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

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In the Matter of	)	
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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

COMMENTS OF INTERNATIONAL CABLE CHANNELS PARTNERSHIP, LTD., ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

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June 11, 2001

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COMMENTS OF
INTERNATIONAL CABLE CHANNELS PARTNERSHIP, LTD.,
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

International Cable Channels Partnership, Ltd. ("ICCP"), submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding, Carriage of Digital Television Stations, 58 Fed. Reg. 16524 (Mar. 26, 2001) ("First Report and Order" and "Further Notice"). The Further Notice seeks comment on a number of specific questions about whether the Commission should adopt rules expanding the cable system must carry obligations during the transition period from analog to digital broadcasting.

I. Introduction

ICCP owns and operates the International Channel, a foreign-language programming service. In addition, ICCP represents and markets an additional ten channels of foreign-language premium video programming services and the Canales ñ package of nine Spanish-language programming services. The International Channel itself is the only national cable network dedicated to in-language international programming. The International Channel is a multilingual video programming service providing educational and entertainment programming appealing to a variety of minority and ethnic groups. Launched in 1990, the International Channel presently is distributed by multichannel video programming distributors, particularly cable systems, throughout the United States to over 10 million subscribers. ICCP provides programming twenty-four hours a day to disparate ethnic groups, offering programming in over twenty-five languages, including multiple Asian, European and Middle Eastern languages, such as Arabic, Cambodian, French, German, Greek, Hindi, Hmong, Italian, Japanese, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, Tagalog (Filipino), Thai, and Vietnamese.

In addition to the International Channel itself, ICCP markets the International Premium Networks, a group of ten full time digital networks from overseas, including the following channels:

ART Cable - Arabic Cultural and Islamic general entertainment programs
CCTV-4 - China Central Television's Overseas Service
Power TV Zhong Tian Channel - Mandarin Chinese Programming
RAI - The rich culture of Italy, 24 hours a day
TFC - (ABS-CBN) Catering to all aspects of Filipino life
TV5 - Lively French-language television 24 hours a day

TV Asia and ZeeTV - Airing programs in Hindi, English, Gujarati, Urdu, Bengali, Punjabi and South Indian languages

TV JAPAN - Japanese programming including LIVE Sumo tournaments

TVR - Russian television programming

Finally, ICCP markets the Canales ñ package of nine Spanish-language video channels and eight Latino audio channels, which carry the programming of many of the world's top Spanish-language digital video and audio cable channels.

II. Summary

It is in this context that ICCP addresses the Further Notice now before the Commission, in which the Commission once again considers whether it should impose a requirement that cable operators carry both the analog and digital signal of every television station during the transition period prior to when such broadcast stations return their analog spectrum, whenever that may be. In the First Report and Order at ¶ 112, the Commission tentatively concluded that "a dual carriage requirement may burden cable operators' First Amendment interests more than is necessary to further the important governmental interests they promote." However, the Commission at the same time expressed concern that the record in this proceeding was not sufficiently complete and up to date to render that tentative conclusion final, and thus posed in the Further Notice several additional questions in order to determine whether requiring carriage of a television station's analog and digital signals during the transition period would be constitutional, and if constitutional, should be required.

ICCP strongly opposes any added must carry obligation with respect to digital broadcast signals during the transition period. An increased must carry requirement would

be a competitive blow to the distribution of ICCP's International Channel, the International Premium Networks, and Canales ñ, for which ICCP fights for carriage in the marketplace every day. The breadth of the programming and the diversity of viewpoints represented by ICCP's International Channel, the International Premium Networks, and Canales ñ are extraordinary, especially when compared to the American broadcast networks that are behind the push for dual carriage of their duplicative analog and digital signals during the analog to digital transition period. Yet the audiences for each individual language and in-language channel are not as big, and carriage is always a battle. These are the multitude of voices that will be lost if digital dual carriage rules are adopted for the transition period. ICCP's networks, without any artificial boost from governmental edict, would be forced to compete with these digital television broadcast signals for the limited remaining channel space on even the most advanced and upgraded cable systems. Such an artificial competitive boost for DTV signals is all the more inappropriate in view of the fact that *virtually no one can see the DTV signals because virtually no one has a television set which can receive them.* ICCP strongly believes that a requirement of dual carriage of analog and digital broadcast signals during any portion of the transition period is both unconstitutional and patently wrong policy.

