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March 5, 2002

Edward W. Paxson / Chairman

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Kathleen Abernathy
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Digital Must Carry (CS Docket No. 98-120)

Dear Commissioner Abernathy:

I want to thank you for meeting with me last week and please allow me to describe in a bit more detail our concept of a proper digital multicast must carry plan. As I indicated, Paxson Communications Corporation ("Paxson") is the largest broadcast television group owner in the United States. Paxson Communications owns 63 full power television stations which, in combination with 57 non-owned affiliates, make up the distribution of the PAXTV Network which reaches approximately 84% of the television households in the country. The PAXTV Network was launched in 1998 to provide the American family with a safe haven of over-the-air television programming free of explicit sex, gratuitous violence and foul language. Paxson has been urging the FCC to adopt full digital must carry for all television stations since 1998 since we believe that DTV must carry is absolutely essential for local broadcasting. Make no mistake, digital is the future of television and must carry is the only way for broadcast television to reach that future.

The PAX Digital Must Carry Proposal Is Based On The 1992 Cable Act

The PAX Digital Must Carry Proposal permits television stations to elect to have their analog signals removed from cable systems and replaced with their primary digital signals which would be down-converted to analog and carried on the analog portion of the cable system. This replacement carriage would be to the same number of cable homes and on the same channel as the basis analog carriage. In addition, television stations choosing to allow cable systems to remove their analog signals in favor of their digital signals would have their HDTV or digital multicast signals carried on the digital portion of the cable system, equipped with digital boxes, subject to certain limitations regarding set-top box penetration. The primary digital signal (carried on the analog portion of the cable systems) and the additional digital signals providing free programming services would be provided as part of the basic cable services provided to all analog cable subscribers and to all subscribers with digital boxes.

This is the basis of the television station must carry rules that were established by the 1992 Cable Act. Section 4 of the 1992 Cable Act clearly provides that "each cable operator

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shall carry on the cable system of that operator, the signals of local commercial television stations . . . as provided by this section.” (47 U.S.C. § 534(a)). The 1992 Cable Act goes on to define a “local commercial television station” as:

. . . any full power broadcast station . . . licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

This carriage requirement makes no distinction between analog and digital signals subject only to the cap on the number of useable activated channels that must be set aside for must carry purposes, and thus leaves no room for Commission interpretation. See Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995).

Furthermore, Congress was not silent in the 1992 Cable Act with regard to the must carry rights of digital broadcast signals. Section 4 provides that:

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to insure cable carriage of broadcast signals of local commercial television stations which have been changed to confirm with such modified standards.

47 U.S.C. § 534(b)(4)(B) (emphasis added).

The legislative history of this provision makes it clear that Congress intended the Commission to take whatever steps were necessary, from a technical standpoint, to insure that television broadcasters’ digital signals (just as with their analog signals) were carried by local cable systems. The House Report interpreting the above language noted that: “The Committee recognizes that the Commission may, in the future, modify the technical standards applicable to television broadcast signals. In the event of such modifications, the Commission is instructed to initiate a proceeding to establish technical standards for cable carriage of such broadcast signals which have been changed to conform to such modified signals.” H.R. Rep 102-628 at p.94.

The Commission’s directive was clear, make whatever technical changes are necessary in order to ensure continued must carriage of local television stations in the digital world. This directive from Congress was contained in the section of the must carry provisions of the 1992 Cable Act dealing with the technical aspects of such must carry, i.e., signal degradation. The placement of the digital must carry discussion in this same section is indicative of the Congressional intent that the question of must carry was not at issue, just



the technical aspects. See INS v. National Center for Immigrants' Rights, Inc., 502 U.S. 183(1991).

The PAX Digital Must Carry Proposal implements the technical changes the Commission should make to accommodate digital must carry. Much has been made of the issue of must carry during the digital transition when some stations are broadcasting in analog only and other stations are broadcasting in digital and analog. Under the PAX Digital Proposal, a station that elects to have its digital signal replace its existing analog signal for cable carriage purposes has, for all intents, completed its cable transition to digital broadcasting. The over-the-air transition to digital broadcasting will be complete when at least 85% of households are capable of receiving digital broadcasts (via all delivery methods). There is no rule or policy reason for the FCC not to recognize that stations have chosen to operate digitally and to require cable operators to honor their complete digital must carry requests.

