

**BEFORE THE**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	CS Docket No. 98-120
	)	
Amendment 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
	)	

**REPLY COMMENTS OF AT&T CORP.**

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Declaration of Casey Blackwelder, AT&T Broadband

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**COMMENTS OF AT&T CORP.**

AT&T Corp. ("AT&T"), by its attorneys, hereby files its reply comments in response to the Commission's Further Notice of Proposed Rulemaking ("*Further Notice*") in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> *In the Matter of Carriage of Digital Television Broadcast Signals*, First Rept. & Order & Further Notice of Proposed Rulemaking, 16 FCC Rcd. 2598 (2001) ("*Further Notice*" or "*Digital Must-Carry Order*").

## **I. INTRODUCTION AND SUMMARY**

The record demonstrates that the transition to digital television is already succeeding impressively. AT&T and other cable operators are investing billions of dollars to upgrade their facilities to accommodate new digital services, including digital video, cable Internet service, telephony, and interactive services. Likewise, cable programmers, such as TechTV, HBO, A&E, and Discovery, are launching new and innovative digital services. And, consumer demand for digital services has been remarkable. AT&T now has over 3.1 million digital video customers, with 274,000 net additions for the second quarter of this year.

In contrast, broadcasters have done little to advance the transition to digital. Just 15% of broadcasters have launched digital signals in the five years since they received free digital spectrum from Congress, and NAB has now indicated that it will seek waivers from the Commission's build-out requirements for hundreds of its members. Moreover, several broadcast commenters freely admit that they will not develop digital content until they are guaranteed a cable audience, and even suggest that they will not return their analog spectrum to the government unless the Commission acquiesces to their must-carry demands. The Commission should reject such tactics and, instead, insist that the broadcasters begin making the necessary investments in digital programming that will facilitate the digital transition.

Even if the broadcast commenters had made a persuasive case that dual must-carry could be justified on policy grounds (which they have not), the record established in this proceeding makes plain that the Commission must reaffirm its tentative conclusion that dual must-carry cannot survive First Amendment scrutiny. Broadcast commenters have failed to show that dual must-carry would advance any of the substantial governmental interests articulated in the *Turner* cases or that it would further any other alleged governmental interest, such as accelerating the digital transition. In addition, as the comments reflect, dual must-carry would impose

impermissible burdens on the First Amendment rights of cable operators, notwithstanding increases in their channel capacity, and would also harm non-broadcast programmers. The relevant question for the Commission should not be *whether* cable operators have the capacity to carry dual broadcast signals, but *why*, out of the myriad of competing uses vying for limited space, broadcasters should receive yet another government handout at the expense of consumers, cable operators, and cable programmers.

Not only does dual must-carry raise significant First Amendment concerns, a wide range of commenters, including Paxson Communications and Consumer Electronics Association (“CEA”), agree that dual must-carry is precluded by the non-duplication and other provisions of the Communications Act.

Finally, the Commission also should reject proposals to establish an open-ended test for determining what content qualifies as “program-related.” The broadcasters and CEA urge the Commission to dispense with the *WGN* test and adopt an approach that would place virtually no limits on the carriage obligations of cable operators. Such an approach is squarely at odds with Commission precedent and the Communications Act, and would also implicate the First Amendment concerns expressed in the *Turner* cases. In contrast, the five-part test proposed in AT&T’s initial comments is consistent with Commission precedent as well as specific provisions of the Communications Act, and minimizes First Amendment concerns. Accordingly, the Commission should reject the broadcasters’ test and, instead, adopt the one proposed by AT&T.

## **II. THE COMMISSION SHOULD REJECT BROADCASTERS’ REQUEST FOR PREFERENTIAL REGULATORY TREATMENT AT THE EXPENSE OF CONSUMERS, CABLE OPERATORS, AND PROGRAMMERS.**

Contrary to the claims of the broadcasting industry, the transition to digital television (“DTV”) is moving forward rapidly. AT&T and other cable operators have made substantial investments to upgrade their networks to accommodate new digital programming and advanced

services, and cable programmers have launched dozens of new digital services. Consumers are responding enthusiastically to these new digital services. The broadcast industry, in contrast, has developed very little digital content, and only a few stations are offering digital signals.

**A. Comments of AT&T, NCTA, and Others Demonstrate That the Transition to Digital Is Succeeding Due to the Efforts and Investments of the Cable Industry.**

The record completely undermines the suggestions by the broadcast industry that the transition to digital television is failing.<sup>2</sup> In fact, AT&T and other cable operators have invested billions of dollars upgrading their networks to provide new digital programming, as well as cable Internet services, telephony, and interactive television (“ITV”).<sup>3</sup> NCTA estimates that cable operators have spent over \$48 billion on infrastructure improvements over the last five years.<sup>4</sup> Discovery, HBO, A&E, and other programmers have also made significant investments to launch new and innovative digital programming services.<sup>5</sup> Many cable operators receive digital programming from the AT&T Digital Media Center via Headend in the Sky (“HITS”). HITS

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<sup>2</sup> See, e.g., NAB Comments at 5-7; Maranatha Comments at 5.

<sup>3</sup> See, e.g., AT&T Comments at 2, 5-6 (noting that AT&T has spent over \$12.4 billion upgrading over 74% of its cable systems to carry digital services).

<sup>4</sup> See *Cable & Telecommunications Industry Overview: 2001*, NCTA (June 2001), at 1, available at [http://www.ncta.com/pdf\\_files/Ind\\_Ovrvw\\_060801.pdf](http://www.ncta.com/pdf_files/Ind_Ovrvw_060801.pdf) (“NCTA Industry Overview”).

