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FEDERAL COMMUNICATIONS COMMISSION
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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 THE WALT DISNEY COMPANY

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COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company ("TWDC"), by its undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the rules of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby submits these Comments in response to the *Further Notice of Proposed Rulemaking* released January 23, 2001, in the above-captioned proceeding.²

¹ 47 C.F.R. §§ 1.415, 1.419 (2000).

² *Carriage of Digital Television Broadcast Signals, Amendment of 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*, FCC 01-22, released January 23, 2001 (*First Report and Order and Further Notice of Proposed Rulemaking* in CS Dockets No. 98-120, 00-96, and 00-2) [hereinafter "*Report and Order*" and "*Further Notice*"]. A summary of the *Further Notice* appeared in the Federal Register on March 26, 2001. 66 Fed. Reg. 16524 (March 26, 2001).

I. INTRODUCTION AND SUMMARY

Congress adopted the Must Carry provisions of the Cable Television Consumer Protection and Competition Act of 1992 (“Cable Act”)³ to ensure that free, over-the-air broadcasting would remain a viable and robust medium and to safeguard viewers’ access to free, over-the-air programming. Congress directed the Commission to ensure that the core principles and statutory objectives of the Cable Act are applied to digital broadcast television.

In the Cable Act, Congress required carriage not only of the entirety of a broadcaster’s programming but also of the “program-related material carried in the vertical blanking interval or on subcarriers.”⁴ In so doing, Congress guaranteed that enhancements to programming that attract and maintain the viewing audience would also be passed through to consumers.

The very essence of digital technology is the potential to enhance and redefine the viewing experience into a more participatory activity through interactivity and access to additional information and visual and audio perspectives that illuminate the programming content. Such digital enhancements, including their interactive functionalities, represent a watershed in the evolution of television that will shape dramatically the expectations that viewers have of the medium and the manner in which they use and relate to it. Similarly, such changes to enhance the interactivity of advertising content will also significantly impact the nature of television as a medium for commerce.

Interactive program enhancements exist today, albeit as two screen applications, and, for example, can be experienced in the form of game related statistics and biographical information

³ Public Law 102-385, 106 Stat. 1406, approved Oct. 5, 1992.

⁴ 47 U.S.C. § 534(b)(3).

on ABC's *Monday Night Football*, answering questions along with contestants on *Who Wants To Be A Millionaire*, or participating in instantaneous polling on election night or during the coverage of the Presidential debates. These enhancements to free, over-the-air programming will become progressively more sophisticated as digital technology develops and broadband capability is deployed more ubiquitously, thereby transforming them into one-screen applications.

These new digital programming enhancements are not available to broadcasters alone; cable operators and their affiliated programming services, too, are seeking to exact the fullest advantage from these digital technologies to attract and maintain their audiences.

Unquestionably, in the digital environment, the programmers that provide the most compelling enhanced content and services will enjoy the most success in attracting and maintaining viewers and advertisers. The question of which elements of a broadcaster's digital television signal constitute "program-related" information entitled to cable carriage cuts to the very heart of broadcasters' ability to compete effectively in a digital video marketplace, and to the ability of cable television subscribers to continue to share in the full range of enhanced services that still developing digital technology will enable broadcasters to deliver to their viewers.

Accordingly, the Commission, in this proceeding, should embrace a definition of "program-related" for digital content that ensures that the fundamental statutory protection afforded broadcasters and viewers by the Must Carry provisions of the Cable Act is not diminished in the digital context. Therefore, the definition must be sufficiently flexible to encompass the dramatic changes to the television broadcast medium enabled by digital technology. Specifically, the Commission should define the scope of "program-related" to ensure that all content, including enhanced interactive advertising content, that is contained

within a broadcaster's free, over-the-air digital signal and transmitted for the purpose of attracting and maintaining viewership will be ensured carriage on the cable system.

II. CONGRESS INCLUDED THE “PROGRAM-RELATED” REQUIREMENT IN THE CABLE ACT TO ENSURE THE CARRIAGE OF BROADCASTERS’ ENHANCEMENTS TO OVER-THE-AIR TELEVISION SERVICE.