The Conference Report accompanying the 1992 Cable Act required the Commission to "conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified [i.e., digital] standards in accordance with the objectives of this section." Conf. Rep. 102-862 at p.67. The FCC was directed by Congress to accomplish exactly what we have proposed in our must carry plan; namely, ensure that television stations transitioning to digital continue to have their free over-the-air broadcast services available as a part of the basic service tiers of cable systems regardless of whether the television station is broadcasting in HDTV or in digital multicast.

Congress did not limit such carriage rights to single program services or to analog programming only but simply to free over-the-air programming. In fact, Congress specifically directed the FCC to recognize and accommodate the carriage rules to the new digital environment of its television stations which have initiated their digital broadcasting. The legislative history of the Telecommunications Act of 1996, Pub. L. No. 104-104, makes it clear that Congress assumed that it had already taken care of digital must carry. The 1996 Telecommunications Act was intended to address only subsidiary issues relating to such must carry not the basis grant of digital must carry rights. Our DTV proposal allows individual stations to determine their digital transition, for cable carriage purposes, and, in the process, will not only hasten broadcasting's conversion to digital but will mitigate any impact on cable operators by spreading out the implementation of digital must carry as different stations elect digital must carry at different times.

The FCC's January, 2001 Decision Is Wrong

In January of 2001, the FCC issued a rule denying full digital must carry to television stations at the very last hour, on the very last day of Chairman Kennard's tenure at the FCC with serious reservations from a majority of the Commissioners. This new FCC rule would, at the end of the digital transition, only require cable carriage of a single channel of programming even if stations, like Paxson's, are providing multiple channels of free-over-



the-air digital, TV, family programming. And I can tell you that many public television stations also intend to provide multiple channels of programming thus providing diversity and increased localism. This FCC decision is wrong and we are urging you to reconsider. But Paxson has done more. Paxson has spent over two years and tens of thousands of dollars working with engineering, legal and other experts and has lobbied hard to provide the FCC with a workable full digital must carry plan.

The widely-circulated PAX Digital Must Carry Proposal is based to a large extent on the channel capacity decisions made by Congress in the 1992 Cable Act, approved by the Supreme Court in Turner and implemented by the FCC. That means that a cable system has to devote up to 1/3 of its MHz capacity to must carry television signals. Under the PAX Digital Must Carry Proposal, **a station could elect its analog "OR" full digital signal for carriage** on larger, upgraded (750 MHz) cable systems with digital boxes. **We are not asking for dual carriage** of both signals. We want to choose which of our signals, analog "or" digital, would be subject to must carry. Under our proposal, even in the largest markets with 20 TV stations, a cable system would be devoting no more than 180 MHz to the carriage of television signals – far below the 250 MHz required by the rules. In a market with 10 TV stations, only 90 MHz of the 250 MHz would be used for must carry signals. This will be a significantly lesser burden on cable than the FCC envisioned. Paxson's proposal is similar to one submitted by a group of Public Broadcasters. A recap of the Pax Digital Must Carry Proposal is attached to this letter. Now more than ever, we believe that the PAX Digital Must Carry Proposal is the way for the FCC to achieve a successful DTV transition.

Full Digital Must Carry Is Necessary

Let me emphasize that full digital must carry is absolutely essential for local broadcasters.

First, as I have noted, digital must carry for television stations have already been granted by Congress in the 1992 Cable Act. The FCC was simply left with the task of making whatever technical changes are necessary to ensure digital must carry and it has failed to do so after nearly four years of rulemaking.

Second, the vast majority of broadcasters will not gain digital must carry through negotiations with cable operators. CBS and Time Warner may reach agreement and NBC and Fox may reach agreement with AT&T, but the hundreds of television stations not owned by the four major networks will left at the mercy of cable without must-carry implementation. And, as you know, the cable industry is continuing to consolidate and the satellite industry is now following suit. Broadcasters desperately need a level playing field in the digital age and that requires must carry.

