

February 3, 2005

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

Ex Parte Notice

Re: Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120
(also CS Docket Nos. 00-96 and 00-2)

Dear Ms. Dortch:

On behalf of Comcast Corporation, this letter responds to the paper submitted on January 28, 2005, by David R. Siddall, Counsel for NBC Television Affiliates and NBC Owned and Operated Stations. In that paper, Mr. Siddall and his colleague, Larry Sidman, respond to Comcast's September 16, 2004 analysis of their previous paper,¹ the central premise of which was that requiring cable operators to carry multiple digital programming streams for each television broadcast license multicast must-carry would be "less of a burden" on cable operators in 2007 than was the decision in 1992 to require cable operators to carry a single channel of analog broadcast programming. It remains the case that these authors fundamentally misapprehend how the "digital transition" will work for cable operators. They have also misrepresented Comcast's statements, both within and without the Commission, and then used their own misrepresentations as the basis for questioning *Comcast's* credibility.

At the outset, it should be noted that the "capacity" issue is something of a sideshow. The central issues in this proceeding are matters of grave Constitutional import -- involving the First and Fifth Amendment rights of cable operators -- and also raise the important public policy question of whether government will intrude further in dictating the use to which facilities built with private risk capital (and facing significant and ever-growing competition) will be put. The "capacity" issue is at most a single factor among the many that would be relevant in a Constitutional challenge to any

¹ For ease of reference, the papers submitted April 16, 2004, and January 28, 2005, are referred to here as "*NBC1*" and "*NBC2*." Comcast's rebuttal of September 16, 2004, is cited as "*Comcast Rebuttal*."

expansion of must-carry requirements.² Still, it is important that the record be set straight on this topic as well.

The cornerstone of the newest submission, *NBC2*, is the notion that Comcast's assertions in this proceeding have "no credibility" because of a purported conflict between what Comcast has told the Commission and what Comcast's Chief Executive Officer, Brian Roberts, has said publicly elsewhere.³ There is no conflict.

As before, the key problem appears to be the authors' inability (or unwillingness) to understand the difference between providing customers with an all-digital *service* and operating an all-digital *system*.⁴ Comcast has gone out of its way to explain -- in industry forums as well as this proceeding -- that providing customers with an all-digital service does not mean it is suddenly free to ignore the needs of its customers who want and continue to need an analog service. In a nutshell, Comcast's message has been that "All Digital Is NOT No Analog."⁵ It is perhaps understandable that Messrs. Sidman and Siddall did not understand that when they wrote their initial paper, but their continuing inability to grasp this fact is inexplicable.

Their previous paper had asserted that "[b]y 2007 . . . all major cable systems will have rebuilt their facilities to replace analog with digital transmission."⁶ In response, Comcast carefully explained that, despite huge investments in network rebuilds and upgrades, "the need to allocate much [cable]

² Comcast has previously explained how many of the factors that justified the Supreme Court's narrow affirmance of analog must-carry have changed materially since the *Turner* ruling. *See, e.g.*, Comcast Ex Parte Letter, CS Docket No. 98-120 (Oct. 16, 2003); Comcast Ex Parte Letter, CS Docket No. 98-120 (Nov. 18, 2003). Those points are succinctly summarized in Attachment A hereto.

³ *Id.* at 2; *see also id.* at 5, 6.

⁴ In the previous go-round, Messrs. Sidman and Siddall alluded to Charter having already begun operation of an "all-digital system" in Long Beach, but the press release they cited made it crystal clear that Charter was introducing an all-digital *service*, using a simulcast approach that also entails carriage of basic cable in analog. *See Comcast Rebuttal* at 2 n.2.

⁵ *See, e.g.*, Dave Fellows, Executive Vice President and Chief Technology Officer, "All-Digital: Myths and Truths," CTAM Summit (2004) (Attachment B). The first slide in that presentation highlights four points about the services Comcast will offer for the foreseeable future:

- There will be analog channels present
- At least the off-air/must carry [will be delivered in analog] for [the] foreseeable future
- Probably a relatively full analog lineup
- BUT all services are available in a digital format!

