

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

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 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
)	

**COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Electronics Association (“CEA”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, hereby respectfully submits its comments in response to the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) issued by the Commission in the above-captioned proceeding.¹

¹ See *In the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission’s Rules; Implementation of The Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues; Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking, CS Docket 98-120, FCC 01-22, 66 Fed. Reg. 16523 (rel. Jan 23, 2001) (“*Further Notice*”).

I. INTRODUCTION

CEA is the principal trade association of the consumer technology industries. CEA members design, manufacture, distribute, and sell a wide variety of consumer electronics equipment and information technology equipment, including analog and digital televisions, radios, personal computers, direct broadcast satellite receivers, videocassette recorders (“VCRs”), and digital versatile disc (“DVD”) players, as well as many other devices that connect to and enhance these products.

Manufacturers are doing their part to move the digital television (“DTV”) transition forward. We are gratified that over one million DTV products have been sold to date, representing over two billion dollars in consumer investment.² Because CEA members invented DTV and have a major interest in the success of the DTV transition, CEA has participated in the digital television (“DTV”) proceeding since its inception and remains committed to helping the Commission resolve DTV’s many issues. CEA seeks to help pave the way for ubiquitous digital and high-definition services for consumers.

In its *Further Notice*, the Commission seeks input on several issues that it did not or could not resolve in its *DTV Must-Carry Order*. The CEA appreciates the opportunity to provide further input on certain issues that will affect consumers throughout the United States and possibly even the future of digital television.

² See *One-Millionth DTV Product Sold*, CEA Press Release (May 2, 2001). In the past three years, television manufacturers have produced more than 250 models of DTV products, while both enhancing their affordability and improving their performance. *Id.*

II. SOME DEGREE OF DUAL OR MULTICAST CARRIAGE SHOULD BE PROVIDED DURING THE DTV TRANSITION

In the *Further Notice*, the Commission sought comment on the need for dual carriage for a successful DTV transition.³ CEA believes that dual carriage, or ideally multicast carriage,⁴ is necessary for a successful DTV transition. To this end, we reiterate an alternative that will help spur the creation of digital programming and facilitate the DTV transition while at the same time adequately addressing cable operators' concerns over constitutional burdens and capacity issues.⁵

Dual or multicast carriage of digital broadcast signals is necessary to ensure a consumer-friendly transition to digital television. The Commission itself noted that “[o]nly if DTV achieves broad acceptance can we be assured of the preservation of broadcast television’s unique benefit: free, widely accessible programming that serves the public interest.”⁶ Approximately seventy percent (70%) of consumers receive their primary television signal via cable.⁷ Denying an important outlet for digital broadcasts and allowing cable operators to exercise their bottleneck control to deny consumer access to digital broadcasting during its infancy will undeniably thwart the public acceptance of DTV.

³ See *Further Notice* ¶ 112.

⁴ CEA strongly disagrees with the Commission’s determination that the statutory language “primary video” limits the application of must-carry requirements exclusively to a single digital video stream from each broadcasting station. *Further Notice* at ¶ 54. This finding confounds the expansive opportunities offered by digital television and constitutes a manifest obstacle to the DTV transition that the Commission seeks. Cf. Separate Statements of Commissioners Powell and Ness, Dissenting Statement of Commissioner Tristani, FCC 01-22.

⁵ See *In the Matter of Carriage of the Transmissions of Digital Television Broadcast Stations, Amendments to Part 76 of the Commission’s Rules*, Reply Comments of the Consumer Electronics Manufacturers Association, CS Docket No. 98-120 at 8 (filed Dec. 22, 1998).

⁶ See Fifth Report and Order, MM Docket No. 87-268, 13 FCC Rcd 12809 at ¶ 5 (1997).

⁷ See *Cable, Content, Copy Protection Are Keys to DTV Transition, Says CEA*, CEA Press Release (Apr. 23, 2001).