ICCP submits that the marketplace should determine how the digital transition should progress. If the HDTV programming is there, and if consumers desire to view it, the cable operators will deliver it without any governmental edict. Consumer demand is what drives the carriage of all services, including those provided by ICCP. ICCP competes vigorously with other cable programmers, with broadcasters, and with other services such

as high speed internet service, telephony, and interactive services, for such carriage. There is no basis in law or policy to exempt broadcasters from this competitive marketplace.

In addition, ICCP submits that the Commission should, as Congress directed, narrowly define what "program-related material" must be carried along with the primary video of digital television stations that are carried pursuant to must carry requirements. The statute was clear in requiring carriage only of captioning and similar closely related material that is an integral part of the primary video, not ancillary and supplementary material or separate video streams.

Further, in the event that the Commission takes a wrong turn and determines to impose a dual carriage requirement on cable systems during any portion of the transition period, it should not extend such a requirement to DBS operators for their local-into-local broadcast service. Because of the fundamentally different distribution technology for the distribution of local television signals to DBS subscribers, a dual carriage requirement would cut in half the number of markets that DBS can provide local-into-local service, which would be a tremendous blow to the competitive promise of DBS.

III. Dual Must Carry Does Not Serve Any of the Governmental Interests Identified as Supporting Mandatory Broadcast Signal Carriage

The constitutionality of the analog must carry requirement, upon which any dual carriage requirement for digital signals during the transition period is necessarily piggy-backed, won very narrow approval by the U.S Supreme Court in Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180 (1997). In Turner, the Court determined that the analog must carry requirements there at issue must be analyzed under the intermediate

scrutiny factors established in U.S. v. O'Brien, 391 U.S. 367, 377 (1968), whereby a content-neutral regulation will be upheld if: (i) it furthers an important or substantial government interest; (ii) the government interest is unrelated to the suppression of free expression; and (iii) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. Consequently, in Turner, the Court identified three governmental interests asserted by Congress in support of mandatory carriage of broadcast stations by cable systems, and which marginally justified the First Amendment intrusion of the must carry rules: (1) preserving the benefits of free, over-the-air local broadcast television; (2) promoting the widespread dissemination of information from a multiplicity of sources; and (3) promoting fair competition in the market for television programming. 520 U.S. at 189-90.

A. The Governmental Interests Supporting Analog Must Carry Are Not Fostered by Requiring Dual Carriage

While the Turner Court found that these governmental interests could support the imposition of the analog must carry requirement,[1] none of these cited governmental interests are present in the case of possible mandatory carriage of *digital* signals, in addition to the same stations' *analog* signals, during the transition period. With respect to the first stated governmental interest, it must be recognized that all stations that would have dual carriage during the transition period already have analog carriage on their local cable systems. This existing analog carriage is what the Supreme Court found serves the governmental interest

[1] It should be noted that only a four Justice minority agreed that the third stated governmental interest, promoting fair competition in the market for television programming, was sufficient to justify the imposition of must carry requirements, while the four dissenting Justices and one

in preserving the benefits of free, over-the-air local broadcast television. The analog signals of local television stations are what viewers in all local markets watch, or have the ability to watch, and that analog carriage is what the Court found to be of substantial benefit in maintaining the local stations' viability. But there is no rational basis for maintaining that additional carriage of the digital signal of such stations during the transition period will add anything to their viability, and there is certainly no record or similar Congressional findings that such dual carriage is necessary to protect the viability of that broadcaster. Moreover, there is no evidence to suggest that the absence of such dual carriage will threaten the availability of free over-the-air broadcast service to non-cable subscribers, which was the key factor that swayed the Turner Court.

Indeed, it is also clear that the imposition of a dual carriage requirement not only fails to foster the second governmental interest of promoting the widespread dissemination of information from a multiplicity of sources, but rather that such a requirement would instead directly *diminish* access to a multiplicity of sources. Requiring dual carriage would necessarily squeeze out the voices of non-broadcast cable programmers who would provide much more diverse, unique, niche programming, in favor of the duplicative, lowest common denominator programming of television broadcasters. Cable system channel capacity remains limited, and even cable systems that have been upgraded to higher capacities do not devote all that increased capacity to carriage of video channels. Rather, that increased capacity is primarily devoted to other advanced services, such as high speed internet access and local telephony. The consumer benefits of high speed internet access