The Congressional intent of the Must Carry provisions of the Cable Act is to preserve free, over-the-air broadcasting. To that end, Congress required comprehensive carriage of broadcasters’ free programming services by requiring retransmission – “in its entirety” – not only of the video program itself, but also of all “program-related” content and, indeed, “the entirety of the programming schedule” as well.⁵ In the Findings section of the Cable Act, Congress specifically listed the reasons that preservation of free, over-the-air broadcasting is so important:

The Federal Government also has a compelling interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals –

(A) promotes localism and provides a significant source of news, public affairs and educational programming . . . and . . .

(C) will enhance the access to such signals by Americans living in areas where the quality of reception of broadcast signals is poor.⁶

Congress also noted that “there is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.”⁷

⁵ 47 U.S.C. § 534(b)(3)(A), (B).

⁶ See H.R. Rep. No. 628, 102nd Congress, 2d. Sess. at 3.

⁷ *Id.*

In the Cable Act, Congress linked its stated goals of preserving broadcasting to its economic analysis of the video marketplace and the need to protect broadcasting. Congress recognized that broadcasters and cable operators “compete directly for the television viewing audience, for programming material and for advertising revenue.”⁸ Congress was concerned that this competitive environment, coupled with the cable industry’s “undue market power” in the multichannel video marketplace, created an “economic incentive [for] cable systems [] to delete, reposition, or not carry local broadcast signals. . . .” which ultimately jeopardized “. . . the economic viability of free local broadcast television and its ability to originate quality local programming”⁹ To address fully this threat to the viability of free television, Congress enacted Section 614(b)(3) to require cable operators to carry “in its entirety . . . to the extent technically feasible, program-related material carried in the vertical blanking interval”¹⁰

Specifically, Congress included the “program-related” carriage requirement in the Cable Act to preclude cable operators from using their market power to undermine the viability of free, over-the-air programming by refusing to pass through enhanced content which is part of the broadcast station’s programming service. The reason for the rule was straightforward. Congress recognized that broadcasters had the ability to deliver enhanced “program-related” content to attract and maintain viewership of their programming, and that absent a mandatory carriage requirement, cable operators would have a strong financial incentive to exercise their market

⁸ See H.R. Rep. No. 682, 102nd Congress, 2d Sess. at 3.

⁹ See Conference Rep. No. 862, 102nd Cong., 2nd Sess. 3 (1992) (§ 2(a)(16)).

¹⁰ 47 U.S.C. § 534(b)(3); 47 C.F.R. § 76.62(e).

power to erode the popularity of broadcast services by stripping out content that helped create and maintain its popular appeal.

Inherent in this carriage requirement is the concept that, to further the purposes of the Cable Act, viewers receiving broadcast services over cable must have the same viewing experience as viewers receiving broadcast services free, over-the-air. Indeed, because cable possesses such widespread penetration and because many cable channels will employ such digital enhancements, if cable subscribers receive only an inferior, or limited version of the broadcast service, the commercial underpinnings of broadcasting are threatened. One need only consider the commercial impact on broadcasters if their programming was carried on the cable system in black and white while cable programming was delivered in color to understand how important this requirement is to the viability of free, over-the-air broadcasting.

Now, in this proceeding, the Commission must ensure that the Must Carry protections afforded broadcasters in the analog context are extended to the digital environment. Congress expressly directed the Commission to modify its rules to ensure fulfillment of that objective.¹¹ As critical as the program-related material carriage requirement has been in the analog context, it will play an even more important role the digital environment. Digital technology is changing the fundamental nature of television programming. For all programmers – broadcasters and cable alike – the means of attracting and maintaining audience are likewise changing dramatically and will continue to do so. As these enhancements come to redefine what television programming can be, and what viewers expect from it, their assured distribution will be just as

¹¹ 47 U.S.C. § 534(b)(4).

vital to the ongoing viability of over-the-air broadcasting as assured distribution of video and audio has been in the past.

If cable operators are not required to carry the full range of content necessary to attract and maintain viewership of a broadcaster's digital programming service, but at the same time are free to offer their own digital enhancements of cable programming, including interactive advertising, free, over-the-air broadcasting will be an inferior service – not economically viable. Such a result would contravene directly the mandate of Congress in the Cable Act, and the Commission should not define “program-related” in a narrow manner that will lead to that result.