Mandating cable carriage of only a single analog or digital broadcast signal forces broadcasters to make a choice that is ultimately detrimental to consumers and the future of digital broadcasting: broadcasters will be required to choose either carriage of their analog signals at the peril of DTV or carriage of their digital signals (if they are even given the choice) at the peril of consumers lacking digital-capable equipment. Indeed, the very mechanics of making such an election will be difficult, as digital broadcasters may well switch between single and multiple program streams over the course of a broadcast day, or even during a single program.

The negative effects of this either/or choice are apparent. Without assurance that digital broadcast signals will be carried during the DTV transition, broadcasters and programmers will have little incentive to produce original digital programming. Consumers will have less incentive to purchase digital receivers. And, it will become less likely that the digital transition will be completed by the 2006 target date. It is obvious that denying carriage of digital broadcast signals or creating incentives to merely simulcast will not hasten the move to digital and the return of valuable spectrum.

CEA favors cable carriage of digital broadcast signals to the greatest extent possible. Optimally, the transition to DTV will be maximized if *all* new digital broadcast services are available to all consumers, including cable subscribers. To this end, a scalable, capacity-based dual or multicast carriage rule would best serve the public interest.

CEA appreciates that capacity differences exist among cable systems. To avoid unfairly burdening those systems with lesser capacity, a system of carriage requirements based on system capacity is a reasonable approach. Such a compromise solution could ensure maximized carriage of digital broadcast content while respecting cable system limitations.

High-capacity cable systems should have must-carry obligations that are appropriate. For instance, 750 MHz cable systems should be required to carry *all* of a broadcaster's digital broadcast signals. These high-capacity systems will not suffer undue hardship or unreasonable constraint on their system capacities under this proposal.⁸ Indeed, multicast carriage on 750 MHz cable systems will likely increase viewership and promote the DTV transition by promoting and showcasing an increasing amount of new digital programming.

As the Commission knows, however, not all cable systems have enough capacity to support widespread dual or multicast carriage. For smaller-capacity cable systems, a sliding scale of digital must-carry requirements, depending on the capacity of each system (considering digital capabilities and total useable bandwidth), is appropriate. The more capacity a cable system has available, the higher the amount of its capacity that should be allocated or available for must-carry purposes. Cable systems lacking the capacity to accommodate all digital local broadcast signals should permit broadcasters to choose which of its signals the cable operator must carry. A scalable must-carry requirement is especially appropriate and forward-looking given the rapidly increasing capacities of cable systems as they upgrade and modernize. Regardless, the scaled must-carry regime for smaller capacity cable systems should be supplemented by the possibility for additional digital broadcast signals to be carried via retransmission consent agreements.

Fears are grossly exaggerated that a dual or multicast carriage requirement for digital broadcast signals will displace substantial numbers of existing cable network channels. As cable

⁸ Cable operators use much of the extra channel capacity afforded by digital systems for redundant premium channels and additional pay-per-view channels. For example, the digital system in Montgomery County, Maryland operated by Comcast offers 81 basic tier channels, as well as five versions of the Discovery channel, 12 Encore Channels, 14 HBO channels, 8 CineMax channels, 10 Showtime channels, 6 Starz! Channels, 45 music channels, 49 sports and movies PPV channels and 18 "sports package" channels. Even if there is no additional channel capacity available on this system (and there may be), a modest reduction in each of these categories would afford the capacity for over-the-air digital broadcast signals with a minimal level of viewer disruption.

systems upgrade, system capacity increases dramatically, reducing the burden placed on cable operators by virtue of must-carry requirements. Most likely, the capacity of upgraded cable systems will far exceed what is needed to carry both digital and analog signals during the transition period. This is helped by the fact that the digital rollout is phased: not all broadcasters will be requesting digital carriage at once. Most of the immediate requests for dual carriage will come from broadcasters in the largest markets—markets where cable systems have already been upgraded. Since broadcasters in smaller markets have delayed regulatory digital requirements, smaller cable systems will have an extended opportunity to upgrade their systems, and existing cable programming will be unaffected by heightened carriage obligations.

