<sup>14</sup> *Order* ¶ 50. For noncommercial educational stations, cable carriers must only carry VBI material “that may be necessary” for handicapped, educational, or language purposes. 47 U.S.C. § 615(g)(1). This distinction is not relevant to the “primary video” analysis.

<sup>15</sup> *Id.* ¶ 54.

<sup>16</sup> *Id.*

The Commission's understanding of the term "primary video" for DTV signals should reflect the congressional mandate of Section 614(b)(4)(B), which directs the Commission to adapt the must-carry requirements to the DTV context. In declining to adopt a requirement that broadcasters transmit only in HDTV and in encouraging innovative uses of the DTV channel in the public interest, the Commission endorsed the notion of transmitting multiple streams of video programming as part of a station's digital service.<sup>17</sup> Noncommercial broadcasters, who face particular challenges in the DTV transition, have based a business plan on this model, with plans to provide simultaneous streams of children's, educational and public affairs programming. Commercial broadcasters are also pursuing multicast opportunities including, for example, subdividing the local newscast into multiple segments for different niche populations in their viewing areas or offering alternative viewing options that will appeal to different subsections of the local community. The Commission suggests that all but one of these streams would be carried only if found to be "program-related" to the "primary" stream – and yet no single segment will be more "primary" than another, and none less entitled to cable carriage under the Act.

The term "primary video" for the DTV channel should include all of the free, over-the-air video programming streams in the DTV signal. The narrow interpretation adopted in the *Order* would stunt the development of innovative DTV programming services and permanently deny consumers access to the full range of digital services broadcasters otherwise might offer for free.

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<sup>17</sup> See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (Fifth Report & Order)*, 12 FCC Rcd 12809, 12829-12830 (1997).

**II. THE COMMISSION SHOULD RECONSIDER OTHER DECISIONS THAT UNDULY BURDEN BROADCASTERS, ARE CONTRARY TO THE ACT, OR UNDERMINE THE DIGITAL TRANSITION.**

**A. The Commission Should Clarify Its Material Degradation Requirements To Ensure That Cable Subscribers Do Not Receive DTV Service, Including HDTV, That Is Inferior In Quality To The Service Available Over The Air.**

Cable systems are required to transmit television broadcast signals “without material degradation” in accordance with prescribed technical standards.<sup>18</sup> In the *Order*, the Commission determines that “a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any digital programmer,”<sup>19</sup> but fails to specify any technical standards to implement the prohibition against material degradation of DTV signals. Moreover, while the Commission holds that “a broadcast signal delivered in HDTV must be carried in HDTV,”<sup>20</sup> it fails to address whether a cable operator may degrade an HDTV signal delivered in 1080I to a lower resolution, such as 720P. The Commission should clarify its rules to ensure that cable operators do not technically degrade broadcasters’ digital signals.

Specifically, the Commission should require cable operators to carry the entire qualified digital bitstream of each station in the format in which the broadcaster originally transmitted it. The Commission should clarify that cable operators may not degrade the quality of broadcasters’ free digital signals by stripping or by down-converting digital signals to other formats without the broadcaster’s consent, including down-converting an HDTV signal transmitted in 1080I to 720P. In addition, the Commission should clarify that cable operators cannot utilize cable boxes

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<sup>18</sup> 47 C.F.R. § 76.62(b); *see also* 47 U.S.C. § 534(b)(4)(A) (“The signals of local commercial television stations that a cable operator carries shall be carried without material degradation.”); 47 U.S.C. § 535(g)(2) (cable operators “shall carry the signal of each qualified local noncommercial educational television station without material degradation”).

<sup>19</sup> *Order* ¶ 73.

<sup>20</sup> *Id.*

to materially degrade broadcasters' digital signals, including HDTV.<sup>21</sup> This protection is mandated by the statute and essential to attracting and building an audience for digital television.

**B. The Commission Should Rule That All PSIP Information Is Entitled To Cable Carriage.**

In the *Order*, the Commission recognizes that a "critical component of digital broadcast television is the program and system information protocol ('PSIP'),"<sup>22</sup> and yet it fails to explicitly rule that *all* PSIP information is entitled to cable carriage. The Commission rules only that "a cable operator will be required to pass-through channel mapping PSIP information as it is considered to be program-related to the primary digital video signal."<sup>23</sup> The Broadcast Group agrees that carriage of the PSIP channel mapping information is critical. Accordingly, we urge the Commission to clarify that a cable operator's obligation to "pass-through channel mapping PSIP information" means that the cable operator must transmit the DTV signal to the digital television set (either directly or through a set-top box) without altering or in any way limiting the effectiveness of the PSIP information. Cable operators should be required to make whatever adjustments are necessary to the navigation information they transmit to the DTV set (directly or through a set-top box) to ensure that the PSIP information can be decoded by the television set in the same way that these instructions would be decoded if delivered over the air.

