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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Carriage of the Transmissions of )  
Digital Television Broadcast Stations )  
)  
Amendments to Part 76 of the Commission's )  
Rules )

CS Docket No. 98-120

TO: The Commission

**OPPOSITION OF  
MEDIACOM COMMUNICATIONS CORPORATION  
TO PETITION FOR RECONSIDERATION OF  
PAXSON COMMUNICATIONS CORPORATION**

Mediacom Communications Corporation ("Mediacom") timely files, through its attorneys, this Opposition to Paxson Communications Corporation's ("Paxson") Petition for Reconsideration ("Petition").<sup>1</sup> As explained below, no basis exists to grant Paxson's Petition for Reconsideration.

**I. INTRODUCTION**

Paxson's Petition represents nothing more than another attempt to seek through regulation what is properly something that it must negotiate in the marketplace. At least in several instances, Paxson has sought carriage of (1) its digital channel "in replacement of the analog channel . . . so that [the digital channel] is available to all Mediacom cable subscribers . . .

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<sup>1</sup>The Commission's Public Notice (Report No. 2481) appeared in the *Federal Register* on May 10, 2001. To be timely, Oppositions to Petitions for Reconsideration must be filed no later than May 25, 2001.

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on the same channel currently occupied by [the analog channel] and is viewable on the same basis as [the analog channel,]" and (2) "the remaining portion of the . . . digital signal on the digital portion of [cable] systems . . . served by digital set-top boxes and connected to Paxson's primary digital channel by use of the cable channel mapping protocol (PSIP)." ("Paxson Proposal").<sup>2</sup> In other words, Paxson has sought to replace cable systems' carriage of Paxson's analog signal with its "primary digital signal[,]" which would be down-converted to analog and carried on the analog portion of the cable system[,]" and to have those systems carry the digital station's "HDTV and digital multicast signals on the digital portion of the system,"<sup>3</sup> without having to relinquish its analog spectrum. The Cable Services Bureau properly rejected Paxson's proposal.<sup>4</sup> Notwithstanding Paxson's protests to the contrary, the Commission should reject Paxson's Petition and its underlying Paxson Proposal for the reasons outlined below.

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<sup>2</sup> See *Paxson Chicago License, Inc. Complaint for Carriage of WCPX-DT, Chicago, Illinois*, CSR-5604-M (October 16, 2000) at 5-6; See also *Paxson Chicago License, Inc. Complaint for Carriage of WCPX-DT, Chicago, Illinois*, CSR-5626-M (November 7, 2000) at 6 (collectively "Paxson Complaints" or "Complaints"). Paxson filed similar complaints against a number of other cable operators. See *In the Matter of Paxson Chicago License, Inc. v. 21<sup>st</sup> Century TV Cable, Inc. et al*, Memorandum Opinion and Order, DA 01-149, 2001 FCC LEXIS 470 (rel. January 23, 2001) ("*Paxson Carriage Order*").

<sup>3</sup> See *In the Matter of Paxson Chicago License, Inc.: Requests for Carriage of WCPX-DT, Chicago, Illinois*, Application for Review in CSR-5604-M and CSR-5626-M (February 22, 2001) ("*Paxson Application for Review*") at 4.

<sup>4</sup> See generally *Paxson Carriage Order* (citing *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22 (adopted January 18, 2001) ("*Digital Must Carry Order and FNPRM*").

## II. PAXSON'S PETITION IS NOT RIPE FOR CONSIDERATION.

Paxson seeks to use its Petition as a vehicle to upend the *Paxson Carriage Order*, notwithstanding the fact that the Commission has largely deferred consideration of issues raised by Paxson's Petition to its *Further Notice of Proposed Rulemaking* in its *Digital Must Carry* proceeding.<sup>5</sup> Paxson complains that the *Digital Must Carry Order and FNPRM* decision ignores the congressional mandate for "full and immediate mandatory carriage of digital broadcast signals – without further need for agency rulemaking" and the Commission therefore exceeded its authority by going beyond making mere "technical changes needed to ensure carriage and nothing more."<sup>6</sup> Paxson also reiterates its "Paxson Proposal" whereby "main programming [of digital signals] would be down-converted by the cable operator to analog and carried on the analog portion of the cable system" and "television stations choosing to allow cable systems to remove their analog signal in favor of their digital signals would have their HDTV or digital multicast signals carried on the digital portion of the cable system equipped with digital set-top boxes," without the need to return the analog spectrum.<sup>7</sup>