III. NON-SIMULCAST DUAL CARRIAGE WILL SPUR NEW DIGITAL CONTENT

In the *Further Notice*, the Commission questioned the practicality of imposing must-carry obligations on cable operators due to the current dearth of digital programming.⁹ Specifically, the Commission wonders if must carry would be duplicative and preemptive of other programming.¹⁰ The Commission's tentative direction on this issue in the *Further Notice* is counterintuitive and will ultimately prove detrimental to the DTV transition. The history of the consumer electronics industry makes clear that consumer acceptance of new technology is driven by the widespread availability of high-quality, compelling content.¹¹ Rather than delaying dual carriage due to the lack of new digital content, the *expansion* of must-carry, along with a concerted effort by broadcasters and the Commission, is needed to help solve the content

⁹ See *Further Notice* ¶ 120.

¹⁰ *Id.*

¹¹ See *Cable, Content, Copy Protection Are Keys to DTV Transition, Says CEA*, CEA Press Release (Apr. 23, 2001).

shortfalls currently being experienced by DTV viewers. The Commission should take an active role in encouraging the creation of and access to digital content.

Imposing dual or multicast must-carry requirements will promote the development of digital programming and the transition from analog to digital television. Undoubtedly, a major impediment to the DTV transition is the lack of original digital programming, especially high-definition programming.¹² As a result of the dearth of digitally originated programming on the market today, most digital consumers experience marginal and highly duplicative programming. The industry is in a “chicken and egg” dilemma: DTV’s popularity is unlikely to increase without the availability of unique and compelling digital content, and programmers are hesitant to develop digital content if there is no sure audience for such content.

Increasing cable operators’ must-carry obligations will ameliorate the programming problem and facilitate the transition to DTV. Knowing that cable systems will carry digital broadcast signals, more digital content will be developed by programmers who have been assured that cable will carry their output. Must-carry of digital broadcasts and multicasts will also spur broadcasters to create more original digital content and avoid mere simulcasting of analog programming in digital format.¹³ In turn, consumers will experience the quality of digital television and grow to expect no less. Further, cable providers will have more incentive to carry digital broadcast programming when more unique and digitally originated programming exists. As a corollary benefit, increased DTV viewership through must-carry requirements will hasten

¹² A recent survey conducted by Digital Tech Consulting found that only 3.6%, or approximately 1,008 hours per year, are broadcast in high-definition. *See Id.*

¹³ The *Further Notice* indicates that the Commission’s DTV transition requirements complicate the question of duplicative programming by requiring phased-in simulcasting beginning April 1, 2003 in preparation for the return of analog spectrum. *Further Notice* at ¶ 68. CEA submits that this requirement, though well-intended in the desire to minimize viewer disruption, should be re-visited in light of the relative dearth of digital broadcast programming and the disappointing penetration levels at this point in the transition for over-the-air digital television.

the DTV transition, provide higher penetration rates, and enable the timely return of broadcasters' analog spectrum.

Broadcasters must also do their part to facilitate the transition to digital television. As such, broadcasters should be discouraged from merely simulcasting a digitized version of their analog programming because such simulcasting is wastefully duplicative and adds little additional quality or value to the viewer experience. Therefore, if the Commission holds that cable operators must provide dual or multicast carriage during the DTV transition, the Commission should prohibit broadcasters from simulcasting. Broadcasters without separate analog and digital programming should be provided a single must-carry channel and should be required to decide which of the signals is carried. This assuages cable operators' concerns over system capacity and other burdens, provides consumers by way of added non-duplicative viewing options, and gives broadcasters an incentive to upgrade their programming, and provide TV viewers with the full high definition ("HD") television experience.

CEA favors one exception to this proposed rule: simulcasting should be permitted if HD-originated programming is involved. An exception for high definition simulcasting is valid because high definition broadcasting provides objectively higher-valued content from the consumer perspective. It is also appropriate because high definition television is the original and ultimate goal of the DTV transition. Further, high definition broadcasting, given its superior quality and definition, will spur consumer interest in DTV.

