

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

In the Matter of)
)
Carriage of Digital Television Broadcast) CS Docket No. 98-120
Signals)
)
Amendments to Part 76)
of the Commission's Rules)

To: The Commission

MSTV/NAB/ALTV OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), and the Association of Local Television Stations, Inc. ("ALTV")¹ oppose the petitions for reconsideration of the *DTV Must-Carry Order*² filed by the National Cable Television Association ("NCTA"),³ Adelphia Communications Corp. ("Adelphia"),⁴ and Time Warner Cable ("TWC").⁵ Specifically, MSTV, NAB, and ALTV

¹ MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. NAB serves and represents the American broadcast industry as a nonprofit incorporated association of radio and television stations and broadcast networks. ALTV is a nonprofit trade association representing local television broadcasters across this country.

² First Report and Order and Further Notice of Proposed Rulemaking, *In re Carriage of Digital Television Broadcast Signals, Amendments to Part 76 of the Commission's Rules*, CS Docket No. 98-120 (rel. Jan. 23, 2001) ("*DTV Must-Carry Order*").

³ National Cable Television Association, Petition for Partial Reconsideration, CS Docket No. 98-120 (filed April 25, 2001) ("NCTA Petition").

⁴ Adelphia Communications Corporation, Petition for Partial Reconsideration, CS Docket No. 98-120 (filed April 25, 2001) ("Adelphia Petition").

⁵ Time Warner Cable's Petition for Reconsideration, CS Docket No. 98-120 (filed April 25, 2001) ("TWC Petition").

oppose petitioners' contention that the Commission should not be able to require cable operators to carry a digital-only broadcaster's digital signal in analog format and TWC's contention that cable operators have no carriage obligations for "program-related" material in the digital context because a digital signal has no vertical blanking interval ("VBI"). Petitioners' arguments misconstrue the law and policy behind the Commission's conclusions in the *DTV Must-Carry Order*, and, accordingly, the Commission should deny their requests for reconsideration.

I. THE COMMISSION HAS AUTHORITY TO CONCLUDE THAT CABLE OPERATORS SHOULD BE REQUIRED TO CARRY A DIGITAL-ONLY BROADCASTER'S SIGNAL IN ANALOG FORMAT.

In the *DTV Must-Carry Order*, the Commission properly and lawfully concluded that for a limited time during the early stages of the DTV transition, a television station broadcasting only in digital may require cable carriage of one of its digital program streams in analog format.⁶ Cable operators, however, seek reconsideration of this conclusion, arguing that the Commission does not have the authority to require a cable operator to carry a digital signal in analog format, that the requirement does not serve a reasonable policy, and that it overburdens cable operators' First Amendment interests.⁷

A local television station transmitting an over-the-air signal, whether in digital or analog format or both, is entitled to mandatory carriage under Section 614 of the Communications Act, 47 U.S.C. § 534. MSTV and NAB briefed this issue extensively in

⁶ See *DTV Must-Carry Order*, ¶ 74.

⁷ See NCTA Petition at 3-6, Adelphia Petition at 1-7, TWC Petition at 1-3. NCTA's request for reconsideration is all the more surprising given its admission that "it may not be objectionable" for a cable operator to carry in analog format the digital signal of an analog station that converts to digital and vacates its analog channel. NCTA Ex Parte Letter, WT Docket No. 99-168 (filed June 6, 2000).

comments and reply comments filed in the WHDT-DT proceeding.⁸ Once it is established that a digital-only station is entitled to mandatory carriage,⁹ the Commission may adapt that requirement to ensure cable carriage of the station in accordance with the objectives of the Communications Act. *See* 47 U.S.C. § 534(b)(4)(B). Section 614(b)(4)(B) of the Act says, in plain English, that when the Commission adopts a DTV transmission standard, it also must adopt rules to ensure that DTV signals are carried on cable. Petitioners' argument that the Commission may ensure cable carriage of some digital signals but not signals of new digital stations simply misses the point. Section 614(b)(4)(B)'s mandate does not depend on the particular course any particular local station takes to DTV broadcasting. As soon as a station transmits a DTV signal, it is entitled to an assurance that it will be carried on cable.

As the Commission recognized, during the early stages of the DTV transition, “[m]any cable subscribers do not yet have television sets capable of receiving or displaying digital signals in their fully advanced format.”¹⁰ Limiting a digital-only station to digital cable carriage at this stage of the transition would effectively eliminate its audience and kill the station. This, in turn, would thwart the goals of the digital transition by decreasing the number of digital stations on the air. It would thus discourage set manufacturers from bringing reasonably priced digital sets to market quickly. It also would contravene the policies that local stations should serve local markets and that their service should be available to all members of the public in

⁸ *See* Comments of MSTV, WHDT-DT Petition for Declaratory Ruling, CSR 5562-Z, at 3-5 (filed Aug. 4, 2000) (“MSTV WHDT-DT Comments”); Reply Comments of MSTV, CSR 5562-Z, at 3-6 (filed Aug. 18, 2000); Comments of NAB, CSR 5562-Z, at 2-5 (filed Aug. 4, 2000); Reply Comments of NAB, CSR 5562-Z, at 1-3 (filed Aug. 18, 2000).