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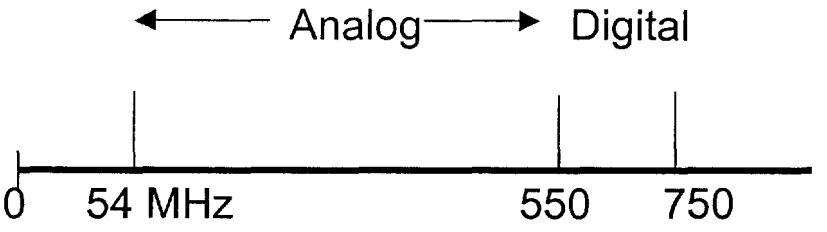
of the majority (Justice Breyer) agreed that this third stated governmental interest was insufficient to support the imposition of must carry requirements. Id. at 226.

and of increased telecommunications competition that accompany the cable system upgrades are threatened as well by increased requirements of dual carriage.

B. Cable System Channel Capacity Remains Limited, and Dual Carriage Will Squeeze Out Specialized Cable Networks

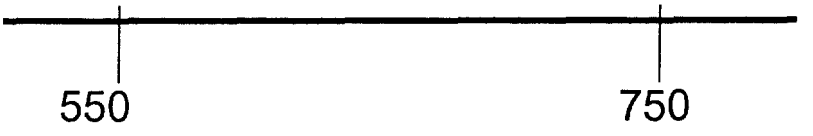
Notwithstanding the tremendous investment that cable operators have made over the past few years to increase the capacity of their systems, the channel capacity of the most advanced systems generally remains at no more than 180 video channel slots. As systems are upgraded from 350 MHz or 550 MHz to 750 MHz, the number of existing analog channel slots are not reduced, but rather remain at the standard 77. The "standard" upgraded 750 MHz configuration is generally as follows:

Analog/Digital Bandwidth



- 550 MHz = approx. 77 analog channels @ 6MHz
- 200 MHz for digital services

Digital Bandwidth



Sample Digital Services Allocation of 200 MHz:

- 60 MHz Pay TV & digital basics
  100 feeds at 10:1
- 18 MHz DTV (terrestrial, HDTV)
- 30 MHz VOD
  50 streams
- 12 MHz High Speed Access (cable modems)
- 6 MHz Telephony
- 74 MHz Future

Thus an analog/digital system will generally have 77 analog channels and 100 digital channels, for a total of 177 linear programming slots. For these 177 linear programming channel slots, after analog must carry/retransmission consent broadcast stations, there are nearly two video networks competing for every remaining slot. As of 2000, there were over 230 existing cable networks, with another 80 or more in development, all seeking those remaining channel slots.

Even for ICCP's International Channel which has been launched for a number of years, carriage is a difficult battle. International Channel is now carried in cable systems representing only 31% of total cable households. The package of the ten International Premium Networks, which has been offered by ICCP to cable systems since 1998, is carried in cable systems representing only about 3% of total cable households, while the nine-channel Canales ñ package, also launched by ICCP in 1998, is available in cable systems representing only about 10% of total cable households.

Moreover, the nature of ICCP's 20 channels and the other 220, and soon perhaps to be 300 or more, cable networks, many more of which will be displaced or never launched in the event that the Commission adopts digital must carry requirements during the transition period, is relevant to any determination of whether such a requirement would further the Turner Court's second stated governmental interest, that of promoting the widespread dissemination of information from diverse sources. These 300 networks offer much more diversity of information than the duplicated analog and digital broadcast signals seeking mandatory carriage during the transition period.

Indeed, the networks most likely to be displaced by increased mandatory broadcast station carriage are precisely the smaller, less mainstream, niche networks serving specialized and otherwise underserved audiences. A prime example is ICCP's twenty foreign-language channel offerings. As noted above, after eleven years, cable systems representing only 31% of cable households carry the unique International Channel service.

Indeed, the International Channel itself was one of the most notorious casualties of the analog must carry rule, displaced in the nation's largest multi-ethnic market, New York City. The International Channel was dropped from carriage by Time Warner Cable in Manhattan when the system was forced in 1996 to add an additional analog must carry broadcast signal. International Channel is only now again carried part-time in Manhattan because ICCP has resorted to commercial leased access for carriage, whereby ICCP must pay for carriage.

