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Lowell W. Paxson - Chairman & CEO

October 8, 2004

Marlene H. Dortsch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

Re: Ex Party Report – Digital Must-Carry
CS Docket No. 98-120

Dear Ms. Dortsch:

Pursuant to Section 1.1206 of the FCC's Rules, this letter will report that on October 1, 2004, the undersigned had a telephone conference with Commissioner Michael J. Copps to discuss the Commission's pending consideration of multicast must-carry. In that conversation, we discussed the topics raised in my letter of September 21, 2004 to Commissioner Copps (copy attached) and also discussed the timing of Commission action on the remaining pending items relating to the digital transition, including multicast must carry.

Sincerely,



Lowell W. Paxson
Chairman and CEO
PAXSON COMMUNICATIONS CORPORATION

Attachment

cc: Commissioner Michael J. Copps

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Lowell W. Paxson / Chairman & CEO

September 21, 2004

Commissioner Michael J. Copps
Federal Communications Commission
The Portals
445 12th Street, SW
Room 8-A302
Washington, DC 20554

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

Dear Commissioner Copps:

In light of the recent September 8, 2004 hearings before the Senate Committee on Commerce, Science and Transportation, the issues of analog spectrum availability, the DTV transition and broadcasters' public interest obligations are once again the topic of Washington debate. While these matters are interrelated, only one, full digital multicast must-carry, has been pending at the FCC since 1998. As you know, broadcasters have been awaiting final word on full digital multicast must-carry since the FCC's January, 2001 decision.

According to a Broadcasting and Cable report of the September 8, 2004 Senate Hearing, "Federal Communications Commission chairman Michael Powell told the Senate Commerce Committee Wednesday that he is not inclined to give broadcasters multicast must-carry, nor, he said, is there any consensus among the other commissioners to change the agency's interpretation of what constitutes a broadcaster's primary digital signal."

That statement was shocking, to say the least. I personally have been lobbying the FCC on the issue of full digital multicast must-carry for the past 6 years and I've met on numerous occasions with each of the 5 current Commissioners, only one of whom (Chairman Powell) voted on the January 1, 2001 decision. Based on those multiple meetings, and voluminous written presentations, I am confident that a majority of the Commissioners, and, perhaps all of the Commissioners other than the Chairman, support full digital multicast must-carry. This is not surprising because the legal and factual record before the Agency overwhelmingly supports full digital multicast must-carry. Remember that the FCC decision in January, 2001, in which you did not participate, was "based on the record currently before [the FCC]" and that record has now changed dramatically in 3 1/2 years. The FCC has the authority, not to mention the obligation, to review and revise that 2001 decision.



And, as recently as June 2, 2004, the Chief of the FCC's Media Bureau in his presentation to the House Subcommittee on Telecommunications and the Internet noted that:

[I]f true digital must-carry meant that broadcasters were entitled to carriage of all free broadcast streams, including free broadcast HDTV and/or "multicast" programming, it would give broadcasters additional incentive to return their analog licenses in a timely manner. From a policy perspective and in the context of this proposal, the Media Bureau would recommend that as part of this Bureau proposal, true digital carriage would mean carriage of all free content bits, including carriage of all multicast programming... (Footnote omitted.)

And, a September 13, 2004 editorial in Television Week, concluded that:

We believe regulators should mandate full carriage of all digital channels. That would speed the transition and help stations manage the cost of digital conversion. It would also level the playing field by giving broadcasters more shelf space in viewers' homes with more opportunities to compete and sell advertising.

The FCC has also finally begun to tackle the issue of digital broadcasters' public interest programming obligations with a decision on children's programming reached at the September meeting and it appears that the remaining public interest dockets will be addressed in October. This is good news.

If truth be told, I think all we need is for the FCC to schedule a vote on full digital multicast must-carry and let the consensus among the majority of the Commissioners prevail. This is what Senators Snowe, Hutchinson, Lott, Craig, Graham, Inhofe, and Congressmen Foley, Wilson, Diaz-Balart, Ros-Lehtinen, Shaw, Collins, Barrett, Osborne, Gillmor, Stearns, Young, Armey, Bilirakis, Hall and Weldon have asked the FCC to do.

I would like to schedule a conference call with you to review the status of full digital multicast must-carry before the FCC and to urge you to place this long pending matter on the Commission's Agenda. As you are aware, my company filed a petition with the United States Court of Appeals for the District of Columbia Circuit asking the Court to issue a Writ directing the FCC to complete its digital must-carry proceeding within 30 days. After waiting for over three and one-half years since a prior FCC issued its January, 2001 decision, we are concerned, that without the Court directive, the FCC may never act. This inaction is contrary to the public interest and is negatively impacting the DTV transition and the return of broadcasters' analog spectrum.

I look forward to discussing this matter with you at your earliest convenience.

Sincerely yours,

Lowell W. Paxson
Chairman and CEO
PAXSON COMMUNICATIONS CORPORATION

cc: Jordan Goldstein. Esq.