As the Commission notes, the PSIP tables contain more than channel identification information.<sup>24</sup> They provide broadcasters with the structure to create narrative and graphic program guides to better inform viewers of DTV services. They also provide for carriage of

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<sup>21</sup> The cable system should be required either to transmit these bits directly to the set (where there is no set-top box), to the set through a set-top box, or to the set bypassing a set-top box. This would mean that a cable system could transmit the DTV signal in a different mode (*e.g.*, in 64-QAM or 256-QAM) so as to use the cable channel more efficiently so long as the transmission did not compress or drop any of the qualified bits in the DTV signal.

<sup>22</sup> *Order* ¶ 49.

<sup>23</sup> *Id.* ¶ 83.

<sup>24</sup> *Id.* ¶ 49.

content advisory data (*i.e.*, V-chip information), provide for carriage of index information for closed captions, and support broadcasting of other services. The failure of cable systems to pass through all of this PSIP information (or later generation vehicles that serve the same purpose) will jeopardize the ability of viewers to receive V-chip code and broadcast program information in the DTV environment.<sup>25</sup> Thus, the Commission should rule that the cable carriage requirements apply to *all* PSIP information, not just channel-mapping information.

**C. The Commission Should Resolve Continued Compatibility And Interoperability Problems.**

In its *Notice of Proposed Rule Making* in this proceeding, the Commission recognized that, without rapid harmonization of technical standards and the establishment of basic principles of digital compatibility, consumers would experience inconvenience and unnecessary expense in accessing DTV signals.<sup>26</sup> But after acknowledging the importance of this issue and soliciting public comment, the Commission failed even to address compatibility in the *Order*. Cable compatibility and interoperability issues were thoroughly briefed in this proceeding by broadcasters, equipment manufacturers, cable operators, and others, and should have been addressed in the *Order*. The Commission must take action to ensure that the compatibility and interoperability problems that continue to impede the DTV transition are finally resolved.

**D. The Commission Should Reconsider Its Decision To Permit Partial Carriage Of Broadcast Digital Signals.**

In the *Order*, the Commission states that broadcasters and cable operators negotiating retransmission consent agreements “may negotiate for partial carriage of a local digital television

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<sup>25</sup> The Broadcast Group also objects to the Commission’s statement that “program guide data that are not specifically linked to the video content of the digital signal being shown cannot be considered program-related, and, therefore, are not subject to carriage requirements.” *Order* ¶ 64. This statement represents a narrowing of the Commission’s prior interpretation of “program-related material,” which we expect will be addressed more fully in comments to the Commission’s *Further Notice of Proposed Rule Making* in this proceeding.

<sup>26</sup> *Carriage of the Transmission of Digital Television Broadcast Stations (Notice of Proposed Rule Making)*, 13 FCC Rcd 15092 (1998).

signal.”<sup>27</sup> The Commission acknowledges that “this policy is a departure from the Commission’s analog carriage rules” and from its prior interpretation of the must-carry statute, but states that it “adopt[s] a different approach here because the statute gives the Commission flexibility to devise new rules for digital carriage when necessary.”<sup>28</sup> While the Broadcast Group agrees that the statute gives the Commission flexibility to adapt its rules for digital carriage – flexibility it should utilize, for example, in interpreting the term “primary video” to include all free programming streams – we disagree that the Commission’s decision to permit partial carriage will promote the transition. On the contrary, partial carriage agreements pose the same threats in the digital context as in the analog context. Indeed, because the digital transition is dependant upon consumer access to and acceptance of digital services, the threats are even greater for DTV. The Commission should reconsider its decision to permit partial carriage agreements for digital broadcast signals – a decision that would harm the transition and undermine the goals of the statute by discouraging full carriage of a broadcaster’s digital signal.

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For the foregoing reasons, the Commission should reconsider several aspects of the *Order* that would undermine the goals of the Act and the congressionally mandated digital transition, in particular its determination that the statute does not compel carriage of broadcasters’ DTV signals during the transition and its interpretation of the term “primary video” to include only a single stream of digital programming. This reconsideration phase provides the Commission with an opportunity to advance the DTV transition by implementing digital must-carry requirements that ensure that broadcasters’ free, over-the-air digital signals are carried to the cable subscribers in their local communities.

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<sup>27</sup> *Order* ¶ 31.

