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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	)	
	)	
Amendments to Part 76 of the Commission's Rules	)	CS Docket No. 98-120
	)	
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

REPLY COMMENTS OF BENEDEK BROADCASTING CORP., ARIZONA STATE UNIVERSITY, AND VERMONT ETV, INC.

Benedek Broadcasting Corp. ("Benedek"), Arizona State University ("Arizona State"), and Vermont ETV, Inc. ("Vermont ETV") submit these reply comments in the above-referenced proceeding to urge the Commission promptly to adopt a comprehensive, workable DTV transition plan, including a limited but effective digital carriage solution, that will involve all the relevant industries and get the stalled transition back on track.

We operate commercial and noncommercial television stations in small and mid-size television markets.[1] We are excited about the opportunities that the conversion to digital television offers but discouraged by the current state of the transition. In the markets we serve, there is virtually no DTV receiver penetration, cable subscribers cannot anticipate receiving digital broadcast signals anytime soon, and we see little to no momentum at the national level to drive DTV penetration in our markets. Nonetheless, we now face imminent mandatory buildout deadlines for our digital facilities (9 months for commercial stations and 21 months for noncommercial). We are concerned that while we expend substantial capital resources to construct and incur higher utility and other costs to operate our digital facilities, the transition will remain stalled and we will be left stranded between two parallel broadcast systems for a protracted period. As the initial comments in this proceeding make clear, the time has come for the Commission to take action to avoid such a scenario, which would be disastrous for consumers and broadcasters alike.[2]

As some commenters have suggested, what is called for now is a comprehensive action plan involving government (including the Commission and Congress, as appropriate) and the three principal industries -- broadcasting, cable and equipment manufacturers -- whose

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[1] Benedek and its affiliates operate over 25 television stations serving small and mid-size markets throughout the United States. Arizona State is the licensee of noncommercial station KAET(TV) in Tempe, Arizona. Vermont ETV is the licensee of 4 noncommercial television stations serving various communities throughout the state of Vermont.

[2] See Comments of NAB/MSTV/ALTV, CS Docket Nos. 98-120, 00-96, 00-2, at ii-iii, 13-15, 26-27, App. A (June 11, 2001) ("NAB/MSTV/ALTV Comments"); Comments of Public Broadcasters, CS Docket Nos. 98-120, 00-96, 00-2, at 1 (June 11, 2001) ("Public Broadcasters Comments"); Comments of the Consumer Electronics Association, CS Docket Nos. 98-120, 00-96, 00-2 (June 11, 2001) ("CEA Comments"); Comments of Univision Communications, Inc., CS Docket Nos. 98-120, 00-96, 00-2, at 13-14 (June 11, 2001) ("Univision Comments"); Comments of Maranatha Broadcasting Company, Inc., CS Docket Nos. 98-120, 00-96, 00-2, at 4-5 (June 11, 2001) ("Maranatha Comments"); Comments of KSLS, Inc. and KHLS, Inc., CS Docket Nos. 98-120, 00-96, 00-2, at 3 (June 11, 2001).

effective participation in the transition is necessary if it is to have a chance to succeed.[3] The elements of such a plan can and should be crafted to ensure that the burdens imposed on each industry are limited and tailored effectively to advance the DTV transition while allowing the market to function wherever possible. Toward that end, we support the commenters who have urged the Commission to take the following steps:

1. Adopt modified digital buildout deadlines tied to marketplace developments such as nationwide penetration of DTV receivers;
2. Impose a transitional DTV carriage requirement tailored to ensure that it does not infringe cable operators' First Amendment rights; and
3. Establish DTV receiver performance thresholds and require equipment manufacturers to include DTV tuners in all television sets sold after a certain date.

I. Broadcast Buildout Deadlines

In 1997, the Commission adopted aggressive DTV buildout deadlines designed to spur a rapid transition.[4] All commercial and noncommercial broadcasters were required to construct DTV facilities by May 2002 and May 2003, respectively.[5] At the time, the hope was that the transition, spurred by early DTV construction in larger markets, would be well on its way before smaller stations and those in smaller markets were required to construct DTV facilities. It was thought that by mid-2002 DTV sets would be rapidly proliferating in larger markets, commercial and consumer equipment prices would be falling, digital/cable

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[3] See Public Broadcasters Comments, at 1-2, 6-7.

[4] In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809, 12840-48 (1997).

[5] Id. at 12840-41.

interoperability problems would be resolved, and digital signals would be widely available to viewers as soon as they came on line.[6]

Although most of the larger market network stations have met their construction deadlines (and pioneering broadcasters in other markets have constructed DTV facilities ahead of schedule), it is now widely recognized that, for a variety of reasons, the transition has not proceeded at the expected pace.[7] Under these circumstances, the arbitrary 2002 and 2003 construction deadlines have become unduly burdensome, particularly in middle and smaller markets where construction costs are high, DTV receiver penetration is virtually nonexistent, and DTV signals are expected to remain unseen by viewers for the foreseeable future.[8] Of course broadcasters must take the lead in migrating their viewers to digital, but there is little public benefit, and much cost, in requiring broadcasters to be so far out in front of market trends.