The Commission, in this proceeding, therefore should embrace a definition of “program-related” for digital content that is sufficiently flexible to encompass the dramatic changes to the television broadcast medium enabled by digital technology. Such an approach builds upon the Commission's existing analytical approach to “program-related” in the analog context and serves to advance the express Congressional objectives of the 1992 Cable Act.

III. THE COMMISSION AND THE COURTS HAVE APPLIED THE TERM “PROGRAM-RELATED” AS A DYNAMIC CONCEPT THAT EMBRACES THE DEVELOPMENT OF NEW TECHNOLOGY.

In adopting rules to implement Congress' directive concerning carriage of “program-related” content in the analog vertical blanking interval (“VBI”), the Commission tailored its Must Carry rules to achieve the purposes of the Cable Act in the face of changing technological developments. Like the state of digital programming enhancements today, the Commission observed “[c]arriage of information on a station's VBI is rapidly evolving: thus, we believe no

hard and fast definition can now be developed.”¹² To accommodate this uncertainty, the Commission adopted a flexible approach to determining program-relatedness.

To develop this conceptual approach, the Commission turned first to the U.S. Court of Appeals’ decision in *WGN Continental Broadcasting Co. v. United Video, Inc.*,¹³ which, in the Commission’s view provided “the best guidance for what constitutes program-related material.”¹⁴ The Commission adopted the three factors identified by the court in *WGN* as a point of departure for its analysis of program-related content;¹⁵ however, in doing so, it recognized that these factors must not be applied in a wooden manner.

Rather, the Commission clarified that the *WGN* factors did not fully encompass the scope of material Congress intended to be deemed “program-related.” Accordingly, the Commission stated that they would not “form the exclusive basis for determining program-relatedness.”¹⁶ Instead, recognizing that “there will be instances where material which does not fit squarely within the factors listed in *WGN* will be program-related under the statute,”¹⁷ the Commission

¹² *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, et al., 8 FCC Rcd 2965, 2986 (1993) (Report and Order in MM Dockets No. 92-259, 90-4, and 92-295) [“*Must Carry Order*”].

¹³ *WGN Continental Broadcasting Co. v. United Video, Inc.*, 693 F.2d 622 (7th Cir. 1982) [hereinafter “*WGN*”]. The case involved an infringement action based on violation of Section 111 of the Copyright Act of 1976, brought by the licensee of the Chicago-based superstation against the satellite carrier, United Video, that relayed the station’s signal to cable television systems around the country, and it examined the extent to which the copyright on a television program included related material encoded in the VBI.

¹⁴ *Must Carry Order*, 8 FCC Rcd at 2986.

¹⁵ Under the *WGN* test, content is deemed “program-related” if: (1) the broadcaster intends for it to be seen by the same viewers who are watching the video signals; (2) it is available during the same interval of time as the video signals; and (3) it is an integral part of the video program. *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6732-33. (1994) (Memorandum Opinion and Order in MM Docket No. 92-259) [“*Must Carry MO&O*”].

¹⁶ *Id.* at 6734.

¹⁷ *Id.*

adopted a more expansive notion of “program-related” to include “information intrinsically related to the particular program received by the viewer.”¹⁸

The Commission’s approach to program-related in the analog context reflects an appropriately foresighted response to changing, and not wholly predictable, circumstances. Indeed, the *WGN* court itself underscored the need for such flexibility to comport the concept of program-related material with rapidly developing technology.

In that case, the court found to be program-related for copyright purposes a teletext program stream containing local news stories that paralleled the national news carried on the main program, as well as scheduling information for the station’s upcoming programming, that WGN had included in the VBI of its nine o’clock evening newscast, and that it intended to be distributed, ultimately, to viewers of the cable systems carrying WGN. Despite the fact that these enhancements to the broadcast service represented a new technological development unanticipated by Congress, the court reasoned that WGN’s nine o’clock news was nevertheless a single “audiovisual work” within the meaning ascribed by the Copyright Act.¹⁹ The court analogized the program-related teletext content as similar to a book that “includes a map for the reader to consult from time to time while reading the text [T]he copyright on the book includes the map although the map is not intended to be read either simultaneously with the text or in some prescribed sequence.”²⁰

¹⁸ *Id.*

¹⁹ *WGN*, 693 F.2d at 626.