<sup>5</sup> See, e.g., Discovery Comments at 5 & n.10 (describing the six Discovery digital networks); HBO Comments at 2-3 (noting HBO’s commitment to digital programming deployment); Cablevision Comments at 4-6 (noting investment in local and HDTV programming). See also *NCTA Industry Overview* at 7-8.

customers can choose from 13 separate digital tiers that offer up to 133 digital video and 45 digital audio networks.<sup>6</sup>

Consumers are responding enthusiastically to these new offerings. AT&T now has approximately 3.1 million digital customers, with 274,000 net additions for the second quarter of this year.<sup>7</sup> According to NCTA, the cable industry as a whole has more than 12 million digital video customers,<sup>8</sup> and that number is expected to grow to 48.2 million by 2005.<sup>9</sup>

Moreover, contrary to the dire claims of certain broadcasters, cable operators and broadcasters are negotiating retransmission consent agreements for the carriage of digital signals. AT&T already has multi-year agreements with NBC and Fox to carry the digital signals of their owned and operated stations, which currently number twenty, and is actively negotiating retransmission agreements with other broadcasters.<sup>10</sup> Time Warner Cable (“TWC”), Cox,

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<sup>6</sup> See HITS, “HITS Programming Lineup,” available at [http://www.hits.com/programming\\_lineup2.html](http://www.hits.com/programming_lineup2.html).

<sup>7</sup> See *Second Quarter Earnings From Continuing Operations Were \$0.04 Per Diluted Share*, AT&T Group Earnings Commentary, Quarterly Update -- Second Quarter 2001, July 23, 2001, at 10, available at [http://www.att.com/ir/pdf/012q\\_cmnt.pdf](http://www.att.com/ir/pdf/012q_cmnt.pdf). See also Cablevision Comments at 3 (noting that Cablevision has invested billions of dollars in expanding its infrastructure for digital video, ITV, and other advanced services).

<sup>8</sup> See NCTA Comments at 15. See also *Cable Continues Rapid Deployment of Broadband Services*, NCTA Press Release, Aug. 13, 2001, available at <http://www.ncta.com/press/press.cfm?PRid=169&showArticles=ok> (“Cable gained 1.3 million new digital video customers during the second-quarter 2001, bringing the nationwide digital video customer base to 12.2 million.”).

<sup>9</sup> See *NCTA Industry Overview* at 7 (citing Paul Kagan Associates, *Broadband Technology*, Feb. 21, 2001, at 1).

<sup>10</sup> See AT&T Comments at 8; AT&T Survey Response, filed in CS Dkt. No. 98-120, at Charts 4A & 4B (May 31, 2001) (listing owned and operated stations covered by retransmission consent agreements).

Comcast, and other cable operators have also negotiated a number of such agreements with broadcasters.<sup>11</sup>

These retransmission consent agreements flatly contradict NAB's claims that cable operators will not negotiate retransmission consent deals with broadcasters absent a dual must-carry requirement.<sup>12</sup> NAB has put into the record a survey of broadcast stations which purportedly shows that cable operators have not been responsive to these stations regarding carriage opportunities. However, the survey is disingenuous at best as it does not attempt to assess the *overall* status of retransmission consent negotiations, but rather simply solicits from its members negative commentary about cable operators. For example, the survey reads: "NAB urgently needs your input on issues related to your transition to digital broadcasting. Please take a few moments to answer the questions below as completely as possible. *We need this information to tell the FCC about industry problems when we file comments on June 11<sup>th</sup>.*"<sup>13</sup> However, even putting to one side the credibility of the survey, the actual survey responses do

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<sup>11</sup> See, e.g., TWC Survey Response, filed in CS Dkt. No. 98-120, at 6 (June 19, 2001) (describing various retransmission agreements with broadcast networks and stations); Cox Survey Response, filed in CS Dkt. No. 98-120 (May 30, 2001) (describing retransmission consent agreements in North Carolina and Nebraska); Comcast Survey Response, filed in CS Dkt. No. 98-120 (May 29, 2001) (noting agreements with several network owned and operated station groups); Cable One Survey Response, filed in CS Dkt. No. 98-120 (Apr. 19, 2001) (noting agreements that require carriage of digital signals under certain conditions, and ongoing negotiations relative to approximately 15 stations).

<sup>12</sup> See NAB Comments at 21-24 & App. B ("NAB Carriage Survey").

<sup>13</sup> NAB Carriage Survey, App. 1 at 1 (emphasis added).

not support NAB's criticisms of the cable industry. An analysis of the tables of actual survey responses demonstrates the following:

- Only 479 of 1266 stations even responded to the survey.<sup>14</sup>
- Only 78 of these 479 stations claim that they are currently transmitting a digital signal.
- Of the 78 stations claiming to transmit a digital signal, only 44 (or 9% of the *total* 479 respondents) claim they have even contacted a cable operator about carriage.
- Of these 44 stations, roughly half rate cable operators' responsiveness as fair to excellent.<sup>15</sup>

Similarly, NAB's and Univision's criticism of AT&T's retransmission consent practices are simply meritless. First, NAB submitted an affidavit from Kathy Clements-Hill, the president and general manager of WFAA, a broadcast station in Dallas, Texas, alleging in wholly conclusory fashion that the station has been unable to obtain carriage for its digital signal.<sup>16</sup> In response, AT&T has attached to this filing a declaration from Ms. Casey Blackwelder, the assistant director for programming at AT&T Broadband. Ms. Blackwelder, who oversees retransmission consent negotiations for AT&T Broadband, contacted key AT&T employees in

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<sup>14</sup> NAB claims that 491 stations responded to its survey, *see id.* at 4, yet the tables of actual survey responses indicate that only 479 stations (393 commercial stations and 86 non-commercial stations) answered survey questions. *See id.* Apps. 2 & 3 (attached to the survey as appendices 2 and 3).

<sup>15</sup> *See id.* Apps. 2 & 3 (actual survey result tables).

<sup>16</sup> *See* NAB Comments at 25 & App. C (affidavit of Kathy Clements-Hill). AT&T cannot respond to the claims made by anonymous respondents to the NAB Carriage Survey that were reproduced in NAB's filing, *see id.* at 24-25 & NAB Carriage Survey at 11-12, without knowing more about the specific cable systems and broadcast stations in question. Because there is no way to test the veracity of these allegations, the Commission should reject them.

its Dallas cable system about Ms. Clements-Hill's allegations, and these employees indicated that they have no knowledge or recollection of any discussions or requests relating to digital carriage for this broadcast station. These officials further advised Ms. Blackwelder that they met with Ms. Clements-Hill approximately eight months ago to discuss issues relating to Texas News Channel, a local news channel run by WFAA, and also have visited with other employees of the station since that time, but carriage of WFAA's digital signal was never raised by anyone at the station. Second, Univision's statements regarding bias against minority-owned stations are baseless.<sup>17</sup> In fact, the specific Commission decisions referenced by Univision, which involved channel positioning disputes, made no reference to any allegations of discrimination, much less found that any such discrimination occurred.<sup>18</sup>

**B. Broadcasters Have Done Little to Accelerate the Transition to Digital.**

In contrast to the cable industry, broadcasters' efforts to facilitate the digital transition have lagged significantly. Nearly 1,300 commercial broadcast television stations have until next May to launch digital signals, but just 202 stations have done so to date, and the broadcast industry is advising the Commission that hundreds of its members will likely be asking for waiver requests.<sup>19</sup> The broadcast industry's record on developing digital programming is even

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<sup>17</sup> See Univision Comments at 17-18 & n.29.

