

RECEIVED

JUN 11 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 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

COMMENTS OF ENTRAVISION HOLDINGS, LLC

INTRODUCTION

Entravision Holdings, LLC ("Entravision"), by and through its attorneys, hereby files its comments in response to the *First Report and Order and Further Notice of Proposed Rule Making*¹ in the above-captioned proceedings. Entravision urges the Commission to adopt a regulatory mechanism that will further, to the greatest degree possible, the carriage of the entirety of local television broadcast stations' digital signals.

Entravision is the licensee of full-power and low-power television stations, most of which broadcast in Spanish language and are affiliated with the Univision Network,

¹ *First Report and Order and Further Notice of Proposed Rule Making* in CS Docket Nos. 98-120, 00-96 and 00-2, FCC 01-22, rel. January 23, 2001.

No. of Copies rec'd
List A B C D E

018

the principal Spanish-language television network. Entravision disseminates, through its full service and LPTV stations, Spanish-language programming that serves the needs of Hispanic individuals who rely on Entravision's stations. Such reliance is not only for entertainment; it also is for news and public affairs programming of importance to the local Hispanic audience. Entravision's LPTV stations retransmit Univision Network programming and, in a number of markets, provide original news and public affairs programming as well as public service announcements and other forms of assistance to the Hispanic community.

The Commission's *First Report and Order* reached a number of "tentative conclusions" on matters relating to the carriage of digital signals – particularly those of local broadcast stations – on cable television systems. The *Further Notice*, in many respects, asks for additional comment, and seeks to build a more contemporary record, on several of the issues for which the FCC offered its tentative and, in essence, interim conclusions.

In response to the *First Report and Order* portion of this document, the Commission has received several petitions for reconsideration. Thus, the Commission now has related processes and developing records – those tied to the reconsideration process and those pertaining to this *Further Notice* – that will help provide the agency with a basis upon it may reach some *final* conclusions concerning cable carriage of digital television broadcast stations.

Moreover, the *Further Notice* seeks comments on how the Commission, in its adoption of rules and policies to implement the terms of the *Satellite Home Viewer*

Improvement Act of 1999 (“SHVIA”),² should address the matter of space satellite delivery of broadcast stations’ digital signals. This further proceeding follows the Commission’s adoption of satellite carriage rules for analog signals of local broadcasters pursuant to the SHVIA – particularly as they implement the “carry one; carry all” statutory provisions.³ Herein, Entravision offers its comments on many of the issues addressed in the Commission’s *Further Notice*. As explained in further detail below, Entravision is of the view that the Commission has ample latitude, under the statute, to afford full carriage rights to the panoply of programming, information and data that broadcasters are and will be providing to the public over their digital channels. Furthermore, it is Entravision’s strongly-held belief that public policy and communications policy considerations weigh heavily in favor of the Commission granting such broad carriage rights to all local television stations, particularly those that serve specialized audiences.

CABLE CARRIAGE OF DIGITAL SIGNALS

A. Fundamental Carriage Rights

For some time and in several Commission proceedings,⁴ Entravision has advocated adoption of FCC regulations that best will ensure the continued availability of local broadcast service to the American public via off-air reception, delivery by cable and

² Pub. L. No. 106-113. 113 Stat. 1501 (November 29, 1999).

³ We acknowledge there currently are two ongoing judicial proceedings in which various provisions of the SHVIA are being challenged.

⁴ See, e.g. Entravision Comments in MM Docket Nos. 00-10 and 99-292, filed February 10, 2000; Entravision Opposition to Petition for Reconsideration and/or Clarification in CS Docket No. 98-201, filed April 5, 1999.

also through space satellite distribution. The public interest need for meaningful cable carriage rights (and space satellite carriage rights, as will be discussed further below) is particularly acute when it comes to broadcast stations carrying specialized programming and serving minority and foreign-language speaking communities.

In its adoption of mandatory cable carriage rules – pursuant to Congressional direction⁵ – the Commission decided that its analog cable carriage regulations should serve several key interests: (1) preserving the benefits of free, over-the-air local broadcast television service; (2) promoting the widespread dissemination of information from a multiplicity of sources; and (3) promoting fair competition in the market for television programming.⁶ In further implementing these statutory requirements in the context of digital television, the Commission must continue to be guided by, and not diverge from, these fundamental considerations.

Clearly, the Commission did not meet its statutory obligations, nor recognize the public policy considerations that should be controlling here, in its *First Report and Order's* “tentative conclusion” not to require “dual carriage” of local stations’ analog and digital signals. Moreover, the Commission also has missed the mark in its failure to require, even in a non-dual-carriage regime, the carriage of the entirety of a local television broadcaster’s digital signal, so that the local audience will be able to receive the full benefits of a station’s total local service offerings.

⁵ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁶ See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 622 (1994); *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 189 (1997).

Contrary to the Commission's tentative conclusion on the matter, it is abundantly clear that if the American public is to realize the total value of the Congressionally-mandated digital, over-the-air broadcast service, the agency must ensure full analog and digital carriage of local broadcast stations during the digital transition and assure continued carriage following the transition. Indeed, the Congressional Budget Office ("CBO"), in its report on the digital transition, observed and concluded that cable carriage of broadcasters' digital signals is the "most significant single determinant" of the pace and success of the digital transition.⁷ The Cable Act clearly requires the adoption of rules whereby each cable operator shall carry the signals of every local commercial television stations. The statute makes no distinction between qualifying analog and digital signals. However, the Commission's *First Report and Order* nevertheless refuses to grant full carriage rights to local stations' digital signals during the transition.⁸

The Commission does not have the latitude to ignore the plain language of the statute, which compels the carriage of all local broadcast signals – both digital and analog. Furthermore, it is not the FCC's prerogative to reject the plain language of the statute and substitute for it a regulatory scheme based on the agency's concern over the "burden on cable operators" and its questioning of the "degree of harm broadcasters" will suffer without a digital must carry requirement. Simply stated, the Commission must follow the terms of the statute and not substitute its judgment for that of the Congress.

