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



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

CS Docket No. 98-120

CS Docket No. 00-96

CS Docket No. 00-2

To: The Commission

**COMMENTS
OF
PAXSON COMMUNICATIONS CORPORATION**

Paxson Communications Corporation ("Paxson") hereby submits its Comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ As an initial matter, Paxson once again reminds the Commission that, with regard to digital must carry, the 1992 Cable Act clearly authorizes the Commission to only make rules regarding the technical changes needed to ensure full digital must

¹ *Carriage of Digital Television Broadcast Signals Amendments to Part 76 of the Commission's Rules, CS Docket No. 98-120, CS Docket No. 00-96, CS Docket No. 00-2, First Report and Order and Further Notice of Proposed Rule Making, FCC 01-22 (rel. Jan 23, 2001) ("Further Notice").*

carry and nothing more.² All of the Commission's actions in the above-captioned proceeding beyond this mandate, including the *Further Notice*'s inquiries regarding "dual carriage," "program related material" and digital retransmission consents, are beyond the Commission's statutory authority. As such, Paxson limits the instant Comments to one of the few areas properly considered by the Commission in the *Further Notice*: the statutory criteria for the return of broadcaster's analog spectrum.

In the *Further Notice*, the Commission asks whether analog television licenses should be required to be "returned when 85% or more of the television households in a market *either* subscribe to a [multichannel video program distributor ("MVPD")] that carries all of the digital broadcast stations in the market *or* have a DTV receiver or digital downconverter to receive the digital signal over the air."³ Paxson submits that even the FCC's formulation of the question is flawed since it is not made absolutely clear that the MVPD must be carrying all of the free digital programming services of all local television stations. In any event, this "either-or" approach cannot be the correct statutory interpretation.

In codifying the Commission's transition expectations, Congress required broadcasters to undertake a rapid and costly transformation.⁴ As beneficial as this transformation may be, it must be undertaken in such a way that does not at any time threaten the delivery of free, over-the-air broadcasting services to the public. Thus, the goal of the 85% exception must be to guarantee the viability of free, over-the-air

² Petition for Reconsideration of Paxson Communications Corporation in CS Docket Nos. 98-120, 00-96, and 00-2 at 8 (Apr. 25, 2001) ("Paxson Petition").

³ *Further Notice* at 117 (emphasis in original).

⁴ 47 U.S.C. § 309(j)(14).

broadcasting, not to further MVPD penetration. MVPD penetration, therefore, cannot be the proper test for the DTV transition.

The only feasible interpretation of the statutory exception is to require at least 85% penetration of DTV receivers and/or converters prior to the completion of the transition. This approach will guarantee that the public continues to receive free, over-the-air broadcast services during and after the DTV transition - reliance on MVPD's will not. Moreover, given the Commission's mistaken interpretation of "primary video" and the cable industry's stated opposition to carrying the full digital signals of qualified local broadcasters, DTV receivers and converters may be only way viewers will be able to access many of the advanced digital services offered by broadcasters.⁵ In reaching an accurate and Congressionally mandated answer on the 85% standard, the Commission cannot rely on, and certainly cannot include, cable boxes that are not equipped to receive over-the-air digital signals of local television stations.

⁵ See Further Notice at 57; Petition for Reconsideration of Time Warner Cable in CS Docket Nos. 98-120, 00-96, and 00-2 at 3 (Apr. 25, 2001); Opposition to Petitions for Reconsideration of the National Cable and Telecommunications Association in CS Docket Nos. 98-120, 00-96, and 00-2 at 8-13 (May 25, 2001).

For the foregoing reasons, the Commission's interpretation of the statutory exception must require 85% or greater penetration of DTV receivers or converters prior to the end of the transition period.

Respectfully submitted,

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