<sup>18</sup> See *KDTV v. TCI Cablevision of Cal.*, 13 FCC Rcd. 10331 (1998); *KDTV v. TCI Cablevision of Cal.*, 13 FCC Rcd. 2444 (1998). AT&T is proud of its record of carrying Spanish-language programming. In fact, AT&T has launched "Canales Españoles," a new Spanish-language cable television lineup featuring 11 channels, in numerous markets.

<sup>19</sup> See *NAB Ex Parte*, filed in MM Dkt. No. 00-39, at 1-2 (June 25, 2001); Ted Hearn, *NAB: 400 Stations to Miss Deadline*, Multichannel News, Aug. 14, 2001.

more lackluster.<sup>20</sup> As C-SPAN aptly noted: “The reason consumers are not rushing out to buy expensive HDTV sets is not because they are not able to watch the broadcasters’ current digital offerings on their cable systems. It is because for the most part, those offerings either do not yet exist or are duplicative of their analog equivalents . . . .”<sup>21</sup>

Indeed, broadcasters freely admit that they have no intention of developing significant digital programming until and unless they are *guaranteed* an audience for such content. Maranatha Broadcasting, for example, stated that it cannot be expected to incur the time and expense of developing digital programming “*without knowing that FCC rules will guarantee cable subscribers access to that programming.*”<sup>22</sup> Likewise, KSLs/KHLS concluded that without dual must-carry, “[t]he increased programming, production, and operational costs associated with launching successful DTV channels could not be justified and would be fiscally irresponsible.”<sup>23</sup> NAB made a similar point.<sup>24</sup>

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<sup>20</sup> See AT&T Comments at 7-8 (quoting Chairman Powell and others about the lack of digital content from broadcasters); TWC Comments at 23 & n.16 (noting that broadcasters have declined to commit to broadcasting HDTV programming); TechTV Comments at 9 (same); HBO Comments at 7 (same); International Cable Channel Partnerships (“ICCP”) Comments at 14 (same).

<sup>21</sup> C-SPAN Comments at 3.

<sup>22</sup> Maranatha Comments at 7 (emphasis added).

<sup>23</sup> KSLs/KHLS Comments at 3.

<sup>24</sup> See NAB Comments at 17 (“Digital must carry, according to [NAB’s commissioned report on the issue], will provide the assurance of mass market audience access which in turn should trigger advertising support of program production throughout the complex programming chain.”).

Broadcasters are clearly alone in their view that government mandates, rather than high-quality content, will attract viewers and drive the transition to digital. As noted, the cable industry is investing billions of dollars to build digital networks and launch new programming services, all without any assurance of a government-guaranteed audience. In fact, non-broadcast programmers, which enjoy no government-guaranteed audience, have far outpaced broadcasters in providing diverse programming, including children’s television and political coverage.<sup>25</sup> Even the Consumer Electronics Association (“CEA”), which favors digital must-carry under certain conditions, noted that “[t]he 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.”<sup>26</sup>

**III. THE RECORD FURTHER DEMONSTRATES THAT DUAL MUST-CARRY WOULD VIOLATE THE FIRST AMENDMENT RIGHTS OF CABLE OPERATORS AND PROGRAMMERS, AS WELL AS THE PLAIN TERMS OF THE COMMUNICATIONS ACT.**

AT&T strongly supports the Commission’s tentative conclusion in the *Digital Must-Carry Order* that a dual carriage requirement would burden cable operators’ First Amendment rights more than necessary to further any governmental interests they could conceivably promote.<sup>27</sup> AT&T urges the Commission to reaffirm that determination in this proceeding. The broadcasters have failed to demonstrate that dual must-carry would advance any of the

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<sup>25</sup> See, e.g., TechTV Comments at 8-12 (noting that TechTV has invested tens of millions of dollars over the last few years to develop its service); A&E Comments at 2-3; Discovery Comments at 2-3; C-SPAN Comments at 4-5.

<sup>26</sup> Comments of CEA at 6.

<sup>27</sup> See *Digital Must-Carry Order* at ¶ 3.

governmental interests identified in the *Turner* cases or the alleged interest in accelerating the transition from analog to digital broadcasting. Likewise, the Commission should reject dual must-carry in light of the demonstration by numerous commenters that it would violate the Communications Act.

**A. Based on the Record, the Commission Must Reaffirm Its Tentative Conclusion That Dual Must-Carry Violates the First Amendment Rights of Cable Operators and Programmers.**

The broadcasters assert that the Commission may impose a dual must-carry requirement that is consistent with the First Amendment and relevant Supreme Court precedent.<sup>28</sup> However, they merely repeat arguments made in earlier phases of this proceeding -- which have already been rejected by the Commission -- and have failed to provide any “specific empirical information to demonstrate *how* mandatory dual carriage would satisfy the requirements of both *Turner* and *O’Brien*.”<sup>29</sup> Consequently, the Commission must reaffirm its tentative conclusion that dual must-carry is unconstitutional.

**1. Dual Must-Carry Would Not Further a Substantial Governmental Interest.**

As AT&T and others demonstrated in their comments, dual must-carry will *not* advance any of the substantial governmental interests identified in the *Turner* decisions. Nor will dual must-carry improve the prospect for a timely transition from analog to digital broadcasting.

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<sup>28</sup> See, e.g., NAB Comments at 6; Maranatha Comments at 3-6; Public Broadcasters Comments at 18-22; Univision Comments at 18-23.

<sup>29</sup> *Further Notice* at ¶ 114 (emphasis added).