⁶ *NBC1* at 7; *see other citations at Comcast Rebuttal* at 1. One noteworthy development in the new paper is the authors' shift regarding the dates when cable transmission will supposedly be "all-digital" -- from 2007 as asserted in *NBC1*, to 2009 (*see NBC2* at 8), or "later" (*see id.* at 11).

bandwidth for analog transmissions has *not* been (and will not soon be) eliminated”⁷ and, thus, “for the foreseeable future, any carriage requirements for digital multicast signals will create burdens that are *in addition to*, not in lieu of, the burdens imposed by carriage of analog broadcast signals.”⁸ That remains true, and the actual comments of Comcast’s CEO, which are available for public viewing, are fully consistent with that statement.

The confusion on the parts of Messrs. Sidman and Siddall is most apparent in the following passage:

It is clear that rather than convert digital signals to analog for an extended period, cable companies in fact are working to convert their systems to *all-digital systems* as soon as possible and that at the present rate in many systems this could be accomplished by the end of the broadcast transition. On January 10, 2005 at the 15th Annual Smith Barney Citigroup Entertainment, Media and Telecommunications Conference, Comcast’s CEO, Brian L. Roberts set forth Comcast’s road map for expediting the transition of all cable subscribers to an *exclusively digital system*.⁹

A review of those remarks proves otherwise.¹⁰ At both of the cited portions of the presentation, Mr. Roberts talks about *digital simulcast* -- where broadcast signals continue to be carried in both analog and digital -- not all-digital systems. He uses the word “simulcast” no fewer than five times (and he never uses the term “exclusively all-digital system” or anything like it).

In the first of the two cited segments, Mr. Roberts explains that, to begin simulcasting analog offerings on digital,

⁷ *Comcast Rebuttal* at 1 (emphasis in original).

⁸ *Id.* at 3 (emphasis in original). Thus, the claim that “[d]igital requires less capacity than analog” (*NBC2* at 2) is technically accurate but -- more importantly -- misleading. The near- and middle-term reality is that Comcast will need to carry *three* versions of many broadcast signals -- (1) analog (6 MHz), (2) HD (2-4 MHz, depending on the modulation scheme), and (3) the MPEG2 standard-definition digital version (0.6 MHz)-- which will require 9.6 MHz of capacity in total, or 3.6 MHz *more* than the current 6 MHz. Obviously the demands on cable capacity would be even greater if each broadcaster could force Comcast to carry multiple channels of programming instead of just one. (Contrary to the speculation about Comcast wishing to “pick and choose” which signals it will carry, *see NBC2* at 7, Comcast would (consistent with the Commission’s *Report and Order* in 2001) leave it to the broadcaster to designate which programming stream constitutes its “primary video” for must-carry purposes.)

⁹ *NBC2* at 6 (emphasis added).

¹⁰ *See* Presentation of Brian L. Roberts (Jan. 10, 2005), *available at* <http://www.veracast.com/webcasts/sbcitigroup/emt-2005/76107549.cfm> (last visited Jan. 31, 2005). Note, the timing given by Messrs. Sidman and Siddall when citing two portions of Mr. Roberts’s remarks (*NBC2* at 2 n.3) is correct when the clips are viewed with Windows Media, but the relevant portions appear about two minutes earlier on the Real Media player version.