<sup>28</sup> *Id.*

Respectfully submitted,



Ellen P. Goodman  
Jennifer A. Johnson  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20004  
Phone: (202) 662-6000  
Fax: (202) 662-6291  
*Attorneys for the Broadcast Group*

ARIZONA STATE UNIVERSITY

/s/ Charles R. Allen  
Charles R. Allen, General Manager  
Station KAET(TV)  
P.O. Box 871405  
Tempe, Arizona 85287-1405  
Phone: (480) 965-3506  
Fax: (480) 965-1000

MIDWEST TELEVISION, INC.

/s/ August C. Meyer, Jr.  
August C. Meyer, Jr., President  
Post Office Box 85888  
7677 Engineer Road (92111)  
San Diego, California 92186-5888  
Phone: (858) 495-9302  
Fax: (858) 569-4203

April 25, 2001

BENEDEK BROADCASTING CORPORATION

/s/ K. James Yager  
K. James Yager, President &  
Chief Operating Officer  
100 Park Avenue  
Rockford, Illinois 61101  
Phone: (815) 987-5350  
Fax: (815) 987-5335

RAYCOM MEDIA, INC.

/s/ John E. Hayes  
John E. Hayes, President/Chief Executive Officer  
Rebecca S. Bryan, Vice President/General Counsel  
RSA Tower, 20<sup>th</sup> Floor  
201 Monroe Street  
Montgomery, Alabama 36104  
Phone: (334) 206-1400  
Fax: (334) 206-1555

Television Stations Owned By The Broadcast Group

Arizona State University

KAET, Phoenix, Arizona

Benedek Broadcasting Corporation

WTVY, Dothan, Alabama  
KKTV, Colorado Springs, Colorado  
WIFR, Freeport/Rockford, Illinois  
WHOI, Peoria, Illinois  
KHQA-TV, Hannibal, Missouri/Quincy, Illinois  
KAKE-TV, Wichita, Kansas  
KLBY, Colby, Kansas  
KUPK-TV, Garden City, Kansas  
WIBW-TV, Topeka, Kansas  
WBKO, Bowling Green, Kentucky  
WILX-TV, Onondaga/Lansing, Michigan  
KDLH, Duluth, Minnesota  
WTOK-TV, Meridian, Mississippi  
KMIZ, Columbia, Missouri  
WOWT, Omaha, Nebraska  
KSTF, Scotts Bluff, Nebraska  
WYTV, Youngstown, Ohio  
KAUZ-TV, Wichita Falls, Texas  
WHSV-TV, Harrisonburg, Virginia  
WTAP-TV, Parkersburg, West Virginia  
WTRF-TV, Wheeling, West Virginia  
WMTV, Madison, Wisconsin  
WSAW-TV, Wausau, Wisconsin  
KGWC-TV, Casper, Wyoming  
KGWN-TV, Cheyenne, Wyoming  
KGWL-TV, Lander, Wyoming  
KGWR-TV, Rock Springs, Wyoming

Midwest Television, Inc.

KFMB-TV, San Diego, California

Raycom Media, Inc.

WAFF, Huntsville, Alabama  
KOLD-TV, Tucson, Arizona

KXRM-TV, Colorado Springs, Colorado  
WFLX, West Palm Beach, Florida  
WTVM, Columbus, Georgia  
WTOC-TV, Savannah, Georgia  
KHBC-TV, Hilo, Hawaii  
KHNL, Honolulu, Hawaii  
KFVE, Honolulu, Hawaii  
KOGG, Wailuku, Hawaii  
KWWL, Waterloo, Iowa  
WAFB, Baton Rouge, Louisiana  
KSLA-TV, Shreveport, Louisiana  
WLUC-TV, Marquette, Michigan  
WPBN-TV, Traverse City, Michigan  
WTOM-TV, Cheboygan, Michigan  
WDAM-TV, Laurel, Mississippi  
KFVS-TV, Cape Girardeau, Missouri  
KTVO, Kirksville, Missouri  
KASA-TV, Santa Fe/Albuquerque, New Mexico  
WSTM-TV, Syracuse, New York  
WECT, Wilmington, North Carolina  
WXIX-TV, Newport, Kentucky/Cincinnati, Ohio  
WUAB, Lorain/Cleveland, Ohio  
WOIO, Shaker Heights/Cleveland, Ohio  
WNWO-TV, Toledo, Ohio  
WLII, Caguas/San Juan, Puerto Rico  
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WACH, Columbia, South Carolina  
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KPRY-TV, Pierre, South Dakota  
KSFY-TV, Sioux Falls, South Dakota  
WACH, Columbia, South Carolina  
WTNZ, Knoxville, Tennessee  
WMC-TV, Memphis, Tennessee  
WTVR-TV, Richmond, Virginia