**a. Dual Must-Carry Is *Not* Necessary to Ensure the Preservation of Free Over-the-Air Television.**

The *Turner I* Court concluded that Congress had identified three substantial governmental interests to be advanced by the statutorily-prescribed analog must-carry requirements: “(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.”<sup>30</sup> These are the only bases on which any must-carry regime has ever been judicially sustained. Because the broadcasters generally focus their comments on how dual must-carry would serve the first of the three governmental interests,<sup>31</sup> AT&T limits this reply to the merits of that view and incorporates by reference arguments it made in its initial comments on why dual must-carry serves none of the three interests.<sup>32</sup>

First, as AT&T and other commenters noted, dual must-carry is not necessary to preserve free, over-the-air television because broadcasters will continue to enjoy must-carry for their analog signals during the entire transition, which guarantees them access to *all* of cable operators’ customers.<sup>33</sup> Consequently, revenues received by broadcasters from their digital signal would be above and beyond their traditional analog-based revenues. Moreover, as CEA

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<sup>30</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994) (“*Turner I*”).

<sup>31</sup> *See, e.g.*, NAB Comments at 13-14; Public Broadcasters Comments at 20-22; Univision Comments at 19; STC Broadcasting Comments at 7; KSLs/KHLS Comments at 3.

<sup>32</sup> *See* AT&T Comments at 16-19. *See also* NCTA Comments at 7-8; A&E Comments at 9-14; Discovery Comments at 3-6; Starz Comments at 7-8.

<sup>33</sup> *See* AT&T Comments at 17-18; NCTA Comments at 7; TWC Comments at 11-12; Discovery Comments at 4; Starz Comments at 7-8; ICCP Comments at 6-7.

and other commenters have noted, carriage of digital broadcast content which merely duplicates analog broadcast signals will not provide broadcasters with access to more cable subscribers than carriage of the analog signal alone.<sup>34</sup>

Second, arguments that dual must-carry is necessary for the viability of broadcasters are undermined by the experience of cable programmers. As the comments of HBO, TechTV, and others attest, non-broadcast networks are attracting viewers based on investment in compelling digital content.<sup>35</sup> HBO, for example, provides twenty-six standard- and two high-definition television digital feeds of its HBO and Cinemax premium programming services.<sup>36</sup> Likewise, Discovery has launched six new digital networks.<sup>37</sup>

Third, NAB's claim that, without dual must-carry, cable operators will decline to carry digital broadcasters because cable competes with broadcasting for advertising dollars, is insupportable.<sup>38</sup> As an initial matter, a majority of the Supreme Court *rejected* the notion that the

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<sup>34</sup> See CEA Comments at 8 (describing the simultaneous carriage of a digitized version of broadcasters' analog programming as "wastefully duplicative and add[ing] little additional quality or value to the viewer experience"); AT&T Comments at 9 & n.16 (noting that "broadcasters have made plain their intention to duplicate programming on their analog and digital signals"); Starz Comments at 7-8.

<sup>35</sup> See AT&T Comments at 6 (noting that cable programmers have already launched 60 new digital channels offering consumers additional choice and further program diversity); TechTV Comments at 8 (noting that cable programmers have invested approximately \$17 billion over the last two years on programming services). NCTA estimates that the cable industry will invest well over \$9 billion in programming this year. See *NCTA Industry Overview* at 2.

<sup>36</sup> See HBO Comments at 2.

<sup>37</sup> See Discovery Comments at 7.

<sup>38</sup> See NAB Comments at 18-21 (citing *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180 (1997) ("*Turner II*").

analog must-carry rules were justified by the supposed anti-competitive advertising-related incentives of cable operators not to carry local broadcast stations.<sup>39</sup> In addition, cable operators are already carrying broadcasters' analog signals, including the advertising contained in those signals, so concerns about competition for local advertising are misplaced. Moreover, the DBS industry has grown significantly since *Turner II*, now serving over 16 million subscribers and delivering local broadcast signals to customers under the Satellite Home Viewer Improvement Act ("SHVIA").<sup>40</sup> This development further vitiates any concerns about cable's "gatekeeper" powers in the local video or advertising markets.<sup>41</sup> The experience of independent cable programmers also undercuts the broadcasters' concerns about the advertising market, particularly

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<sup>39</sup> See *Turner II*, 520 U.S. at 225 (Breyer, J., concurring) (joining the majority opinion "except insofar as [it] relies on an anticompetitive rationale").

<sup>40</sup> See AT&T Comments at 15 (noting that "the Commission has determined that DBS is a substitute for cable services and an increasingly important competitor to cable operators"); TWC Comments at 9-10. As AT&T noted in its comments, SHVIA requires that if any such signals are carried, then all signals in that market must be carried, providing a ubiquitous additional outlet for broadcast programming. See AT&T Comments at 15. A federal district court recently upheld the constitutionality of SHVIA's must-carry requirements. See *Satellite Broad. & Communications Ass'n of America v. FCC*, Civ. No. 00-1571-A (E.D. Va. Jun. 19, 2001).

<sup>41</sup> Other marketplace developments also argue against the notion that cable operators will favor affiliated cable programmers over broadcasters in order to capture a greater share of local advertising. As the *Time Warner* court recently observed, cable operators select programming on the basis of *quality*, not *affiliation*. See *Time Warner Entm't v. FCC*, 240 F.3d 1126, 1143-44 (2001). Additionally, as the Commission found in its recent Video Competition Report and as AT&T's decision to spin-off Liberty Media attests, vertical integration in the cable industry is declining. See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd. 6005, at ¶ 173 (2001) (noting that "the proportion of vertically integrated channels . . . continued to decline" for each of the last two years); AT&T Comments, filed in CS Dkt. No. 99-251, at 28-29 (May 11, 2001) (noting that with spin-off of Liberty Media, the number of video programming services affiliated with AT&T will be dramatically reduced).

since those programmers, like broadcasters, also compete for local advertising and yet, unlike broadcasters, they are launching new digital services.<sup>42</sup>

**b. Dual Must-Carry Is *Not* Necessary to Accelerate the Transition to Digital Television.**

Broadcast commenters posit another rationale for imposing dual must-carry, namely that such a requirement is necessary to facilitate a rapid transition to digital television and the return of broadcasters' analog spectrum for other uses.<sup>43</sup> However, as noted by several commenters, neither Congress nor the Supreme Court identified accelerating the transition to digital television as a substantial governmental interest justifying a must-carry obligation.<sup>44</sup> The broadcasters cannot manufacture such an interest now.