You take the 80 channels that are analog, give or take 8-to-one compression, so *we need ten channels extra*, and we just *reduplicate* the broadcast and channel-map it right onto your old channel numbers, so nothing changes to the consumer except your pictures get better. And then once you've done that, you have opened up the gates to technological innovation because we no longer need to have an analog encryption device, conditional access device, in the box. We don't need a hybrid analog/digital, we can just have a pure digital box, which means we can reach out to the entire consumer electronics industry to try to bring their innovation to our customers in a digital world. And, secondly, it allows us to go to our analog customers and begin to give them a better value proposition

In short, the simulcast approach gives Comcast an ability to offer customers a better experience. But, for the foreseeable future, the price of the simulcast approach is that it *exacerbates* scarcity of cable bandwidth (even when carrying only a single channel of programming for each broadcaster).¹¹

As we previously explained, “[t]he need to deliver signals over the cable system in analog format will be eliminated only when the cable operator is able to place some sort of digital decoder functionality on *every* TV of *every* cable subscriber, a development that is *not* contemplated in the near- or medium-term future.”¹² We further explained that Comcast expects analog carriage of this sort to continue “for at least the length of our planning horizon -- which extends well beyond the year 2007 (on which the NBC Paper focuses) or even 2009 (the year which is the focus of the Media Bureau’s ‘aggressive DTV transition plan’).”¹³ Messrs. Sidman and Siddall have adduced no evidence to the contrary.¹⁴

¹¹ Mr. Roberts’s presentation also confirms other points in Comcast’s earlier submission. While cable capacity has indeed increased, *see NBC2* at 2, the demands on that bandwidth have increased even more thanks to vast increases in the number of networks carried, the addition of high-definition carriage, the incredible success of high-speed cable Internet and the rapid growth of video-on-demand, to say nothing of IP Phone services and others that are under development. *See Comcast Rebuttal* at 3 n.5. Mr. Roberts discusses these services repeatedly throughout the presentation. The authors’ denigration of these services as “speculative” (*NBC2* at 9) is grossly uninformed.

¹² *Comcast Rebuttal* at 2 (emphasis in original).

¹³ *Id.* at 2.

¹⁴ The authors speculate that, because 39.1% of Comcast’s customers subscribe to its digital services, and “[a]ssuming past rates of growth, all or nearly all Comcast customers will be digital service subscribers by 2009.” *NBC2* at 8. They have no basis for this prognostication, and in any event it mistakenly assumes that a household that uses *one* digital box is a household in which *every* television set uses a digital box. In Comcast’s experience, on average, digital cable households have approximately 1.5 digital set-top boxes. But the average household has 2.7 TVs. *See* Consumer Elecs. Ass’n Comments, MB Docket No. 04-210, at 2 (Aug. 11, 2004) (quoting U.S. Census data). This means, even in a home that already subscribes to Comcast’s digital service, 1.2 TVs (on average) are connected to the analog service without a digital set-top (and this does not count VCRs, that sometimes have their own separate connection to the cable system).

To some extent, they try to change the terms of their own argument by shifting from a discussion of what cable operators *will do* to a discussion of what they *could do*. But here they are on ground that is no firmer. By no means is this a matter of “cable operators’ own choice to delay their (and their consumers’) transition to digital television,” nor is it a source of “harm [to] consumers.”¹⁵ To the contrary, it is an approach that accommodates the practical realities of meeting consumer expectations in a highly competitive market. Fully half of all TVs in cable households have no set-top box, and, while cable operators can try to present options that make adding a digital decoder functionality attractive, the circumstances of the marketplace simply will not permit cable operators to discontinue analog transmissions just because the broadcast transmission may be coming to an end.¹⁶ Even if the cable industry can achieve its goal of developing a \$50 set-top box using downloadable security, and even if digital penetration were to be driven from 40.2% (its current level) to 100%, the costs of removing all analog signals and installing such boxes on every TV would exceed \$2 billion.¹⁷ It is not the rightful role of Messrs. Sidman and Siddall, nor their clients, to compel cable operators and their customers to incur these costs before they are ready to do so.