IV. "PROGRAM-RELATED" SHOULD INCLUDE ALL INFORMATION IN ANY WAY RELATED TO BROADCAST PROGRAMMING

In the *Further Notice*, the Commission sought input regarding the appropriate scope of "program related" in the DTV context and the proper relationship between "program-related" and

"ancillary or supplementary" in terms of the statutory objectives.¹⁴ The correct resolution of these issues is vital towards ensuring that DTV achieves its full potential. It is important that the ultimate definition of "program-related" be broad enough to enable the advanced services and features contemplated by advanced television while at the same time not providing broadcasters an unintended windfall at the expense of cable operators.

A broad definition of "program-related" best serves the public interest. As such, for both manufacturers and consumers it is essential that all the capabilities of consumer television equipment can be utilized as intended. For the Commission to take the position that PSIP and other information delivered in this stream does not relate to programming currently being aired could result in television receivers being prevented from operating as designed and intended or even as required by statute. For example, broadcast Program System Information Protocol ("PSIP") streams include a mass of information pertaining to tuning, V-chip, closed captioning, program guides, emergency information alerts, etc.¹⁵ Consumer confusion would also be caused if the DTV receiver features demonstrated in the showroom were not available in the living room due to the local cable provider's refusal to pass along the necessary system information.

It is also in the public interest for the Commission to foster interactive content such as personalized electronic program guides ("EPGs") and free data broadcasting services. Such interactive content differentiates digital content from plain-old analog television, and would have substantial potential for widespread viewer appeal—thereby facilitating the DTV transition.

¹⁴ See *Further Notice* ¶ 122. Pursuant to Section 336 (b)(3) of the Communications Act of 1934, as amended, ancillary and supplementary services are not subject to must-carry. See 47 U.S.C. § 336 (b)(3).

¹⁵ The delivery of PSIP information via cable is the subject of a technical agreement between CEA and the National Cable Television Association outlining the steps needed to be taken to assure provision of PSIP to DTV Receivers. See Letter of Robert Sachs, President and CEO, NCTA and Gary Shapiro, President and CEO, CEA to William Kennard, Chairman, FCC (Feb. 22, 2000); see also *Compatibility Between Cable Systems and Consumer Electronics Equipment*, FCC 00-342, PP Docket No. 00-67, ¶¶ 34-36 (rel. Sept. 15, 2000) (acknowledging agreements and

Limiting the carriage of such interactive content would limit the value of DTV for consumers and could provide anti-competitive advantages to cable operators and affiliated program providers, thereby undercutting the viability of free over-the-air broadcasting.

Therefore, to achieve the maximum benefit to consumers, “program-related” should include *all free, over-the-air services and information that is in any way related to broadcast programming*. The definition of “program-related” should be broad enough to encompass program guide and other material that is unrelated to the current program being viewed, so long as it is not provided on a fee or subscription basis.

Cable operators should not be able to deny viewer access to receiver functions such as individualized program guides or other electronic program guides solely because they happen to be unrelated to the program airing during a given moment. Such a result would only serve to frustrate the ultimate goals of advanced television and delay the DTV transition. The Commission must move to the “next level” in its perception of digital media: the capacity of digital television to deliver quantities of programming information orders of magnitude above that delivered by analog transmission should not be blocked by definitional reasoning developed in that same analog context. A cramped interpretation of “program-related” would mirror the narrow, mistaken approach taken with respect to “primary video” and would be just as injurious to the future of digital television.

The definition of “program-related” should not be so broad, however, to include fee-based services such as newswire services or data services. Such fee-based features appropriately fall within the statutory definition of “ancillary or supplementary” and are not appropriate for mandatory carriage.

expressing support for implementation); Erratum in PP Docket No. 00-67 (OET rel. Oct. 25, 2000) (setting forth reporting requirements).

V. CONCLUSION

The Commission's decisions on DTV must-carry and its related issues will make or break the success of digital broadcast television. Some degree of dual carriage is required if the digital transition is to occur in a timely manner and succeed commercially. Such carriage should not preempt the enhanced services and functionalities that distinguish DTV and form the cornerstone of the Commission's original advanced television objectives. Digital must-carry that inspires innovative digital programming and high levels of consumer interest can be achieved while at the same time protecting the interests of cable operators. We urge the Commission to take these issues and their potential solutions under serious consideration.

Respectfully submitted,

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