Even assuming *arguendo* that it were permissible for the Commission to consider an additional governmental interest beyond the three governmental interests considered in the *Turner* decisions, no broadcaster has ever explained -- nor could it -- *how* dual must-carry would accelerate the transition to DTV. As many commenters noted, dual must-carry provides no incentives for consumers to buy digital television sets, particularly when the broadcasters are creating little or no original digital content and merely plan to simulcast analog programming on

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<sup>42</sup> See, e.g., A&E Comments at 2-3 (“[A&E Television Network] has always been content to compete in the marketplace based on the quality of our service to the public, and has never asked the government to guarantee our niche.”); ICCP Comments at 2-3 (noting that ICCP markets the International Channel as well as the International Premium Networks, a group of ten full-time digital networks from overseas).

<sup>43</sup> See NAB Comments at 8-17; Public Broadcasters Comments at 22; Maranatha Comments at 5-6; Univision Comments at 19; STC Comments at 6-7.

<sup>44</sup> See, e.g., AT&T Comments at 19; NCTA Comments at 8-9; A&E Comments at 6-7; Starz Comments at 14-15.

their digital signals.<sup>45</sup> Conversely, as TechTV observed, if the Commission refrains from granting broadcasters a dual must-carry privilege, broadcasters will have an *increased* incentive to develop high-quality digital programming in order to compete more effectively with non-broadcast programmers, which, in turn, will make their programming more attractive for carriage by cable operators and other MVPDs and will more likely motivate consumers to purchase DTV sets.<sup>46</sup> In fact, dual must-carry, by guaranteeing broadcasters a digital audience *regardless* of whether they produce quality digital content, will actually *reduce* the broadcasters' incentives to develop such content, thus *slowing* the transition.<sup>47</sup>

There is also no substance to the claims by broadcasters and others that only dual must-carry will spur the rapid transition to digital.<sup>48</sup> This view presumes that cable operators will not carry digital broadcast signals absent dual must-carry. However, as noted above, cable operators have negotiated voluntary agreements with broadcasters for carriage of their digital signals, and

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<sup>45</sup> See, e.g., AT&T Comments at 19-20; TWC Comments at 13-18; NCTA Comments at 10-14.

<sup>46</sup> See TechTV Comments at 14.

<sup>47</sup> A number of broadcasters also mischaracterize the findings of a 1999 Congressional Budget Office ("CBO") study on the DTV transition. Contrary to the broadcasters' claims, see, e.g., Maranatha Comments at 4-5; Univision Comments at 6-7; NAB Comments at 23 & n.57, the report did *not* advocate dual must-carry. Indeed, the report found that cable operators serve 85% or more of the households in virtually no markets, and that "viewers who value television the least -- the 10 percent to 15 percent of households that are not expected to subscribe to a multichannel video programming distributor by 2006 -- may be the key to reaching the 85% adoption level and triggering cessation of stations' analog broadcasting." Congressional Budget Office, *Completing the Transition to Digital Television*, Sept. 1999, at 32. See also NCTA Comments at 10 ("The real end of the transition will hinge on the behavior of those households that do *not* subscribe to cable or any other multichannel provider." (emphasis in original)).

<sup>48</sup> See, e.g., NAB Comments at 15-17; CEA Comments at 4; Univision Comments at 8.

can be expected to negotiate more such agreements as broadcasters roll out digital programming.<sup>49</sup> Marketplace interest in those digital products will drive the digital transition. If, as the broadcasters argue, retransmission consent will not accelerate the DTV transition, it is difficult to see how must-carry, which generally involves carriage of less-watched programming, will do so.<sup>50</sup>

Finally, calls for dual must-carry by CEA and others ignore the fact that there are far less intrusive means available for accelerating the digital transition. For example, in a pleading recently filed with the Commission, Motorola described a cost-effective product that allows manufacturers to rapidly convert existing analog TV sets into hybrid analog/digital TV sets.<sup>51</sup> CEA should fully explore this and other possible market-based alternatives before reflexively advocating government regulation of the cable industry.<sup>52</sup>

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<sup>49</sup> See AT&T Comments at 9.

<sup>50</sup> See *id.* at 9 n.15; TWC Comments at 14 (noting that “carriage of stations that are not sufficiently popular to obtain voluntary carriage is unlikely to encourage consumers to buy a digital TV set”); NCTA Comments at 12-13 (“It is far more likely that digital broadcast stations carried pursuant to retransmission consent -- or cable programmers providing digital fare -- would be valued by cable customers than digital must carry stations.”).

<sup>51</sup> See Motorola Comments, filed in MM Docket No. 00-39, at 3-4 (Apr. 5, 2001) (describing M-DTV™ module product line).

<sup>52</sup> CEA’s advocacy of regulation in this proceeding is also flatly inconsistent with the market-based approach it has favored in the digital tuner proceeding. See, e.g., CEA Comments, filed in MM Dkt. No. 00-39, at 5-10 (Apr. 6, 2001) (“If the market can be trusted to determine how well a DTV tuner should perform, by rewarding innovation and new capabilities, then the consuming public -- and not the government -- should also be the arbiter of whether a DTV tuner is desired in the first place, among the wide variety of video products that are now available.”).

## 2. **Regardless of Cable’s Capacity, Dual Must-Carry Imposes an Unconstitutional Burden on Cable Operators and Programmers.**

Aside from failing to demonstrate that dual must-carry would advance a substantial governmental interest, the broadcasters also fail to show how such a requirement satisfies the “narrow tailoring” requirement under the *Turner* precedents. In general, these commenters suggest that the expanding channel capacity of cable operators obviates any First Amendment concerns with dual-must carry.<sup>53</sup> These claims are flawed for a number of reasons.

First, the broadcasters misconstrue the test for assessing whether the regulation is narrowly tailored under the *Turner* precedents. Contrary to the broadcasters’ claims, channel capacity alone is not determinative of whether a dual must-carry requirement is narrowly tailored. In fact, *Turner I* directed that the narrow tailoring inquiry consider, among other things: (1) the extent to which cable operators will be forced to make changes in their current *or anticipated* programming selections; (2) the degree to which cable programmers will be dropped to make room for local broadcasters; and (3) the extent to which cable operators can satisfy their must-carry obligations by devoting previously unused channel capacity to the carriage of local broadcasters.<sup>54</sup> The broadcasters do not even bother to answer the first two questions, nor do they consider how cable operators are presently using, or planning to use, their expanded capacity.