In these and other respects, the authors simply assume that they understand the economics, technology, and operations of the cable business better than those who actually operate that business. They tout the efficiency of 1,024 QAM,¹⁸ apparently oblivious that it is not part of any DOCSIS or MPEG standard. They speculate that Comcast will “ignore the growing installed base of MPEG-2 receivers,”¹⁹ even though the intensely competitive circumstances of the video marketplace demand

Messrs. Sidman and Siddall choose to ignore these realities. Comcast cannot. The Commission *should* not.

¹⁵ *NBC2* at 5, 7.

¹⁶ Messrs. Sidman and Siddall observe that “cable operators, unlike broadcasters, are not subject to any government deadline for a final transition to all-digital operations.” *Id.* at 4 n.9. Of course there is no such deadline, and for good reason. Cable operators were not given a choice 6 MHz slice of the public airwaves to use for free, nor did they borrow a second one for purposes of a “transition.” But cable’s record of investment, innovation, and compensation to the public compares very favorably to that of broadcasters. Cable has instead spent \$90 billion to upgrade its networks, and it generally pays five percent of gross revenues in exchange for use of public rights-of-way. Broadcasters have invested only a tiny fraction of that amount in their own transition, and unlike other spectrum users they pay nothing for the privilege.

¹⁷ Today, Comcast has about 8.7 million digital customers and 12.9 million analog customers. But assume that all Comcast’s 21.5 million customers have become digital subscribers. Still, if each household has an average of 2.7 TVs, and only 1.5 digital boxes, an additional 25.8 million digital boxes will be needed (again, this ignores VCRs, some percentage of which will require their own digital STBs), along with 21.5 million truck rolls. At about \$50 each (per box and per truck roll), the total tab comes to over \$2.3 billion. Comcast’s business plan calls for incurring these costs gradually, over a period of years, and as much as possible in conjunction with the sale of additional revenue-generating services. This has a logic that investors respect -- and demand.

¹⁸ *Id.* at 11; *see also id.* at 2.

¹⁹ *Id.* at 11.

that Comcast take account of the characteristics of the equipment that its customers use; in fact, it is that sensitivity to meeting consumers' needs that precludes the all-digital cable system that Messrs. Sidman and Siddall had previously suggested would be ubiquitous by 2007.

The new "paper" also blatantly misrepresents a key portion of the legal discussion in Comcast's earlier submission. The authors assert that "Comcast, using a tricky play on words, incorrectly asserts that Congress was oblivious to high definition and advanced television when the must carry requirements were enacted in 1992."²⁰ This is nonsense. The relevant passage said something quite different:

The NBC Paper does warrant the Commission's attention for one reason. It acknowledges (at 7) that "[d]igital video programming transmission was not even a proven operational technology in 1992." This statement is true, but it is not helpful to those who demand multicast must-carry rights. It certainly undermines any broadcaster claim that Congress could have consciously chosen in 1992 to grant must-carry rights for multiple digital program streams for each individual broadcaster. Indeed, given the state of the art as of 1992, Congress possessed none of the facts necessary to even begin an analysis of what "important or substantial governmental interest" would thereby be served or of whether such a requirement would "burden substantially more speech than is necessary" to further those interests. And of course the broadcasters have furnished no evidence that Congress ever even contemplated the question, much less that it consciously resolved the question in their favor.

Thus, Comcast did not "assert[] that Congress was oblivious to high definition and advanced television." Comcast merely quoted Messrs. Sidman and Siddall (accurately) and showed that Congress did not consciously contemplate *multicasting* -- which is very different from suggesting that Congress was unaware of *high-definition television*.

Congress was, of course, keenly aware of HDTV, as was the Commission. But a brief review of the history of FCC and Congressional activities does nothing to strengthen -- and much to weaken -- the case for multicast (or dual) must-carry.

- From the outset, the primary thrust of the Commission's inquiry on "advanced television" was to enable broadcasters to provide the *same* single-channel service but with *higher technical quality*.²¹ This was a central theme of the advanced television rulemaking throughout the period prior to, and contemporaneous with, the drafting of the must-carry requirement.²²

²⁰ *Id.* at 12.