⁷ *Completing the Transition to Digital Television*, CBO, Chapter I (Sept. 1999).

⁸ The only exception provided in the *First Report and Order* is for stations that only operate with digital transmission.

B. Retransmission Consent Agreements and Voluntary Carriage Agreements

For stations, particularly like those operated by Entravision, it is critical that the Commission afford a full must carry right for both digital and analog signals throughout the digital transition. Moreover, the fact that *some* stations may reach digital retransmission consent agreements with *some* cable operators will not aid the viewers of local stations that are not party to such agreements.

As the Commission well knows from experience, local television broadcast stations not affiliated with a major national network, and particularly stations providing service to minority and foreign-language populations, consistently have been unable to negotiate retransmission consent agreements with local cable operators. As such, these local broadcasters have relied upon the must carry provisions of the statute and the Commission's rules to ensure the delivery of their signals to local viewers who subscribe to cable television. It is essential that these broadcasters' transition to digital broadcasting not be in a regulatory environment where their digital service is not distributed over local cable systems.

Thus, the existence of retransmission consent agreements among cable operators and major network-affiliated stations provides absolutely no justification for the agency's failure to adopt an effective digital must carry requirement. On the contrary, it is critical that the Commission, in these further proceedings, recognize and abide by the Congressional mandate to afford full must carry rights to all local stations, particularly those for which the retransmission consent provisions of the statute and the FCC's rules do not offer any realistic benefit.

C. Carriage of the Entire, Free Broadcast Signal

In the *First Report and Order* the Commission, in the context of digital broadcasting, narrowly construed the term “primary video” to include carriage of only a “single stream” of video programming. However, such an approach will work against the interests of local viewers in receiving the full mix of offerings that the local broadcaster, in his or her editorial discretion, has chosen to broadcast in order to be responsive to the needs and interests of the community.

The proper and Congressionally-mandated course is for the Commission to require cable carriage of *all* the free video and audio material provided in a broadcaster’s six megahertz digital channel, together with the closed-captioning and program-related materials that also are part of that digital bitstream.

SATELLITE DISTRIBUTION OF BROADCAST STATIONS’ SIGNALS

The *Further Notice* asks a series of questions on the scope and content of the forthcoming FCC regulatory system for the carriage, by space satellite providers of video programming, of the digital signals of local broadcasters. Already, the Commission has adopted rules – implementing the SHVIA – for carriage of stations’ analog signals. It is Entravision’s view that the regulatory framework for space satellite carriage of analog signals simply should be extended to carriage of stations’ digital signals, and enhanced along the lines we have suggested herein for reform of the cable carriage rules applicable to local broadcasters’ digital offerings.

Entravision urges the Commission to adopt digital carriage rules for space satellite providers that will fulfill the Congressional mandate to regulate satellite carriage

in a fashion “as similar as possible” to the rules applicable to cable operators’ carriage of broadcast signals.⁹ Importantly, this regulatory scheme for space satellite providers also should reflect the provisions that we have offered, above, as recommended revisions to the cable carriage rules the Commission has adopted – at least on a “tentative conclusion” basis – for local broadcasters broadcasting in the digital mode. For purposes of space satellite carriage of local stations in the “carry one; carry all” regulatory environment, it is essential that the Commission adopt a regulatory approach that best will ensure the delivery of the entirety of local stations’ digital service. To do less simply would deprive local space satellite subscribers of the digital fare to which they are entitled under the statute and should receive consistent with the most fundamental notions of rational communications policy.

Moreover, Entravision strongly recommends the adoption of space satellite digital video regulations that will apply the same kind of network nonduplication, syndicated program exclusivity and sports blackout requirements to satellite carriers as currently are applicable to cable television system operators. Such a parallel regulatory scheme for satellite providers will provide not only worthwhile regulatory parity but also will ensure that the goals sought through the rules as applied to cable will not be subverted as a result of the operation of satellite services not subject to these requirements.

⁹ Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong., 145 Cong. Rec. H11793, H11796 (daily ed. Nov. 9, 1999). *See also* 47 U.S.C. § 339(b)(1)(B).

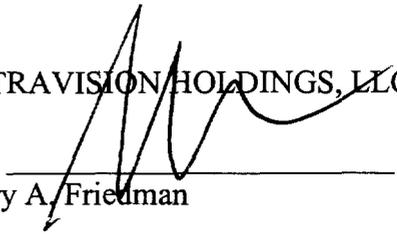
CONCLUSION

In this further phase of the above-captioned proceedings, the Commission has the opportunity to adopt a regulatory system for cable carriage of local stations' digital signals that is much improved over the "tentative conclusions" offered in the FCC's *First Report and Order*. Making those regulatory reforms – coupled with the adoption of parallel regulations for the space satellite distribution of local broadcast stations' digital signals to local audiences – will better ensure a more rapid and orderly transition to digital broadcasting.

Moreover, adoption of the rules advanced herein by Entravision will provide untold benefits to the local television audience that otherwise would be deprived of valuable and locally-responsive programming provided by local stations – particularly those serving specialized audiences in this digital age.

Respectfully submitted,

ENTRAVISION HOLDINGS, LLC

By: 
Barry A. Friedman

THOMPSON HINE, LLP
1920 N Street, NW, Suite 800
Washington, DC 20036-1600

Date: June 11, 2001
120305