

December 9, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 98-120; MB Docket No. 03-15

Dear Chairman Powell:

This letter responds to a recent submission by broadcast organizations and companies billed as a “plan” for “completing the digital transition.”¹

The broadcasters’ proposal has little to do with measures that would accelerate the return of the spectrum they were loaned to transition to an all-digital broadcast system. This plan has nothing to do with the critical issue of how broadcasters intend to continue to serve *over-the-air* viewers with analog sets after the analog switch off.

Instead, the broadcasters’ plan amounts to an attempt to embargo return of that spectrum unless the FCC imposes significant costs and regulatory burdens on the cable industry. In that regard, their recycled plan contains the all-too-familiar elements of both dual and multicast must carry.

The broadcasters’ filing makes plain that a precondition to their even considering a hard date for returning their analog spectrum would be an FCC requirement for cable operators “to transmit the broadcaster’s full digital signal from the head-end and either (a) provide for downconversion in subscriber homes with analog sets or (b) if the cable operator prefers, also send a downconverted version for homes with analog sets.” And before broadcasters would even contemplate giving up their single channel analog spectrum, the government must guarantee that cable operators will be forced to carry multiple streams of programming from each broadcaster, whether that station is carried pursuant to must carry or retransmission consent.

¹ Oct. 29, 2004 ex parte filing by NAB, MSTV, et al.

The Commission has already acknowledged that a dual carriage obligation raises serious constitutional problems.² The broadcasters' plan imposes a "back door" dual carriage obligation.³ By requiring cable operators to deliver a broadcast signal "so that all consumers are able to receive, at their TV set, the full program offerings provided by free over-the-air broadcast services" and by preventing operators from sending an analog version from the cable headend in lieu of "full digital signal carriage," the plan forces operators to carry a digital signal in both analog and digital formats.⁴ Or the plan – by requiring operators to "provide for downconversion in subscriber homes with analog sets" – forces cable customers to obtain digital-to-analog converter devices for each of their analog television sets.

The broadcasters try to make it sound like this scheme provides cable operators with a real choice, and suggest that carriage of both a digital and analog version of the same signal would not be a requirement but an exercise of cable operator "preference."

But this plan really provides operators with no choice. The lack of a real choice is apparent when one considers the costs of providing a digital-to-analog set-top box for every customer's analog set. In 2006, there will be an estimated 141 million analog television sets hooked up to cable that would require a box under this plan. And with cost estimates ranging from between \$50 and \$200, the price tag in 2006 for converter boxes alone could range from more than \$7 billion to more than \$28 billion industry-wide. This figure does not even take into account additional headend costs that might be incurred.

This multibillion dollar tax on cable customers is wholly unnecessary. The digital transition for cable customers with analog sets can be seamless and cost-free if cable operators are permitted to take a broadcaster's digital signal and modify its format so that it is transmitted as an analog signal over the cable system. There is simply no need to force cable customers to spend billions of dollars on converter devices designed to enable them to view the same thing they receive today on the same television set. So this "alternative" is no alternative at all.

Broadcasters contend that analog cable customers must bear these costs because "consumers that have invested in digital sets ... should not face uncertainty whether after the transition they will be able to receive HDTV and other digital services from their cable system." Analog set owners will hardly be comforted, though, by the notion that their cable bill will increase, and their analog sets will be no longer receive analog broadcast signals, simply because some other cable customers may have one digital set in a multi-set home.

² See, e.g., Local Broadcast Signal Carriage Issues, 16 FCC Rcd. 2598, 2599 (2001).

³ The Broadcasters' letter suggests that "small cable systems could be exempted from this requirement as they are under the analog carriage rule." But those rules carve out a lesser commercial station carriage obligation for only the very smallest systems – those with 12 or fewer channels. 47 U.S.C. §614(b) (1).

⁴ While ambiguous, the broadcasters' plan could perhaps force operators to carry analog versions of each digital multicast stream as well.

The Honorable Michael K. Powell

December 9, 2004

Page 3

In any event, such a consumer-unfriendly step is unnecessary to protect digital set owners' investments. These set owners will not lose access to digital signals if cable is permitted to downconvert must carry digital signals to analog. Cable customers with digital sets today can receive digital programming, both over-the-air and from their cable operator. More than 450 different local television stations' mostly HD digital signals are being carried on cable today. There is no reason to expect these choices to diminish over time and every reason to expect that competition will spur cable operators to add more HD programming if capacity allows.

The cable industry has done and will continue to do its share to ensure that cable customers can receive broadcast signals in the future. But like the many old ones that broadcasters have hatched since the FCC ruled against dual and multicast must carry nearly four years ago, this new plan imposes unnecessary and unlawful costs and burdens on the cable industry. The Commission should not adopt it.

Best regards,

/s/ Robert Sachs

Robert Sachs

cc: Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
M. Dortch