As one alternative to alleviate the construction burden while ensuring that broadcasters remain at the forefront of the transition, we support the Public Broadcasters' proposal to tie stations' DTV construction deadlines to market developments such as increases in

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[6] Id. at 12842, 12843-44, 12846-47.

[7] See, e.g., Digital Television: A Private Sector Perspective on the Transition, Hearing Before the Subcomm. on Telecommunications and the Internet of the House Comm. on Energy and Commerce, 107th Cong. (Mar. 15, 2001) (various statements); Testimony of Ben Tucker, Executive Vice President for Broadcast Operations, Fisher Broadcasting, Inc. and NAB Television Board Chairman, before the Senate Committee on Commerce, Science and Transportation, Hearing on the Transition to Digital Television Broadcasting, at 3-4 (Mar. 1, 2001) ("Tucker Testimony"); Public Broadcasters Comments, at 1.

[8] See, e.g., NAB Survey of Stations' Plans to Meet Digital Television Deadlines, August 2001, at 3 (filed in MM Docket No. 00-39, Aug. 14, 2001) ("Small market stations appear to be less optimistic that they will be able to meet the [DTV construction] deadline. Only 49.1 percent of responding [commercial] stations in Nielsen Markets 100+ indicated that they believe they will be on-air by May 2002."); Letter to FCC Chairman Michael Powell from Senators Baucus and Burns, June 22, 2001 (filed in MM Docket No. 00-39).

national DTV penetration levels.[9] As national DTV penetration grows, so will the momentum of the DTV transition. At that point it will be reasonable to require broadcasters in progressively smaller markets to do their part to keep the ball rolling by bringing DTV broadcasts to their communities. In the absence of such an accommodation, the Commission risks leaving smaller market broadcasters with two equally unsatisfactory alternatives: (1) incur huge capital and operating costs (with no accompanying increase in revenues) that drain the resources available to program their stations and serve their communities or (2) forfeit their licenses and cease operations.[10]

II. Cable Carriage Requirement

It is widely acknowledged that, with cable operators controlling access to 70% of television households, the DTV transition cannot succeed without cable carriage of digital signals.[11] The Commission has given cable operators plenty of opportunity to negotiate voluntary carriage of broadcasters' digital signals (and cable operators themselves have been aggressively rolling out digital cable services), but still DTV signals -- even those offering a full complement of prime-time HDTV programming and the first "enhanced" DTV broadcasts -- are

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[9] See Public Broadcasters Comments at 12-15.

[10] Alternatively, the NAB has urged the Commission to adopt a simplified waiver procedure for granting buildout extensions to smaller stations and those in smaller markets upon a showing of financial hardship, zoning problems, tower problems, lack of availability of equipment, or other factors preventing completion of construction by the deadline. See National Association of Broadcasters, Notice of Ex Parte Communication, MM Docket No. 00-39 (July 5, 2001).

[11] See, e.g., Congressional Budget Office, Completing the Transition to Digital Television, at I.3, III.4-6 (Sept. 2000); NAB/MSTV/ALTV Comments, at App A. (Kraemer/Levine Report on Implications of the Adoption of Digital Must-Carry on the Speed of the Broadcast DTV Transition); Tucker Testimony, at 4-5; CEA Comments, at 3; Univision Comments, at 5-7.

not available to the vast majority of cable subscribers.[12] The current state of affairs shows that the market alone will not produce the DTV cable carriage necessary to drive the transition.

Although some Commission intervention is clearly necessary,[13] it need not be heavy-handed or unduly burdensome. Like broadcasters' buildout deadlines, cable carriage requirements can be tied to market developments (*i.e.*, national DTV penetration levels sufficient to trigger construction of the local broadcast DTV facilities that would be subject to carriage) and otherwise tailored to limit the burden imposed on cable operators. The initial comments contain a number of viable alternatives designed to accomplish this objective.[14] The Commission should start with these proposals, initiate a dialog with the interested parties, and develop a reasonable, workable transitional carriage requirement that will advance the goals of

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[12] See, e.g., Adelphia Communications Corp. Response to FCC Survey, at 1-2 (June 13, 2001) (stating that Adelphia currently uses all of its digital capacity for "national, multi-plexed programming to meet the requirements of our programming contracts on a nationwide basis"); Armstrong Cable Services Response to FCC Survey, Question 4 (June 28, 2001) (no DTV retransmission agreements signed or in negotiation); BellSouth Interactive Media Services, Inc. Response to FCC Survey, Question 4 (June 13, 2001) (same); Cable One, Inc. Response to FCC Survey, Question 4 (June 13, 2001) (no current carriage of DTV signals, existing agreements provide for contingent carriage only); Cablevision Systems Corp. Response to FCC Survey, Question 4 (June 13, 2001) (no DTV retransmission agreements signed or in negotiation); Insight Communications Response to FCC Survey, Question 4 (June 13, 2001) (no digital carriage requirements in existing agreements); Mediacom Communications Corp., Question 4 (Aug. 6, 2001) (no digital carriage requirements (except contingent on carriage of another local DTV signal) in existing agreements).