²⁰ *Id.* at 627.

Significantly, the court acknowledged that the definition of “audiovisual work” upon which it based much of its analysis did not reveal Congress’ intent with complete clarity. The court observed, “[t]he fact is that Congress did not foresee the kind of use that WGN has made of the vertical blanking interval.”²¹ Taking note of the breadth of the definition that Congress had adopted, however, and the technological advances that had precipitated the 1976 rewrite of the Copyright Act, the court reasoned that:

[t]his background suggests that Congress probably wanted the courts to interpret the definitional provisions of the new act flexibly, so that it would cover new technologies as they appeared, rather than to interpret those provisions narrowly and so force Congress periodically to update the act.²²

This prescient observation is equally applicable to the circumstances that confront the Commission in this proceeding. Like the use of the VBI in the 1980s, the development of digital elements intended to enhance the content and viewing experience of digital broadcast television programming is rapidly evolving today. For this reason, the Commission would be remiss in adopting in this proceeding a rigid definition for program-related incapable of responding to technological developments.

To the extent that any weight is to be given to the fact that there is no longer a VBI, the natural conclusion to be drawn is that content that heretofore would have been considered only “program-related” is now part and parcel of the programming itself. In digital broadcasts, program-related enhancements of the sort discussed herein are seamlessly integrated within, and are an immutable component of, the broadcast bit stream. As a practical matter this means the

²¹ *Id.*

²² *Id.*

boundaries between program-related material and programming are harder to define. In effect, the digital manifestation of the analog concept of program-related material is simply programming with a higher level of quality and functionality. Viewers will not consider digital enhancements to be a separate component of the broadcast programming, they will simply come to define broadcast programming in terms of these enhancements. A definition of “program-related” that fails to recognize the necessary relationship between such content enhancements and the programming they accompany would be contrary to the Cable Act and Congress’ objectives.

Such an approach would also depart dramatically from the Commission’s past decisions concerning program-related. In applying the concepts of *WGN* with a commensurate recognition of the need to allow technology to develop, the Commission has already determined that a variety of enhancements to the broadcast signal are program-related and, thus, entitled to carriage. For example, the Commission has found the Source Identification Codes (“SID codes”) embedded in broadcast signals and used to determine Nielsen rating information to be program-related because they “constitute information intrinsically related to the particular program received by the viewer.”²³ Likewise, in this very proceeding, the Commission has found, in the case of the digital broadcast of a sporting event that includes a selection of multiple camera angles from which the viewer may choose, that “[t]he statute contemplates and our rules require that cable operators provide mandatory carriage for this program-related content.”²⁴

Such examples as these do not circumscribe the limits of program-related content, however. They merely demonstrate the baseline from which the Commission’s analysis in this

²³ See *Must Carry MO&O*, 9 FCC Rcd 6723, 6733-34.

²⁴ See *Report and Order*, slip op. at 25 ¶ 57.

proceeding must begin. Thus, to the extent that SID codes, wholly unseen by the viewer are deemed to be intrinsically related, then *a fortiori* such enhancements as geographically-customized local news programming accompanying a general newscast, or specialized children's programming must also be. The Commission must also recognize that this is not an academic exercise. In point of fact, broadcasters are already actively developing and deploying enhanced program-related content designed to involve the viewer more actively in their programming, and these enhancements will increasingly come to be viewed not as enhancements, but rather as basic characteristics of video programming service.

IV. PROGRAM-RELATED DIGITAL ENHANCEMENTS ARE BEING INTRODUCED NOW AND WILL RAPIDLY COME TO DEFINE THE BROADCAST MEDIUM.

The action to be taken by the Commission in this proceeding is particularly important because it will impact activities that are already underway to improve the quality of service that broadcast television delivers to the public. As the Commission is aware, broadcasters are already harnessing new digital technologies to develop and deploy an exciting array of program-related content designed to provide the public with a more robust, greatly enhanced, free, over-the-air television service. By improving the character and quality of the programming service, these enhancements in entertainment, news, and advertising content will enable broadcasters to continue to attract and maintain viewers to free broadcast programming in the face of growing competition from subscription services offering competing enhancements.

