



CBS Television Network Affiliates Association

February 27, 2004

The Honorable Michael K. Powell
 Chairman
 Federal Communications Commission
 445 Twelfth Street, S.W.
 Washington, D.C. 20554

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Re: CS Docket No. 98-120FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Chairman Powell:

The poster child for the cable industry's strong resistance to a multicast carriage requirement has long been the cable programmer. Since the CBS Affiliates visited the Commission on January 6, 2004, and filed its pleading and declarations on January 13, this pattern has held. For example, HBO, which is owned by cable giant Time Warner, recently submitted a letter urging the Commission to deny carriage rights to broadcasters' free multicast channels so as to reserve cable capacity for additional, multiple premium and on-demand services that HBO and its "sister service" Cinemax might choose to offer in the future. See HBO *ex parte* letter of Jan. 22, 2004. Of course, HBO does not claim that any of its multiple premium channels has ever been denied cable carriage by virtue of the limited capacity occupied by local broadcasters on cable systems. And, the fact is cable programmers will be very well served by the digital transition. Moreover, a multicast carriage requirement will open opportunities for programmers that are not accommodated in the highly concentrated and vertically integrated cable environment.

The first fact to note that the cable industry would like the Commission to ignore is that the transition to digital will halve the capacity cable systems need to devote to the carriage of broadcaster channels and thereby free up substantial additional capacity for cable programmers. This will be made possible by broadcasters' huge and early investment in digital. Far from being hurt by the digital transition, cable programmers will greatly benefit from it in this respect alone.

Second, broadcasters are charged with putting their digital channel to the highest and best use in the public interest, which in many cases is likely to be a mix of HDTV and multicast programming. Cable operators argue that they should be able to invade broadcasters' programming streams and strip out multicast programming. When a local station, during election night, switches from its local coverage back to the national network feed but provides continuing coverage of local races on a multicast channel, would it be good public policy to allow cable systems to delete that second channel of local programming? If denied access to 70% of their viewers by cable's refusal to provide carriage (especially when the multicast services compete with the cable system's own news services, for example), broadcasters will abandon plans for multicasting or take existing multicast services off the air. In its place, they will opt for an all-HDTV strategy, which may be second-best in terms of service to the public and yield little or no additional capacity opportunities for cable programmers. The FCC should not craft rules that distort broadcasters' programming judgments as

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Bob Lee, Chair
 WDBJ Post Office Box 7 Roanoke VA 24022
 (540) 777-3200 fax (540) 985-3633 email blee@wdbj7.com

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to how best to take advantage of digital's capacity to provide optimal free, local and universal service to the American public.

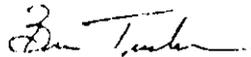
Third, also contrary to the cable industry's assertions, programmers will benefit from the new outlet opportunities that multicasting will provide. They can become broadcast programmers. This is especially so for those programmers that have been shut out from cable system access. *See ex parte* letters of DIC Entertainment Corp., Nov. 4 and 6, 2003; Black Education Network, Jan. 28, 2004; Minority Media & Telecommunications Council, Jan. 26, 2004. The NBC and CBS Affiliates' January 8 and 13 submissions supported by 14 factual declarations show that there will be a strong localism orientation to many broadcaster multicast offerings. This means that multicast carriage will greatly benefit and facilitate new program initiatives, local as well as national, thereby contributing to consumer choice and program diversity.

The Commission should look behind cable's arguments about the burdens to programmers that a multicast carriage or anti-stripping requirement would entail. The truth is programmers will greatly benefit from broadcasters' digital transition, including multicasting which will get off the ground only if multicast carriage is adopted.

Respectfully submitted,



Bob Lee
Chair



Ben Tucker
Government Relations Committee Chair

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein
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