Third, all commercial broadcast stations are now planning their DTV construction; applications are on file at the FCC, plans are being finalized and equipment is being ordered, all on an FCC-mandated schedule. The FCC must not turn its back and require

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broadcasters to spend millions of dollars to upgrade their facilities without guaranteeing cable carriage in their markets.

The Report of the Committee of Conference in passing the 1992 Cable Act clearly addressed the importance of must carry:

The conferees find that the must-carry and channel positioning provisions in the bill are the only means to protect the federal system of television allocations, and to promote competition in local markets. Other remedies . . . will not protect these interests. . . . Given the current economic condition of free, local over-the-broadcasting, an affirmative must-carry requirement is the only effective mechanism to promote the overall public interest.

Conference Report 102-862 (September 14, 1992) at p. 75.

Congress saw the importance of must carry in 1992 and the Supreme Court upheld that decision in the Turner Broadcasting case. It is now time for the Commission to act consistently with the wishes of Congress.

I seek your support for the PAX Digital Must carry Proposal and, as always, I am prepared to discuss our digital must carry proposal with you and your staff.

Very truly yours,

A handwritten signature in cursive script, reading "Lowell W. Paxson".

Lowell W. Paxson

Chairman

Paxson Communications Corporation

Attachment



THE PAX DIGITAL MUST CARRY PROPOSAL

1. Television stations may elect to have their analog signals removed from the cable systems and replaced with their digital signals before the end of the digital transition. For the carriage of a digital signals, the main programming would be downconverted by the cable operator to analog and carried on the analog portion of the cable system on the same channel as the analog signal was carried. The remaining free multicast programming portion of the station's digital signal would be carried on the digital portion of the cable system served by the set-top digital boxes and would be used to deliver additional channels of free programming services only, compressed by cable operators into 3 or less MHz. All broadcast station signals should be contiguous to each other.
2. The station's primary digital signal when downconverted to the analog portion of the cable system will utilize 6 MHz of cable analog capacity. The remaining portion of the station's digital signal would be placed on the digital tier of the cable system and would require no more than 3 MHz of cable digital capacity. When a cable operator's digital set-top box penetration reaches 95% of its subscribers, the system could carry all of the broadcast station's signals on the digital tier only. Thus, a DTV station would only require, in the future, 3 or less MHz of a cable operator's digital capacity.
3. This digital must carry election would be applicable to cable systems with 750 MHz of capacity provided that the systems have installed digital head-ends and have digital set-top boxes. The downconverted digital signal (carried on the analog portion of the system) and the multicast digital signals (carried on the digital portion of the system) would be provided as part of the basic cable services provided to all analog cable subscribers and (for the multicast signals) to all basic subscribers with digital boxes. Thus, as digital set-top boxes are deployed by the cable operator, full digital must carry would occur.
4. This digital must carry option would be available on a first-come, first-served basis within the Communication Act's existing 33% cap on the use of cable systems activated channels for must carry purposes. A 750 MHz cable system is required by the 1992 Cable Act



to devote 250 MHz to local television signals. Under the PAX Digital Proposal, such cable system operating even in a market with 20 television stations would devote 120 MHz for the analog portion of the system and another 3 MHz per station ($20 \times 3 = 60$ MHz) on the digital tier for a total of 180 MHz – far below what the 1992 Cable Act requires be devoted to the carriage of such signals. The average market with 10 television stations would require only 90 MHz of a cable system's spectrum leaving 160 MHz, set aside by the FCC for broadcasters, to revert to cable for its own use.

5. All other aspects of the 1992 Cable Act, as it relates to must carry, would apply. Congress directed the FCC only to establish whatever technical changes are necessary in the carriage provisions of the 1992 Cable Act to ensure full cable carriage of broadcasters digital signals. Everything else the FCC has attempted to change in the must carry requests goes beyond this Congressional mandate. The PAX Digital Must Carry Proposal accomplishes what Congress intended and is faithful to the 1992 Cable Act as implemented by the FCC.