It is in the largest markets, where there is the greatest need for ethnically diverse programming such as that offered by ICCP, that even upgraded cable systems are most likely to be already channel locked or nearly channel locked with analog must carry signals. The addition of new digital must carry signals as a result of Commission-mandated dual carriage during the transition period will push those systems not already channel locked over the edge, thus further foreclosing any possibility of carriage for these niche but needed services. Channel-locked cable systems are not going to drop established networks such as ESPN or CNN to accommodate a dual must carry requirement. As noted above, ICCP has already learned the hard way that specialized channels such as its International Channel will be among the first to be dropped if there is a dual carriage requirement. Moreover, the

chances for developing specialized networks such as the International Premium Networks and Canales ñ to gain access to whatever channels remain would be minimal.

The silencing of these diverse voices in favor of duplicated digital versions of analog channels already carried by cable systems is the antithesis of the valid governmental interest recognized by the Turner Court of promoting the widespread dissemination of information from a multiplicity of sources; rather, imposition of a dual carriage requirement would instead directly diminish access to a multiplicity of sources.

C. Dual Carriage Requirements Will Have a Much Greater Impact on Existing Carriage Patterns Than the Minimal Impact Found in the Analog Must Carry Challenge

The Turner Court also placed substantial reliance on its finding that the imposition of the analog must carry requirements at that time would place a minimal burden on cable systems because the vast majority of local broadcast stations were already being carried before the must carry requirement was imposed. 520 U.S 180, 214-16. Specifically, the Court found that the addition of some 5,880 new channels because of the must carry rules was a minor burden when compared to the 30,000+ local signals that were already carried before the must carry rules became effective.

In the case of any dual carriage requirement, however, the burden would be much greater. Although retransmission consent will be a major force in local broadcast stations gaining cable carriage for their digital signals in the transition period, may fewer digital stations will likely be carried on cable systems during the transition period than analog stations were carried before the analog must carry rules became effective. The number of digital stations carried voluntarily in each market pursuant to retransmission consent

arrangements will likely be only about half the local stations in a market, especially in the larger markets with more in-market stations, rather than the one/sixth as was the case with the analog must carry rules. While this smaller number of stations in each local market being voluntarily carried pursuant to private agreement may be substantial enough to encourage early buyers to invest in digital or HDTV television sets, it still leaves a much higher number of stations whose duplicative digital signals will not be carried voluntarily than was the case in Turner. Thus the burden of compliance with the new rules, and level of disruption and displacement of existing carriage is much higher than with respect to the imposition of the analog must carriage rules as permitted under Turner decision. For this reason as well, the constitutionality of dual carriage rules is on much shakier ground than the narrowly affirmed analog must carry rules.

D. Dual Must Carry Cannot Be Justified As Furthering a Governmental Interest in Speeding the Return of Analog Spectrum

In view of the fact that a dual must carry requirement would not foster any of the governmental interests relied on by the Turner Court in turning back the First Amendment challenge to the analog must carry rules, some broadcasters have argued that a dual carriage requirement could be justified by a governmental interest in speeding the transition to digital service so as to allow for the speedier return of the analog spectrum. However, such an interest has never been expressed by Congress, and indeed runs contrary to the expressed governmental interest in promoting the preservation of free over-the-air television for non-cable subscribers. This is because when that transition is complete, non-cable subscribers will lose their only access to over-the-air signals unless they purchase an expensive digital

to analog converter or an even more expensive digital television set. Speeding the day when the transition is complete and analog signals are gone will certainly not protect the over-the-air only viewers from the loss of such free service.

But that transition day will likely be a long time coming, making the time period for any "temporary" dual carriage requirement virtually permanent. As hard as it may be for the Commission and Congress to acknowledge, the "promise of HDTV" and the spectrum giveaway that was supposed to support it was essentially a mistake. HDTV is a folly that may never reach the masses. Very little actual HDTV programming is broadcast by over-the-air stations. It is far more likely that digital spectrum given to broadcasters will be used for multiplexing rather than for HDTV. No one is buying the extraordinarily expensive television sets, and all bets are off as to when the transition may be completed.

Nonetheless, if there is anything that will speed the transition to digital, it will be the HDTV programming that is carried by the network affiliated broadcast stations that elect retransmission consent for their analog and digital signals. As has been reported, many network affiliates at the forefront of HDTV offerings are actively negotiating retransmission consent agreements for their digital signals. Both over-the-air and cable viewers watch retransmission consent stations far, far more than stations electing must carry, and any governmental interest in speeding the transition to digital will be served primarily by these network-affiliated stations electing retransmission consent; the additional dual carriage requirement that serves only to force carriage of the more marginal broadcast stations in each market is irrelevant to speeding any transition to digital.