For example, ABC already offers enhanced program-related content in connection with such programs as *Who Wants To Be a Millionaire*, the Academy Awards, and *Monday Night Football*. Since its launch little more than a year ago, 17 million viewers have logged on to *Who Wants To Be a Millionaire* on ABC.com to answer the questions in real time with the program

telecast. Similarly, 450,000 people logged on to ABC's enhanced TV site this year to follow the Oscars during the network's broadcast of the annual awards ceremony. This represented the highest level of viewer participation for any program since ABC's telecast of the Super Bowl in January of last year. During that broadcast, 650,000 viewers logged on to the *Monday Night Football* website to access sports statistics while they watched the game.

ABC is not alone in these endeavors. The Public Broadcasting Service only recently completed a four-week trial, which commenced on March 27, 2001, sending enhanced programming for *Scientific American Frontiers* to viewers in seven markets.²⁵ Significantly, from the competitive standpoint of broadcast television, many cable programming networks are also moving in this direction. The Weather Channel, CNN, and others have already deployed enhanced, interactive program-related content. In a statement released last December, Discovery Communications, Inc., announced an agreement with Liberty Digital, Inc., to "explore the development of a video channel [targeted to the online leisure travel sector] interactively enhanced by a range of narrowband and broadband technologies" that, among other things, would enable viewers to request information and browse travel destinations.²⁶ According to the release, the channel would "complement Discovery Communication's [sic] existing entertainment brand, the Travel Channel."²⁷

The Liberty Digital/Discovery venture also highlights another significant area in which digital technology will play an increasingly significant role in the future: interactive advertising

²⁵ See J. Merli, *De-bugging e-TV; PBS test of new ATVEF spec for enhanced DTV hits a few bumps during on-going trial*, *Broadcasting and Cable*, April 16, 2001, at 58 (trial scheduled to run through May 1).

²⁶ Discovery Communications, Inc., Press Release, December 6, 2000, viewed June 8, 2001, available at: www.discovery.com/corporate/press/press_releases/001206r.html.

²⁷ *Id.*

content. While all of the potential opportunities afforded by new technologies to enhance the interactivity of advertising content have not been fully developed, certain possibilities are evident. For example, a commercial for a clothing merchant might be accompanied by a data stream, or a cache of “clickable” content, providing additional, more fully developed information concerning one of the products featured in the main ad (*e.g.*, the price, color, and availability of a sweater) or about the merchant itself (*e.g.*, store hours and locations), or even geographically-targeted information on sales or special offers. Such enhancements would increase the effectiveness of the ad for the advertiser and the usefulness of the spot for the viewer, and thereby increase the revenue potential for the commercial.²⁸

As broadband technology becomes more pervasive, viewers will not need a separate computer and Internet connection to enjoy these program-related enhancements; this content will be delivered directly on one screen as part of the free, over-the-air broadcast service and to cable viewers through the digital set-top box. More important, as these enhancements become widely available they will come to redefine video programming. In precisely the same way that color

²⁸ The assured preservation of free, over-the-air broadcasting as a viable, competitive medium also necessitates that the Commission’s definition of “program-related” encompass content, material or information that serves to enhance the viewer’s experience of the broadcaster’s advertising content, and the utility of the ad spot for the advertiser. Unlike cable programming networks which can rely on subscriber fees charged to cable operators, broadcasters must rely almost exclusively on advertising to fund their operations. Indeed, the protections of the Cable Act are, in part, rooted in the Congress’ desire to protect the free, over-the-air broadcast medium against anticompetitive actions by cable operators that would threaten broadcasters’ advertising revenues. *See* Conference Report No. 102-862, 102nd Cong., 2nd Sess. 3 Section 2(a)(15) (1992). Under the approach advocated herein, a broadcaster’s enhancements to its commercial advertising content should necessarily be deemed to be “program-related” insofar as they would be included in the broadcaster’s over-the-air digital signal for the purpose of attracting and maintaining viewership to the broadcaster’s programming, and would be accessible by viewers without charge. Moreover, the unimpaired and unaltered retransmission of interactive advertising as part of a broadcaster’s signal is independently required by Section 111(c) of the Copyright Act. 17 U.S.C.A. § 111(c)(3) (West 1996 & Supp. 2001) (denying a cable operator a compulsory license “. . . if the content of the particular program . . . , or any commercial advertising . . . transmitted by the primary transmitter [*i.e.*, the broadcaster] during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions” (emphasis added)).