⁹ *See DTV Must-Carry Order*, ¶¶ 12, 15.

¹⁰ *Id.*, ¶ 74.

those markets, including cable subscribers.¹¹ At this stage of the transition, it is cold comfort for a digital-only station to have exclusively digital cable carriage. The Commission is well within its authority to ensure that carriage is meaningful by requiring cable operators to carry a digital signal converted to analog so that cable subscribers actually will be able to view the signal.

Petitioners' assertions that there is a First Amendment problem with the Commission's conclusion¹² also are not persuasive. There is no more burden to a cable operator asked to carry a new station's digital signal in analog format than there is to carry a new station's analog signal. The Commission has not given new digital stations enhanced must-carry rights. As long as cable operators remain protected by limits on the number of local commercial television stations that they are required to carry, *see* 47 U.S.C. § 534(b)(1), must-carry obligations remain constitutional.¹³ If under the Communications Act and the Commission's rules, a cable operator must carry a station's signal, there is no reason that the requirement is more burdensome when the signal is carried in analog converted from digital instead of analog that began as analog. When the burden is no greater, the analysis of the *Turner* decisions¹⁴ that upheld cable carriage requirements is unchanged by the Commission's conclusion in the *DTV Must-Carry Order* that a digital-only station may request analog carriage. Moreover, the Commission explicitly limited the duration of the digital-to-analog requirement to the early

¹¹ *See* MSTV WHDT-DT Comments at 4.

¹² *See* Adelphia Petition at 3-7; TWC comments at 2.

¹³ *See Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 215-216 (1997) (finding that capacity limits on must-carry obligations render them narrowly tailored) ("*Turner II*").

¹⁴ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994); *Turner II*.

stages of the DTV transition – the period in which there may be few DTV receivers, stating that it will revisit its policy in three years.¹⁵

II. THE COMMISSION HAS AMPLE AUTHORITY TO ADAPT THE CABLE CARRIAGE RULES TO ENSURE DIGITAL CARRIAGE OF PROGRAM-RELATED MATERIAL.

In the *DTV Must-Carry Order*, the Commission properly determined that although the digital broadcast signal does not include a VBI in which program-related material may be transmitted, “there are certain over-the-air digital services sufficiently related to a broadcaster’s primary digital video programming that are entitled to carriage.”¹⁶ TWC, however, argues that because the original carriage provision refers to program-related material “carried in the vertical blanking interval” – and the VBI is purely a creature of analog technology – the Commission cannot require carriage of program-related material in a digital signal.¹⁷ TWC’s specious argument ignores the Commission’s explicit mandate in Section 614(b)(4)(B) to adapt the cable carriage rules to the digital environment.

The Commission’s conclusion with respect to carriage of digital program-related material is the paradigmatic example of why Congress required it to adapt the carriage rules to the digital context: although there are certain technological differences between analog and digital television, Congress intended that the scope of cable carriage afforded digital signals would be at least as great as for analog signals. If the Commission could not require digital carriage of program-related material, then cable operators would be free to refuse carriage of closed captioning information, V-chip program ratings data, and Nielsen Source Identification

¹⁵ See *DTV Must-Carry Order*, ¶ 74.

¹⁶ *Id.*, ¶ 61.

¹⁷ See TWC Petition at 3.

Codes. That certainly was not the intent of Congress when it directed the Commission to adopt rules that would assure cable carriage for digital signals. Certainly Congress cannot have intended that as the congressionally-mandated DTV transition progressed, other statutorily-mandated measures designed to make television accessible to the disabled and to give parents greater control over their children's television viewing would be phased out. There should be no question that these and other types of program-related material continue to be entitled to cable carriage.

TWC's fears about undue expansion of carriage obligations, moreover, are unfounded. The limits of what constitutes program-related material will be debated presently in response to the *Further Notice of Proposed Rulemaking* in this proceeding.¹⁸ That is the proper forum in which to determine what constitutes program-related material entitled to mandatory carriage. Regardless of the Commission's ultimate decision, there is no reason to abrogate the debate altogether because of the meaningless technological distinction that a digital signal has no VBI.

* * *

¹⁸ See *DTV Must-Carry FNPRM*, ¶¶ 54-54.

In the *DTV Must-Carry Order*, the Commission properly concluded that a cable operator may be required to carry a digital-only station's signal in analog format and that program-related material in a digital signal is entitled to mandatory carriage. The Commission has clear statutory authority and sound policy reasons to adapt the carriage rules to the digital environment. Accordingly, the Commission should deny the petitions for reconsideration of NCTA, Adelphia, and TWC.

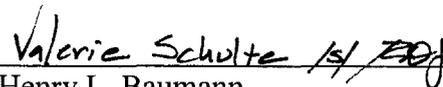
Respectfully submitted,

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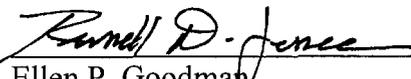


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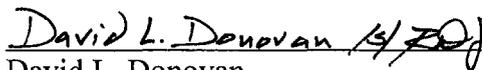
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May 25, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the MSTV/NAB/ALTV Opposition to Petitions for Reconsideration was hand-delivered this 25th day of May 2001, to:

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