The Commission's *Digital Must Carry Order and FNPRM*, however, makes clear that the issues raised by Paxson's Petition are largely the subject of a pending proceeding and not properly the subject of a Petition for Reconsideration. For example, as the Cable Services Bureau noted in the *Paxson Carriage Order*, "Paxson . . . continues to broadcast in both an

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<sup>5</sup>See *Digital Must Carry Order and FNPRM* at ¶¶ 112-127; see also *Paxson Carriage Order* at ¶ 8.

<sup>6</sup>See Paxson Petition at 3-8 (emphasis in original).

<sup>7</sup>See Paxson Petition at 16-20.

analog format and a digital format. . . [T]hose television stations that broadcast in both analog and digital modes, like Paxson, cannot assert digital carriage rights under Section 614 or Section 615 until the resolution of the matter in the pending proceeding in CS Docket 98-120."<sup>8</sup> To the extent Paxson's Petition seeks to have the Commission prematurely rule on issues intrinsically tied to issues in the *Digital Must Carry FNPRM*, it must be dismissed for lack of ripeness.

### III. THE COMMISSION SHOULD REJECT PAXSON'S PROPOSAL.

#### A. Paxson's Proposal Does Not Fall Within the Commission's "Either-Or" Option But Actually Seeks Dual Carriage.

Paxson misleadingly suggests that the Paxson Proposal seeks carriage under the Commission's "either-or" category outlined in its *Digital Must Carry NPRM*.<sup>9</sup> In fact, Paxson's request represents nothing more than a shrewdly crafted request for "dual" carriage. The Commission's "either-or" proposal, which, to date, the Commission has declined to adopt as an acceptable solution during the transition period, would "require broadcasters to choose between mandatory carriage for either the analog signal or the digital transmission, but not both, during the early years of the transition period."<sup>10</sup> While Paxson nominally meets that criterion by seeking carriage of its digital signal in lieu of its analog signal, the burden imposed by the

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<sup>8</sup>See *Paxson Carriage Order* at ¶ 8.

<sup>9</sup>See Paxson Petition at 18 (referring to *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Notice of Proposed Rulemaking in CS Docket No. 98-120, 13 FCC Rcd 15092, FCC 98-153 (1998) ("*Digital Must Carry NPRM*"). Mediacom respectfully disagrees with the Bureau's acceptance of Paxson's characterization of its proposal as falling under the Commission's "either-or" proposal for digital must carry during the transition period. See *Paxson Carriage Order* at note 18 ("Paxson, has by its actions, adopted the either/or proposal for digital must carry during the transition period that was raised in the NPRM.").

<sup>10</sup>See *Digital Must Carry NPRM* at ¶ 47.

Paxson Proposal rivals that of dual carriage by virtue of the fact that Paxson would have its digital signal (down-converted into an analog format) carried in place of the analog signal plus HDTV and multiple programming streams of its digital signal carried on the digital portion of the cable system.<sup>11</sup> Paxson's Proposal therefore does not properly fall within the Commission's "either-or" proposal. The Commission should therefore reject Paxson's Petition.

**B. The Commission Has Determined That Broadcasters May Not Seek Digital Carriage Without Relinquishing Their Analog Spectrum.**

The Commission has determined that digital-only television stations have must carry rights.<sup>12</sup> A digital-only television station, for which there is no paired analog station or the broadcaster has returned its analog spectrum, may seek carriage of its digital signal in either a digital or analog format.<sup>13</sup> By allowing digital-only stations to seek carriage in an analog format, the Commission, at least in part, sought to "facilitat[e] the return of the analog spectrum."<sup>14</sup>

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<sup>11</sup>The burden posed by Paxson's Proposal is similar to that where a broadcaster seeks carriage of both its analog and digital signals. As Paxson Petition acknowledges, the Paxson Proposal would require substantially more than 6 MHz of a cable system because 6 MHz would be dedicated to carriage of the down-converted digital signal on the analog portion of the system plus the additional bandwidth needed to carry the multicast signals. See Paxson Petition at 19.

