

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)
)
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)

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FEDERAL COMMUNICATIONS COMMISSION
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CS Docket No. 98120
CS Docket No. 00-96

CS Docket No. 00-2

TO: The Commission

REPLY COMMENTS
OF THE STATION REPRESENTATIVES ASSOCIATION

The Station Representatives Association ("SRA") files these reply comments to urge the Commission to adopt digital cable carriage requirements that will ensure the delivery of broadcasters' digital signals to cable subscribers during the transition and beyond. SRA's membership includes the independent television station sales representatives for nearly every commercial television station in the advertising marketplace, other than those owned and represented by a network. As such, SRA knows well how crucial cable carriage is to broadcasters' continued ability to provide high quality, advertiser-supported – and therefore, free – content to their local communities. The congressionally mandated digital transition has the potential to expand broadcasters' ability to offer local viewers enhanced and innovative content, including a wide variety of advertiser-supported digital programming and other services. But without digital cable carriage in the near term, broadcasters will be stranded in a world between analog and digital and the public will be deprived the benefits of DTV service.

Moreover, because of the give-back requirement and the rule that a station that does not activate

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its DTV channel may lose its analog channel, even the public's analog service would be put in jeopardy by an unsuccessful transition.

The broadcast industry has invested and continues to invest heavily in the DTV transition. Among other things, broadcasters have designed and constructed expensive DTV facilities, tackled complicated interference and tower siting issues, developed HDTV and other digital content, and worked cooperatively with the consumer electronics industry on DTV equipment issues. But these efforts alone will not drive the transition to DTV. As NAB, MSTV and ALTV explained:

For almost 15 years, the Commission has sponsored a public/private partnership to move American television into a digital future. Congress endorsed this goal, and asked that the transition be completed as quickly as possible, but without substantially disrupting consumers. Broadcasters have fulfilled their role in the transition; they are rapidly putting DTV signals on the air. But a rapid transition cannot be achieved through the efforts of broadcasters alone.¹

Unless the Commission adopts carriage requirements that assure delivery of broadcasters' digital signals to the 70% of viewers that subscribe to cable, the DTV transition can be expected to drag on for 20 years or more.² Straddling between analog and digital for such a prolonged period of time would be extremely crippling to broadcasters and would contravene the congressional and Commission commitment to effect a swift and successful DTV transition that *enhances* the public's over-the-air broadcast service.

SRA believes that cable carriage of digital television signals during the DTV transition is mandated by the Communications Act.³ Congress expressly directed the Commission to adapt

¹ Comments of NAB/MSTV/ALTV, CS Docket Nos. 98-120, 00-96, and 00-2 (June 11, 2001) at ii ("NAB/MSTV/ALTV Comments"). (Unless otherwise noted, all pleadings cited herein refer to those filed in CS Docket Nos. 98-120, 00-96, and 00-2.)

² *Id.* at ii, 9-13, Appendix A ("If broadcasters are left to be the sole driving force of the transition, . . . it may take 20 or more years for the 85% penetration target set by Congress to be achieved.").

³ *See* Petition for Reconsideration and Clarification of the Broadcast Group at 2-4; NAB/MSTV/ALTV Petition for Reconsideration and Clarification at 6-9; Joint Petition for (continued...)

the analog cable carriage rules to “ensure cable carriage” of DTV signals.⁴ When Congress enacted this requirement, it already had been established that broadcasters would operate both analog and digital signals during the DTV transition.⁵ Recognizing that cable carriage of broadcasters’ digital signals would be essential, Congress directed the Commission to adopt DTV carriage requirements “[a]t such time as the Commission prescribes modifications of the standards for television broadcast signals” – not years into or after the DTV transition.⁶

Even if the Commission continues to believe that transitional digital carriage requirements are a matter of FCC discretion rather than congressional mandate, however, there are compelling governmental and public interests that support adoption of effective digital carriage requirements during the transition. By promoting a quick DTV transition, digital cable carriage requirements will “achieve Congressional and FCC public policy goals of preserving the over the air broadcast system, bringing digital television to *all* American households and all-sized markets, reclaiming spectrum for advanced mobile wireless communications services and realizing substantial auction revenues for other important government uses.”⁷ By contrast, “a slow DTV transition without must carry puts preservation of the free, over-the-air broadcasting system and that central purpose of the Cable Act at risk.”⁸

[A] prolonged transition without DTV must carry (and thus without DTV revenue) of 20 or more years will drain [broadcasters’] resources, provide a negative return on their

Reconsideration of the Association of America’s Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting at 14-18.

⁴ 47 U.S.C. § 534(b)(4)(B).

⁵ The *Second Report and Order* in the DTV proceeding, adopted May 8, 1992, established the framework under which the Commission would assign transitional paired DTV channels to broadcasters and repossess an unused channel when the transition to DTV was complete (a fifteen year period was established). *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (Second Report & Order)*, 7 FCC Rcd 3340 (1992).

⁶ 47 U.S.C. § 534(b)(4)(B).

⁷ NAB/MSTV/ALTV Comments at 15.

⁸ *Id.* at 26.

millions of dollars invested in expensive DTV facilities, deplete their capital budgets for DTV production and other equipment necessary to build that DTV business and, eventually, require replacement of their analog transmitters and equipment, which will further siphon off resources needed to maintain a reasonable level of service. The cost-cutting in their basic analog service eventually will diminish their service, their audience and their advertising support, all to the end that was predicted by Congress to occur without carriage of broadcast signals.⁹

Thus, on one side of the constitutional balance, all the historical reasons for carriage apply here plus the additional government interest of facilitating the important digital transition. And on the burden side of the constitutional balance, cable has dramatically increased its cable capacity and broadcasters have expressed support for various ways to limit the impact of a transitional digital carriage requirement. Under *Turner II*, such a requirement would both serve the public interest and pass First Amendment muster.¹⁰

* * * *

For these reasons, SRA urges the Commission to advance the DTV transition by implementing digital must-carry requirements that ensure that broadcasters' free, over-the-air digital signals are carried to cable subscribers in their local communities. The Commission should reject an all-or-nothing approach to transitional digital carriage, and focus on crafting reasonable, market-based carriage requirements that foster broadcast DTV service without imposing undue burdens on cable operators.¹¹ Reasonable digital carriage requirements during the transition will stimulate consumer interest in, acceptance of and investment in DTV. It will

⁹ *Id.* at 26-27.

¹⁰ *See Turner Broadcasting Sys., Inc. v. FCC*, 520 U.S. 180 (1997) ("*Turner II*").

¹¹ Public Broadcasters have proposed one such approach. *See* Comments of the Association of America's Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting at 7-14. The Consumer Electronics Association has proposed another. *See* Comments of the Consumer Electronics Association at 3-6. SRA does not specifically endorse either of these approaches, but urges the Commission to use these comprehensive, market-based proposals as a basis for crafting reasonable, constitutionally sound, digital cable carriage requirements.

foster the development and delivery of digital content and services to consumers. It will promote advances in DTV technology, increase DTV receiver penetration, and ultimately quicken return of the broadcast analog spectrum *without* causing significant losses or degradations in service to the public. In short, digital cable carriage would encourage the creation, distribution, and widespread consumer access to the myriad enhancements to the public's television service that digital technology was meant to foster.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Waldron", written over a horizontal line.

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