[13] We agree with those who have argued that the 1992 Cable Act mandates cable carriage of DTV signals during the transition. See 47 U.S.C. § 534(b)(4)(B); NAB/MSTV/ALTV Petition for Reconsideration, CS Docket No. 98-120 (Apr. 25, 2001); Joint Petition for Reconsideration of the Association of America's Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting, at 14-18 (Apr. 25, 2001); Public Broadcasters Comments, at 18-19; Maranatha Comments, at 7-8. But even if the Commission has discretion to determine whether or not to adopt transitional digital carriage requirements, market developments demand that it do so as a matter of sound public policy.

[14] See, e.g., Public Broadcasters Comments, at 7-15 ; CEA Comments, at 4-6.

the DTV transition while protecting cable's First Amendment rights. Further delay could spell the death of the DTV transition.

We note that the Public Broadcasters proposed a reasonable transitional carriage requirement that would take effect in any market in which two or more stations are broadcasting a digital signal; in markets served by only one or two broadcast stations, any one station broadcasting in digital would be entitled to carriage.[15] As broadcasters serving a number of smaller markets, we urge the Commission to take care in crafting any carriage requirement tied to the number of stations broadcasting in a market. Markets served by three stations also tend to be quite small, and one (or more) of the local stations may, because of financial constraints, be unable to make the conversion to digital promptly or at all. In these circumstances, a stronger station that takes the initiative and rolls out digital services early should not be left without carriage (and cable subscribers in the market should not be left without access to available digital services) for the foreseeable future because of the weakness of other stations in the market. Accordingly, we propose that any carriage requirement triggered by the number of local stations broadcasting in digital should provide that in markets served by fewer than four stations, any one station broadcasting a digital signal is entitled to carriage on the local cable system. Such a "small market" exception would protect small market pioneers and viewers while imposing a minimal burden on local cable systems, which would be required to carry only the one additional signal that begins operating digitally.

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[15] Public Broadcasters Comments, at 8. Arizona State and Vermont ETV of course support the Public Broadcasters' Working Draft proposal.

III. DTV Receivers

Consumer equipment manufacturers are the third leg necessary to support consumer uptake of digital television. Their participation, like cable's, is essential to the success of the transition.[16] But manufacturers are selling millions of analog-only television sets only a few years before Congress had expected such sets to become largely obsolete, the technical performance of the DTV receivers they have been selling has sometimes been inadequate, and DTV sets are not yet interoperable with cable.[17] Whatever the reasons for these problems, the Commission cannot allow them to continue indefinitely. The Commission should encourage manufacturers (and other interested parties) to remedy the situation voluntarily. But in the absence of prompt resolution, we agree that the Commission must stand ready to (1) adopt mandatory DTV tuner requirements (perhaps on a phased-in basis), (2) assure adequate DTV performance thresholds, and (3) establish requirements for full and effective cable/DTV receiver interoperability.[18]

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[16] See, e.g., Testimony of Dr. Joseph S. Kraemer, Director, LECG, LLC, before the Senate Committee on Commerce, Science, and Transportation, Hearing on the Transition to Digital Television Broadcasting, at 11-12 (Mar. 1, 2001); Tucker Testimony, at 5; Public Broadcasters Comments, at 16; MSTV/NAB/ALTV Comments, MM Docket No. 00-39, at 5 (Apr. 6, 2001) ("MSTV/NAB/ALTV DTV Biennial Review Comments").

[17] See, e.g., Tucker Testimony, at 6-7, 12-14; MSTV/NAB/ALTV DTV Biennial Review Comments, at 2.

[18] See Public Broadcasters Comments, at 16-18; MSTV/NAB/ALTV DTV Biennial Review Comments, at 5-7 ; Tucker Testimony, at 12-16.

Although the Commission has significant discretion to craft the specific rules necessary to advance the DTV transition, it cannot, consistent with the public interest, continue to leave the transition in its current state. The transition is derailed, and comprehensive, creative action is needed to get it back on track. The Commission has been the guiding force behind the transition since its inception, and it is the appropriate entity now to take the lead in pursuing such efforts. We urge the Commission promptly to discharge this responsibility in accordance with the foregoing suggestions.

Respectfully submitted,

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Dated: August 16, 2001