Second, as numerous commenters pointed out, dual must-carry would require cable operators to set aside significantly more spectrum than they do today for broadcasters to

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<sup>53</sup> See NAB Comments at 35-36; Public Broadcasters Comments at 22; CEA Comments at 5-6; STC Comments at 9.

<sup>54</sup> See *Turner I*, 512 U.S. at 668.

accommodate the broadcasters' digital signals.<sup>55</sup> The Supreme Court's conclusion in *Turner II* that the statutory analog must-carry requirements did not burden substantially more speech than necessary was based in significant part on evidence that cable operators historically had carried most broadcast signals prior to the adoption of the statutory requirements. By contrast, cable systems today generally are not carrying local broadcasters' digital channels (not surprisingly, given that very few digital broadcast signals exist today). Hence, the burdens of dual must-carry would far surpass those considered by the *Turner* Court.

Third, NAB erroneously claims that the burden on cable operators under a dual must-carry requirement would be less than it was under the analog requirement in 1992.<sup>56</sup> NAB myopically focuses on a static view of cable capacity, ignoring the fact that the number of video programming and advanced services has expanded over the past ten years at a greater pace than cable's capacity to accommodate them.<sup>57</sup>

Fourth, dual must-carry would also harm cable operators and programmers by delaying or derailing the rollout of new video and advanced services. As non-broadcast programmers noted, the existing analog must-carry requirement already harms new programmers by limiting carriage opportunities, particularly in important larger markets, and dual must-carry will only exacerbate that problem by requiring cable operators to drop some non-broadcast services or limit new distribution opportunities for non-broadcast services in order to make room for

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<sup>55</sup> See AT&T Comments at 21 n. 44 (citing *Turner II* statement that "cable operators nationwide carry 99.8 percent of the programming they carried before enactment of must-carry"); TWC Comments at 20-21; NCTA Comments at 15-16.

<sup>56</sup> See NAB Comments at 36.

<sup>57</sup> See AT&T Comments at 9 n.15; NCTA Comments at 19.

broadcasters' digital signals.<sup>58</sup> Moreover, dual must-carry would adversely affect the plans of cable operators to deploy new advanced services. Cable operators are dedicating more and more spectrum to advanced services, such as cable Internet service, telephony, ITV, and video-on-demand. To the extent that cable systems were encumbered with additional must-carry requirements, spectrum would have to be diverted away from deployment of these advanced services, which are highly valued by consumers.<sup>59</sup>

In short, the question should not be *whether* cable operators have the capacity to carry dual broadcast signals, but *why*, out of the myriad of competing uses vying for limited space, broadcasters should receive yet another government handout at the expense of consumers, cable operators, and cable programmers.

AT&T also agrees with NCTA that dual must-carry would violate the Takings Clause of the Fifth Amendment.<sup>60</sup> Requiring carriage of broadcasters' digital signals plainly would amount to a physical occupation of cable operators' property by forcing them to distribute those signals throughout their cable plant.<sup>61</sup> Moreover, the Communications Act expressly provides

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<sup>58</sup> See TechTV Comments at 5-7; A&E Comments at 14-18; Discovery Comments at 5-6; HBO Comments at 3-4; Starz Comments at 8-13; C-SPAN Comments at 3-5; ICCP Comments at 8-12; Filipino Channel, *et al.* Comments at 21-29; Cablevision Comments at 2-6; Insight Comments at 4-5.

<sup>59</sup> See AT&T Comments at 9; NCTA Comments at 16; TWC Comments at 22-23.

<sup>60</sup> See NCTA Comments at 21-25. See also AT&T Answer, filed in CSR 5596-M, at 28 n.70 (Oct. 2, 2000).

<sup>61</sup> See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982) (“[A] permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve.”).

that operators may not obtain payment or other consideration for carriage of must-carry stations,<sup>62</sup> eliminating any doubt that the statute fails to provide “just compensation.”

**B. The Record Also Demonstrates That Dual Must-Carry Would Violate the Communications Act.**

Contrary to the claims of the broadcasters,<sup>63</sup> the Commission lacks statutory authority to impose dual must-carry on cable operators. As AT&T and NCTA noted, Section 624(f) of the Communications Act bars the Commission from imposing dual must-carry because nothing in Title VI expressly authorizes the Commission to adopt such a requirement.<sup>64</sup> In fact, Congress enacted several provisions that bar, or cast serious doubt on the Commission’s authority to impose, dual must-carry. For example, under the plain language of Section 614(b)(4)(B), cable operators’ obligation to carry digital broadcast signals does not apply unless and until the broadcasters *change* their method of broadcasting from an analog to a digital format. If broadcasters continue to provide their analog signals, then the signals have not “been changed” and Section 614(b)(4)(B) has not been triggered.<sup>65</sup>

Moreover, both CEA and Paxson agreed with AT&T that cable operators should not be required to carry duplicative broadcast signals. For example, CEA noted that simulcasting is

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<sup>62</sup> See 47 U.S.C. § 534(b)(10) (“A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section, or for the channel positioning rights provided to such stations under this section . . .”).

<sup>63</sup> See, e.g., Public Broadcasters Comments at 18-19; Entravision Comments at 4; Maranatha Comments at 2.

<sup>64</sup> See AT&T Comments at 23; NCTA Comments at 4.

<sup>65</sup> See AT&T Comments at 23; NCTA Comments at 4-5.

“wastefully duplicative and adds little additional quality or value to the viewer experience,” and should be prohibited.<sup>66</sup> Likewise, Paxson has stated that “the 1992 Cable Act specifically prohibits the carriage of duplicative program signals.”<sup>67</sup> Thus, to the extent broadcasters use their digital spectrum to simulcast their analog content -- as they clearly intend to do (and, indeed, are *required* to do by the Commission’s rules) -- a dual must-carry requirement is statutorily barred.