<sup>12</sup>See *Digital Must Carry Order and FNPRM* at ¶¶ 15-16. See also *In the Matter of WHDT-DT, Channel 59, Stuart, Florida: Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, Memorandum Opinion and Order in CSR-5562-Z, FCC 01-23 (rel. January 23, 2001) ("*WHDT-DT Order*").

<sup>13</sup>See *WHDT-DT Order* at ¶¶ 13-15; see also *Digital Must Carry Order and FNPRM* at ¶ 74. Mediacom's reference to the Commission's decision in the *WHDT-DT Order*, however, does not signal its agreement with the Commission's position that a broadcaster with a digital-only station may seek carriage of its digital signal in an analog format.

<sup>14</sup>See *Digital Must Carry Order and FNPRM* at ¶ 74.

The Paxson Proposal is distinguishable from situations where the Commission has determined that digital must carry rights exist. The primary difference here – Paxson refuses to give up its analog spectrum. Having decided that only stations with no paired analog station have must carry rights, the Commission has considered and rejected Paxson’s suggestion that a broadcaster be allowed to demand carriage of its digital signal without relinquishing its analog spectrum.<sup>15</sup>

**C. The Paxson Proposal Does Not Give Incentive to Transition to Digital Television.**

Incredibly, Paxson’s Petition suggests that the Commission’s decision acts as a disincentive for consumers to transition to digital television. Paxson claims that

The Commission’s new DTV must carry rules create an incentive structure that perpetuates analog service. Since households have little incentive to switch to digital receivers, broadcasters have no incentive to terminate analog service to obtain digital cable carriage. Analog spectrum will not be returned. Digital television will not be implemented. Innovation will not occur.<sup>16</sup>

This, of course, makes no sense when one considers that Paxson proposes to down-convert its "primary video" digital signal into an analog format, for which there is no need for a digital television set.<sup>17</sup> Furthermore, even if broadcasters’ multiplexed programming streams

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<sup>15</sup>See, e.g., *Digital Must Carry Order and FNPRM* at ¶ 15, *WHDT-DT Order* at ¶12. Paxson even recognizes this point. See Paxson Application for Review at 7 ("Under the Commission’s new rules, only those television stations which terminate analog service are entitled to cable carriage of their digital signals.")

<sup>16</sup>See Paxson Petition at 19-20.

<sup>17</sup>The Commission has noted this as well. See *Digital Must Carry Order and FNPRM* at ¶ 74 ("We recognize, that permitting digital-to-analog conversion will not provide an impetus for cable subscribers to purchase digital television sets . . ."). Interestingly, to the extent the

were carried, their receipt by cable subscribers would initially rest on the availability of digital set-top boxes, also obviating the need for a digital television receiver. Bottom line, Paxson's Proposal does nothing to facilitate the transition to digital television.

#### **IV. CONCLUSION**

Paxson's Petition represents nothing more than another attempt to have the Commission legislate that which must be left to marketplace forces. As discussed above, the Petition is premature and the subject of a pending proceeding. Mediacom therefore respectfully requests that the Commission reject Paxson's Petition.

Respectfully submitted,

**MEDIACOM COMMUNICATIONS  
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Commission embraces the idea that new digital-only stations or those that have returned their analog spectrum will facilitate the digital transition, Paxson's continued resistance to returning its analog spectrum impedes the digital transition.

## CERTIFICATE OF SERVICE

I, Kyle Baker, a secretary with the law firm of Fleischman and Walsh, L.L.P., hereby certify that on this 25<sup>th</sup> day of May, 2001, I caused to be sent, via first class mail, postage prepaid, or hand-delivery, copies of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION to each of the following:

William L. Watson  
Secretary and General Counsel  
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Kyle Baker