service superseded black and white, viewers will come to expect such enhancements and interactive functionality from their television programming as a matter of course. To preserve the viability of free broadcast service, digital broadcasters will need access to the same mass market of cable viewers that they did when the Cable Act was first enacted.

The digital enhancements of programming service discussed herein share the same essential characteristics as described by the *WGN* court and exhibited by the content that the Commission has already recognized in its existing pronouncements on the scope of program-related material. These digital enhancements will be offered free, over-the-air to all viewers who choose to access them,²⁹ and will be available in the same time interval as the programming with which they are associated. Whenever the broadcaster is transmitting the panoply of interactive programming elements that enhance the program service, it is also offering the underlying, traditional broadcast programming content upon which they are based. Such enhancements will unquestionably be an integral part of the main program service. They are squarely intended to attract viewers to the accompanying programming and hold their interest.

It should also be observed that the “program-related” concept we advance is not, as cable operators may allege, an effort on the part of broadcasters to build new businesses upon the backs of cable systems. To the contrary, the dynamic definition we urge the Commission to embrace would be limited to content that is offered by broadcasters to their viewers over-the-air without charge as an enhancement to existing programming. At its essence, such an approach merely

²⁹ Moreover, just as the lack of universal access to closed captioning data does not prevent it from being classified as “program-related” and subject to mandatory coverage, the lack of ubiquitous access by every viewing household to the additional equipment necessary to enjoy all of the interactive programming elements designed to attract and maintain viewership does not prevent it from being classified as “program-related” and subject to mandatory coverage. 47 U.S.C. § 303(u); 47 C.F.R. § 15.119.

requires cable operators to do what they have always been required to do under Section 614: retransmit the entirety of a station's programming service to their subscribers, *i.e.*, utilize the same 6 MHz of spectrum (19.4 Mbps digital bitstream) as used for analog transmissions. Accordingly, the proposed approach also would not require any more bandwidth from cable operators than do the existing analog Must Carry requirements.

The Commission should continue to use the flexible and dynamic approach to the definition of "program-related" that it has previously applied. Indeed, the Commission should preserve in the digital context the dynamism and flexibility inherent in the Cable Act. If the policies underlying the Cable Act are to be fulfilled, then the term "program-related" must be construed in a manner that will permit digital enhancements, in what ever form they may take, to be available to all members of the public, whether they receive their signals free, over-the-air or via cable.

V. CONCLUSION

The requirement in Section 614(b)(3) that cable operators carry "program-related" material in a broadcaster's signal represents an important constituent part of Congress' carefully crafted Must Carry regime. Underlying that regime is the fundamental legislative objective of preserving free, over the air broadcast television as a robust medium. In Section 614(b)(4), Congress expressly manifest its intent that the Commission extend the full panoply of Must Carry protections to television broadcasters in the digital age.

As these comments demonstrate, the advent of digital programming enhancements that is already underway signals a fundamental change in the nature of the video programming medium that will reshape the basic expectations that viewers hold for television in the future. If broadcast television is to remain viable and competitive in the multichannel digital video programming

marketplace, it will need a level playing field upon which to compete. If such an environment is to be achieved, and the objectives of the Cable Act satisfied, then the Commission must adopt an analytical framework for defining program-related that is sufficiently flexible to respond to the dramatic changes to the television broadcast medium engendered by digital technology.

Accordingly, the Commission should define the scope of "program-related" in the digital context to ensure that all content, including enhanced interactive advertising content, that is contained within a broadcaster's free, over-the-air digital signal and transmitted for the purpose of attracting and maintaining viewership will be ensured carriage on cable systems.

Respectfully submitted,

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