At the very least, AT&T and NCTA demonstrated that dual must-carry raises significant constitutional issues.<sup>68</sup> Indeed, the Commission tentatively concluded that such a requirement would not survive First Amendment scrutiny. In the absence of a clear statutory directive for dual must-carry, the Commission must err on the side of avoiding a constitutional infringement.<sup>69</sup>

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<sup>66</sup> CEA Comments at 8 (also advocating that “[b]roadcasters 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”).

<sup>67</sup> Paxson Petition for Reconsideration, filed in CS Dkt. No. 98-120, at 4 (Apr. 25, 2001). *See also* AT&T Comments at 24-26 (noting that Section 614(b)(5) precludes mandatory carriage of duplicative content).

<sup>68</sup> *See* AT&T Comments at 13 (noting that the Commission’s past efforts to impose must-carry obligations on cable operators without explicit statutory direction were rejected on First Amendment grounds in the *Century* and *Quincy* cases); NCTA Comments at 5-6.

<sup>69</sup> *See* NCTA Comments at 6 n.10 (citing *Solid Waste Agency v. Army Corps of Engineers*, 121 S. Ct. 675 (2001)).

**IV. THE COMMISSION SHOULD REJECT PROPOSALS BY BROADCASTERS TO ESTABLISH AN OPEN-ENDED TEST FOR DETERMINING WHAT MATERIAL IS “PROGRAM-RELATED.”**

The Commission historically has taken a restrictive view of what qualifies as “program related,” adopting the *WGN* test and other rules to limit the carriage obligations of cable operators. Contrary to this well-established precedent, the broadcasters and CEA now urge the Commission to dispense with the *WGN* test and adopt an open-ended approach for defining “program-related” content.<sup>70</sup> The Commission should reject such self-serving proposals as inconsistent with the Communications Act, the accompanying legislative history, and its own precedent.

**A. The Broadcasters’ “Program-Related” Proposals Are Inconsistent with the Communications Act, FCC Precedent, and the Constitution.**

Dual must-carry advocates proposed that the Commission define “program-related” to include virtually *all* material that a broadcaster transmits. For example, CEA argued that “[program-related] should include *all free, over-the-air services and information that is in any way related to broadcast programming . . . [including] program guide and other material that is unrelated to the current program being viewed.*”<sup>71</sup> NAB asked the FCC to require carriage of “all non-subscription material that adds to, supplements, or relates to the program service of a television station.”<sup>72</sup> Finally, Disney urged that “program-related” should encompass “all

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<sup>70</sup> See, e.g., NAB Comments at 41 (concluding that “[t]he Commission should . . . abandon the *WGN* test for DTV”).

<sup>71</sup> CEA Comments at 10 (emphasis in original). Of course, the Commission expressly rejected CEA’s program guide proposal in its *Digital Must-Carry Order*, see *Digital Must-Carry Order* at ¶ 64, and it would be inappropriate to reconsider the issue in the *Further Notice*.

<sup>72</sup> NAB Comments at 41.

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.”<sup>73</sup>

Such an open-ended approach, which places virtually no limits on the carriage obligations of cable operators, is flatly inconsistent with the Communications Act, Commission precedent, and the Constitution. As AT&T and others noted, the Communications Act and Commission precedent specifically limit the types of content that may qualify as “program-related” eligible for must-carry.<sup>74</sup> The “program-related” provisions of Section 614, for example, were intended to be a narrow carve-out from the general rule that cable operators have editorial discretion over what to carry beyond the broadcaster's primary video. The proposals of the broadcasters and CEA would effectively and impermissibly read those limitations, as well as the statutory exclusions of ancillary or supplementary content, out of the statute.<sup>75</sup> Similarly,

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<sup>73</sup> Disney Comments at 3-4.

<sup>74</sup> See, e.g., AT&T Comments at 27-35; NCTA Comments at 26-32; Starz Comments at 16-19; ICCP Comments at 15-17. Moreover, contrary to the broadcasters' claims, see NAB Comments at 39-40; Disney Comments at 12; Public Broadcasters Comments at 23, the “program-related” language in Sections 614 and 615 of the Communications Act does not provide an independent basis for mandatory carriage of multicast services, such as time-shifted programming or community-specific newscasting. The Commission's holding with respect to “primary video” forecloses such a reading of the statute. See *Digital Must-Carry Order* at ¶ 57; *id.* at 2869 (Separate Statement of Commissioner Michael K. Powell) (“Inasmuch as these [multicast] programming streams represent separate, distinct and multiple transmissions, I am unable to defensibly conclude that they are entitled to must carry as ‘program-related’ content.”).

<sup>75</sup> Rules of statutory construction require the Commission to give effect to every word in the Communications Act, including the limitations on “program-related” content in Sections 614(b)(3) and 336(b)(3). See, e.g., *Pennsylvania Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552, 562 (1990) (“Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment.”); 2A *Sutherland Statutory Construction* § 46:06 (2000) (“A statute should be construed so that effect is given to all its  
(footnote continued...)”)

Disney argued that interactive advertising content should qualify as “program-related,”<sup>76</sup> even though it clearly fails the *WGN* test,<sup>77</sup> the limitations in Section 614(b)(3)(A),<sup>78</sup> and the prohibition on mandatory carriage of ancillary or supplementary content.<sup>79</sup> The Commission

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(...footnote continued)

provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.”).

<sup>76</sup> See Disney Comments at 13-14.

<sup>77</sup> In particular, Disney failed to demonstrate how interactive advertising is an *integral* part of the video program under the third prong of the *WGN* test. See *Digital Must-Carry Order* at ¶ 61. Although, as Disney notes, such enhancements may help attract viewers to the accompanying programming, see Disney Comments at 15, they are certainly not integral to the viewer’s understanding of the underlying programming. Such advertising would also appear to fail the other prongs of the *WGN* test because the interactive content would not be available to the same viewers as those watching the main program unless they had a separate Internet connection, and might not be shown only during the same interval of time as the video signal.

<sup>78</sup> See 47 U.S.C. § 534(b)(3)(A) (expressly excluding “advertiser-supported information services” from the definition of “program-related” content).