IV. The Commission Should Adopt a Narrow Definition of "Program Related" Material

The Further Notice also seeks comment on whether certain programming material transmitted over the air along with a digital broadcast signal should be required to be included with a must carry digital signal. The underlying must carry statute requires that a cable system "shall carry in its entirety the 'primary video' of the station" that is required to be carried under the rules. 47 U.S.C. §534(b)(3). The statute also requires carriage of "accompanying audio" and "line 21 closed caption transmission" of such stations, as well as, "to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers." Id. Essentially similar provisions require carriage of program-related material broadcast by non-commercial stations.[2]

The Further Notice at ¶ 122 seeks comment on whether certain uses of the digital spectrum should be considered "program-related material" subject to required carriage, specifically such uses as a digital television broadcast of a sporting event that uses multiple camera angles that a viewer might choose among, sports statistics that "complement" a sports broadcast, "detailed financial information to complement a financial news broadcast," or "interactive enhancements like playing along with a game or chatting during a TV program." Id. The Further Notice also asks whether multicast educational programming aired by non-commercial stations should be considered "program related."

ICCP submits that the examples suggested in the Further Notice go substantially beyond the appropriate definition of "program-related material" that may be required to be

carried along with a must carry digital signal. The statute clearly states that "Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator." 47 U.S.C. ¶534(b)(3). In enacting the statute, Congress emphasized that although broadcasters may seek to enhance their signals with additional services, the mandatory carriage requirement is much more narrow: "Carriage of other program-related material in the vertical blanking interval and on subcarriers or other enhancements of the primary video and audio signal (such as teletext and other subscription and advertiser-supported information) is left to the discretion of the cable operator." H.R. Rep. No. 102-862, 102nd Cong., 2d Sess. at 92-93 ("House Report"). Moreover, Congress emphasized that the requirement to include program-related material "was not meant to include tangentially related matter such as a reading list shown during a documentary or the scores of games other than the one being telecast or other information about the sport or particular players." Id. at 101. Indeed, the 1996 Telecommunications Act narrowed the scope of required carriage of "program-related material" even further, stating that "no ancillary or supplementary service shall have any rights to carriage under section 614 or 615 [47 U.S.C. §§534 and 535] . . . ." 47 U.S.C. §336(b)(3).

With these Congressional caveats, there are only a very limited number of uses of the broadcasters' digital spectrum that are closely enough related to the primary video such that they should be required to be carried with a must carry digital signal. The permissible uses

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[2] 47 U.S.C. §535(g)(1). The non-commercial provision adds the further requirement that program-related material in the VBI or on subcarriers include material "necessary for the receipt of programming by handicapped persons or for educational or language purposes." Id.

would include closed captioning information, program ratings data for use in conjunction with the V-chip function of receivers, Source Identification Codes used by Nielsen Media Research in the preparation of program ratings, and the channel mapping and tuning protocols that are part of PSIP, as were set forth in the First Report and Order at ¶61.

Any uses beyond these listed above must be considered "ancillary and supplementary," and thus are not entitled to mandatory carriage. Thus the example of sports statistics that supposedly complement a sports broadcast, detailed financial data behind a financial report, playing along with a game, or chatting during a TV program, are all ancillary and supplementary and should not be required to be carried. In addition, uses that require additional video streams, such as streams showing alternative camera angles or multicast educational programs, should not be required to be carried with digital must carry broadcast signals. In the case of multicast educational programs, the added language in 47 U.S.C. §535(g)(1) that material originated by noncommercial stations be transmitted "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes," does not obviate the requirement that such material still be directly related to the underlying primary video program. Rather, the "educational purposes" language was meant to include such materials as lesson plans and other data directly related to the underlying program. See House Report at 101. Importantly, such ancillary material is not without a substantial bandwidth cost, and thus the statute's requirements should not be stretched at the expense of other, less constitutionally suspect uses that subscribers may prefer, such as additional cable program networks.

