



STAMP & RETURN

Joseph A. Parsons, Chairman

November 11, 2003

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NOV 14 2003

Jane Mago
Chief, Office of Strategic Planning
and Policy Analysis
Federal Communications Commission
445 - 12th Street, S.W.
Washington, DC 20554

Federal Communication Commission
Bureau / Office

Re: **Full Digital Multicast Must Carry**
CS Docket No. 98-120

Dear Ms. Mago:

Comcast Corporation filed a letter with the FCC on October 17, 2003 following a meeting with you regarding the FCC's consideration of digital must carry rules and responding to certain statements submitted by public broadcasters describing their multicasting plans. Several statements in that Comcast letter deserve brief comment.

First, Comcast argues that the FCC's adoption of full digital multicast must carry would be a content-based regulation, subject to a "strict scrutiny" standard of review and implicating the First and Fifth Amendment rights of cable operators. It is worth noting that Comcast has raised these constitutional arguments against multicast must carry in the past with no success. The Supreme Court fully resolved the First Amendment issues surrounding must carry in the Turner Broadcasting cases and the question of multicast must carry presents no new First Amendment issues. Moreover, no court has ever accepted Comcast's Fifth Amendment takings argument against any form of must carry. As you are aware, the cable operators withdrew their Fifth Amendment claims before the Turner Broadcasting court had a chance to pass on it. The legal analysis supporting full digital multicast must carry is part of



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the record in CS Docket No. 98-120 and Comcast's letter does not change that analysis which fully supports full digital multicast must carry.

Second, the suggestion that Comcast has reached voluntary carriage agreements with public broadcasters in every market where Comcast has launched HDTV service misses the issue even while it raises questions as to its accuracy. Must carry is not about cable operators voluntarily agreeing to carry some broadcasters under some conditions. Must carry is about insuring that all **broadcasters are entitled to carriage** so that even if cable operators do not wish to negotiate carriage agreements, this country's system of free, over-the-air broadcasting is preserved in its current vigorous form. The FCC cannot allow cable operators to control broadcasters' access to their audiences in a way that would make a mockery of Congress' intent in establishing the must carry regime in the first place. Comcast's statement that it has reached "such agreements in virtually every single market" in which it has launched HDTV service is not supported by the statements of the public broadcasters and should give the Commission no solace in any event. Public broadcasters (like commercial broadcasters) cannot wait for cable operators to decide that its programming is entitled to carriage or it will be the end of over-the-broadcasting as we know it. In any event, we do not believe that Comcast has reached agreements with public broadcasters, as described in its October 17th letter, and we believe that public broadcasters will tell you so.

Very truly yours,

Lowell W. Paxson
Chairman & CEO
Paxson Communications Corporation