<sup>79</sup> See *Digital Must-Carry Order* at ¶ 59 (noting that ancillary and supplementary services, including interactive materials, are not entitled to mandatory carriage); 47 U.S.C. § 336(b)(3) (barring mandatory carriage of ancillary and supplementary services); 47 C.F.R. § 73.624(c) (defining ancillary and supplementary services). See also AT&T Comments at 30-32; NCTA Comments at 29. Moreover, the Communications Act in no way requires cable operators to devote upstream bandwidth to broadcasters.

Contrary to Disney’s claims, Section 111(c)(3) of the Copyright Act does not require “the unimpaired and unaltered retransmission of interactive advertising as part of a broadcaster’s signal.” *Id.* at 14 n.28. The Commission squarely rejected such an interpretation in its *Emergency Alert System Reconsideration Order*, concluding that “[t]he language of Section 111(c)(3) that refers to deletions means removal of commercial messages or program content for the purpose of insertion of the cable system’s own commercial messages by the cable system.” *In the Matter of Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, 10 FCC Rcd. 11494, at ¶ 22 (1995) (emphasis added). In addition, in this docket, the Commission has already ruled that the “primary video” requirements in Sections 614 and 615 permit a cable operator to transmit only a portion of a broadcaster’s digital signal. The Copyright Act plainly does not control the Communications Act’s

(footnote continued...)

must reject such efforts to circumvent its rules and the plain terms of the Communications Act, and otherwise impose additional carriage burdens on cable operators that further implicate the First Amendment concerns outlined above.

**B. The Cable Industry’s Approach on “Program-Related” Content Is Faithful to the Communications Act, FCC Precedent, and the Constitution.**

AT&T reiterates its request that the Commission define “program-related” content as content that: (1) satisfies the *WGN* standard; (2) can be carried by a cable system in a technically-feasible manner; (3) is not fee-based or advertiser-supported; (4) is created and/or distributed by the broadcast licensee itself as opposed to a third-party purchaser/lessor; and (5) does not constitute an “ancillary or supplementary” service.<sup>80</sup> In addition to being faithful to Commission precedent, the Communications Act and its legislative history, and the Supreme Court’s *Turner* precedent, such an approach provides clear guidelines on cable operators’ carriage obligations relative to “program-related” content, in contrast to the open-ended proposals of the broadcasters and CEA. Content that fails this test, such as interactive advertising, should be the subject of voluntary negotiations between cable operators and broadcasters, as is the case for cable programmers.<sup>81</sup>

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(...footnote continued)

requirements as to how various elements of a digital broadcast signal should be characterized for must-carry purposes.

<sup>80</sup> See AT&T Comments at 27-35 (also proposing a program-related test for non-commercial stations); NCTA Comments at 26-32 (advocating similar limitations).

<sup>81</sup> See 47 U.S.C. § 534(b)(3) (“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.”); *id.* § 535(g)(1) (“Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.”). See also NCTA Comments at 27-28.

**V. CONCLUSION**

For the foregoing reasons, AT&T respectfully urges the Commission to reject a dual must-carry requirement and adopt a definition of “program-related” that is consistent with AT&T’s comments and reply comments filed in this proceeding.

Respectfully submitted,

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August 16, 2001

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
Carriage of Digital Television Broadcast Signals	)	CS Docket No. 98-120
	)	
Amendment 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
	)	

**DECLARATION OF CASEY BLACKWELDER**

I, Casey Blackwelder, do hereby declare as follows:

1. I am Assistant Director, Programming at AT&T Broadband. My business address is: 188 Inverness Drive, Englewood, Colorado 80112. I oversee retransmission consent negotiations for AT&T Broadband.

2. I have reviewed the declaration the National Association of Broadcasters ("NAB") submitted in its Comments in CS Docket No. 98-120 from Kathy Clements-Hill, president and general manager of WFAA-TV, a broadcast station in Dallas, Texas, alleging that the station has been unable to obtain carriage for its digital signal on AT&T Broadband's cable system in Dallas.

3. In an effort to confirm or deny the allegations Ms. Clements-Hill makes in her declaration, I made inquiries to the individuals at AT&T Broadband who I believed might have some knowledge of retransmission consent negotiations with, or requests for such negotiations by, WFAA-TV. (Ms. Clements-Hill's declaration does not identify the AT&T Broadband representatives with whom she purports to have dealt.) My investigation did not uncover any information that supported Ms. Clements-Hill's allegation that AT&T has been unwilling to negotiate for retransmission of WFAA-TV's digital signals.

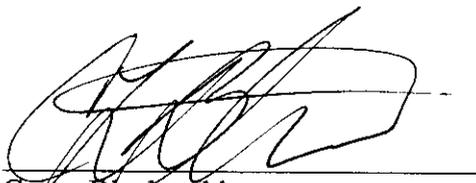
4. AT&T Broadband's key officials in its Dallas cable system indicated that they have no knowledge or recollection of any discussions or requests relating to digital carriage for WFAA. I spoke with Ms. Dottie Lane, Vice President, Marketing, and Ms. Paula Trustdorf, Senior Vice President, in AT&T Broadband's Dallas cable operations, both of whom reported that they have had contacts with Ms. Clements-Hill, but have no knowledge or recollection of any request from Ms. Clements-Hill for digital carriage of WFAA-TV, or any discussion with Ms. Clements-Hill about digital carriage for WFAA-TV. These AT&T Broadband employees indicated that they met with Ms. Clements-Hill approximately eight months ago to discuss issues relating to Texas News Channel, a local news channel run by WFAA-TV, and also have visited with other employees of the station since that time, but carriage of WFAA-TV's digital signal was never raised in any of these discussions.

5. Ms. Clements-Hill states in her declaration that "within the last six months" WFAA "was unable to obtain digital carriage rights for WFAA-DT in connection with negotiations relating to retransmission consent rights with a major cable MSO." I have no reason to believe that this statement refers to negotiations with AT&T Broadband, which has a longstanding retransmission agreement with WFAA that has a number of years remaining in its

term. To my knowledge AT&T Broadband had no occasion to negotiate retransmission rights with WFAA within the six months preceding Ms. Clements-Hill's declaration.

6. I have reviewed AT&T's Reply Comments in CS Docket No. 98-120 ("Reply Comments"). To the best of my personal knowledge, information, and belief, the statements made in Section II.A. of the Reply Comments concerning the Clements-Hill declaration are correct.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate.



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Casey Blackwelder

August 15, 2001