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**Federal Communication Commission
Bureau / Office**

December 11, 2003

The Honorable Michael K. Powell
Federal Communications Commission
445 Twelfth St., NW
Washington, D.C. 20554

Re: Full Digital Multicast Must-Carry for All Broadcast Television
Stations
CS Docket No. 98-120

Dear Chairman Powell:

I am writing to you today to comment on a recent *ex parte* letter filed by the Association of Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting System requesting immediate Commission action on multicast must-carry for public broadcasters. As you know, Paxson Communications Corporation ("PCC") has been a long-time supporter of full digital multicast must-carry for all television broadcasters, commercial and non-commercial alike, because we believe that multicast must-carry is essential to a swift DTV transition and to the future vibrancy of the over-the-air broadcasting system. The public broadcasters' recent letter only serves to underscore these points and provides still further evidence in favor of multicast must-carry. The Commission now has a complete and definitive record before it that unequivocally supports multicast must-carry. The Commission should act now to ensure that American television viewers are given full access to broadcasters' entire free over the air programming schedule, as Congress intended.

The arguments raised by the public broadcasters' *ex parte* demonstrate why multicast must-carry should be ordered for all stations, commercial and noncommercial alike, and why that action should be taken sooner rather than later. Both commercial and noncommercial broadcasters are part of a unified Congressional scheme designed to ensure that all viewers' programming needs are met. Just as public broadcasters have a special mission under the Public Broadcasting Act to serve their communities' educational and informational needs, commercial broadcasters also are governed by the Communications Act's requirement that they serve all the needs of their communities in the public interest. This unified system will not work if the Commission ensures only a vigorous public over-the-air broadcasting system; it must strengthen and protect commercial broadcasting as well.



As PCC has shown in previous submissions to the Commission, the only effective way to promote a vigorous over-the-air DTV broadcasting system is by requiring multicast must-carry for all stations. All the evidence in the record shows that the health of the over-the-air broadcasting system has been damaged by a DTV transition that has not gone according to plan. Public Broadcasters properly point to the massive investments that they have made with the aid of local, state and federal government agencies to make their multicasting plans a success. Commercial broadcasters also have made great investments in their DTV facilities, and, due to their earlier build-out dates, have been investing funds in the DTV conversion for an even longer period than public broadcasters.

To cover their DTV build-out costs, most commercial broadcasters have been forced to rely on outside sources of funding, such as bank loans and bond issues. While public broadcasters have state and federal governments to answer to if their multicasting plans are prevented from coming to fruition, commercial broadcasters must satisfy investors and shareholders. In addition, both public and commercial broadcasters must cope with the added costs of simultaneously operating of both analog and digital stations. Without hope of a financial return on their DTV investments, these costs are stranded, and broadcasters have been and will continue to be forced to reduce the quality and quantity of service to their local communities as a way of economizing to cover these additional costs. The evidence of this dilemma is before the Commission, but it also is simply an irrefutable fact of business life.

Moreover, just like public broadcasters, commercial broadcasters have suffered due to cable operators' unwillingness to negotiate multicast DTV carriage agreements. Although many broadcasters have forged ahead with multicasting despite the uncertainty that lack of cable carriage engenders, the effect that cable's intransigence is having on the development of multicast programming plans cannot be overstated. Nor should it be ignored that the only parties that gain from refusing to carry multicast signals are (1) cable operators, who benefit from weakened broadcast competitors, and (2) their largely vertically integrated cable programming operations, which are given preferential access to cable channels regardless of the public interests at stake. Cable's nakedly anticompetitive maneuvers in this regard are exactly what Congress sought to combat with the 1992 Cable Act. Moreover, the public broadcasters' complaints about cable "cherry-picking" are both reminiscent of pre-1992 Act cable malfeasance and a foreshadowing of misconduct to come in the absence of full digital multicast must-carry. Cable's bottleneck control over what programming reaches consumers negatively impacts both commercial and non-commercial broadcasters. A Commission decision to tolerate this anticompetitive conduct only guarantees that it will continue.

The statutory differences between the treatment of commercial and public broadcasters are not material to the question of whether cable operators should be required to carry all broadcasters' free over-the-air programming. PCC has great respect for public broadcasters and their mandate to serve the educational needs of all Americans, but



the issues in this proceeding do not turn on the provisions of the Public Broadcasting Act or the differences in the carriage rules set out in Section 614 for commercial broadcasters and in Section 615 for public broadcasters. The issue is what Congress meant when it ordered cable operators to carry the over-the-air programming provided by local television stations. PCC continues to believe that Congress meant that cable operators should carry all broadcasters' free over-the-air content. The multicast transmissions of both commercial and noncommercial stations satisfy that standard and accordingly should be carried.

The Commission has before it an unprecedented opportunity to expand access to the public's airwaves and it is an opportunity that is unlikely to come again in the future. Full digital multicast must-carry of both commercial and noncommercial stations would be good for competition; it would be good for American television viewers; and it would be good for the public interest. It is also the law of the land.

The Commission should order full digital multicast must-carry for all broadcasters without further delay.

Sincerely,

Lowell W. Paxson
Chairman and CEO
PAXSON COMMUNICATIONS, INC.

cc: The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
The Honorable Jonathan S. Adelstein
Catherine Crutcher Bohigian
Jonathan Cody
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