V. The Commission Should Permit Cable Operators To Carry Digital Broadcast Signals on Digital Tiers During the Transition Period

The must carry statute requires that the basic tier on a rate regulated system include all signals carried to fulfill the must carry requirements as well as "any signal of any television broadcast station that is provided by the cable operator to any subscriber . . . ." 47 U.S.C. §543(b)(7)(A). The Further Notice at ¶132 asks whether cable operators and broadcasters may agree to place digital signals carried pursuant to retransmission consent agreements during the transition period on digital tiers. The Commission suggests that to allow such voluntary agreements that involve placement on the digital tier might facilitate voluntary carriage of digital signals.

The Commission's suggestion is absolutely correct. Such added flexibility will encourage cable operators to voluntarily carry additional digital signals. Moreover, because the benefits of reception of digital service requires more expensive television sets and would usually be associated with a heavier television user, it is much more likely that such viewer would already be a subscriber to digital cable service. Indeed, if the voluntarily carried digital broadcast signals are located on an optional digital tier, the basic-only analog subscribers would not be burdened with the added costs of providing the digital broadcast signal on the rate regulated basic tier.

VI. DBS Systems Should Not Be Required to Carry Any Digital Broadcast Signals During the Transition Period

Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"),[3] requires satellite carriers, by January 1, 2002, "to carry upon request all

[3] Pub. Law 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999). The

local television broadcast stations' signals in local markets in which the satellite carriers carry at least one television broadcast station signal," subject to the other carriage provisions contained in the Act. DBS operators, such as DIRECTV and EchoStar, are granted a royalty-free copyright license through January 1, 2002, to retransmit television broadcast signals on a station-by-station basis, subject to obtaining a broadcaster's retransmission consent. This transition period is intended to provide the satellite industry with time to begin providing local television signals into local markets, otherwise known as "local-into-local" satellite service. The Commission recently adopted rules to implement the satellite carriage provisions contained in Section 338, but reserved to the present docket the question of whether any dual must carry requirements for the transition period should be imposed on such DBS operators electing local-into-local service.[4]

Although the Commission suggests that the general approach of SHVIA is that satellite carriage rules should be similar to cable carriage rules, there are substantial differences in delivery technology which require that DBS operators not be subjected to dual carriage even if such a requirement were to be imposed on cable operators. Specifically, the provision of local-into-local service for the greatest number of markets is contingent on the total satellite transponder capacity of each DBS operator. Each of the two DBS operators has a limited number of satellite transponders. Although spot beam technology can stretch the number of signals that can be carried somewhat, in general, any local broadcast station carried by such a DBS operator must be carried nationally, and if a DBS operator must carry twice as

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Commission adopted the *Notice of Proposed Rulemaking* to implement Section 338 on May 31, 2000. *See Implementation of the Satellite Home Viewer Improvement Act of 1999—Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 15 FCC Rcd 12147 (2000).

[4] *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal*

many local stations because of a dual carriage requirement, it will only be able to offer local-into-local service in half as many markets.

At present, EchoStar offers local-into-local service in 36 markets, and DIRECTV offers local-into-local service in 43 markets. In each of these markets, the DBS operators carry three to six local stations as part of their local-into-local service. When the new DBS analog must carry rules become effective next January 1, the DBS operators will each have to carry twice as many or more local stations in each of the markets in which such operators provide local-into-local service. This will necessarily reduce the number of markets in which the DBS operators may provide local-into-local service, perhaps in half. If this must carry obligation for the DBS operators is extended to digital signals during the transition period, the number of markets in which local-into-local service can be provided will be cut in half again.

The advent of local-into-local service was a tremendous milestone in the development of DBS into a roaring competitor to cable television. In the 16 months since SHVIA became law, DBS growth has been phenomenal, and finally competition to cable is real. Local-into-local service has been a driving force in this new competition, especially in larger urban markets. But extension of any dual must carry requirement to DBS operators would cripple them, and would slow dramatically the competition to traditional cable. Because of the nature of the nationwide delivery system inherent in DBS, a dual must carry requirement would inordinately hamper DBS growth as compared to cable. Thus in the event that a dual must

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Carriage Issues, Report and Order, FCC 00-417, ¶125-29 (adopted November 29, 2000).

carry requirement is imposed on cable systems, it should not in any event be extended to DBS operators.

VII. Conclusion

For these reasons, ICCP urges the Commission to refrain from increasing the must carry burden imposed on cable and DBS systems. If the digital signals are valuable to cable systems' subscribers during the transition period, the systems will carry them. The marketplace is the proper and appropriate means of deciding whether a digital signal, in addition to the analog signal from the same station, should be carried during the transition period.

Respectfully submitted,

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June 11, 2001