²¹ Had the Commission been contemplating a new service, there is no reason why incumbent broadcasters could have reasonably expected that they, and only they, would be allowed to provide it.

²² The first sentence of the first paragraph of the Commission's *Notice of Inquiry* discussed how advancements in technology created the possibility of improving "significantly upon television picture and sound quality." *Notice*

- The language that became Section 614(b)(4)(B) of the Communications Act, which calls for the Commission to initiate a proceeding to change the must-carry requirements to conform with modified technical standards for broadcasting, comes straight from a bill introduced on September 24, 1991 (H.R. 3380, 102d Cong.), at which point no ATV system capable of multicasting had yet been developed.
- The Committee Reports accompanying the bills (H.R. 1303 and S. 12, 102d Cong.) that became the 1992 Cable Act included lengthy analyses explaining why, in the view of the Committees, the must-carry provisions would pass constitutional muster. None of those analyses discussed the ramifications of compulsory carriage of multiple channels of programming for a single broadcaster. Neither Committee made any findings to the effect that multicast must-carry would be essential to the preservation of free, over-the-air television or that a multicast must-carry requirement would impose only a minimal burden on cable operators or cable programmers.
- After the Cable Act, when broadcasters began to lobby for “spectrum flexibility,”²³ they pushed for the right to offer *not* multiple channels of video programming but rather “such ancillary or supplementary services . . . as may be consistent with the public interest, convenience and necessity.” *E.g.*, H.R. 3636, 103d Cong. § 204(a) (1993). And this proposal would have allowed such ancillary and supplementary services only if the use of a designated frequency for such services was “indivisible from the use of such designated frequency for the provision of advanced television services.” *Id.* § 204(b)(1).

of Inquiry, 2 FCC Rcd. 5125 ¶ 1 (1987). The same was true of the first sentence of the first paragraph of the *Tentative Decision and Further Notice of Inquiry*, 3 FCC Rcd. 6520 ¶ 1 (1988). The Commission stressed that its goal was “*not* to launch a new and separate video service” but to make beneficial changes in the “*existing* terrestrial broadcast service.” *Id.* ¶ 136 (emphasis added). The *First Report and Order* continued the Commission’s commitment to pursue a “technically excellent ATV service” and explained that the tentative approval of a simulcast approach to the introduction of ATV was being adopted because it would maximize the “potential for significantly greater improvement in the *quality* of television picture and audio improvement.” 5 FCC Rcd. 5627 ¶¶ 6-7 (1990) (emphasis added). The *Notice of Proposed Rulemaking* stressed the Commission’s intention “to effect a major technological improvement” and reiterated that it was *not* intended “to launch a new and separate video service.” 6 FCC Rcd. 7024 ¶ 5 (1991). It also spoke of having each broadcaster simulcast on “both its NTSC and ATV channel,” *id.* ¶ 45, thereby implicitly confirming that the “ATV channel” was contemplated to be a single channel. The same perspective was reflected in the *Second Report and Order and Further Notice of Proposed Rulemaking*, which also rejected a proposal to allow broadcasters to retain the NTSC channel to continue indefinitely with different programming and found “no reason to permit use of the second channel for non-ATV purposes that differ from those on the associated NTSC channel.” 7 FCC Rcd. 3340 ¶¶ 5, 50, 59, 65 (1992).

²³

In early 1993, after the Cable Act had been adopted, broadcasters began to discuss the possibility that ATV might have some extra capacity to carry additional information and service, and at that time the notion was that about 10% of the spectrum might be available for such purposes. Joel Brinkley, *Defining Vision: The Battle for the Future of Television* 207-08 (1997) (“*Brinkley*”).

- The potential use of the loaned ATV channels for *multicasting* became a subject of public debate in 1995 (three years after the Cable Act),²⁴ at a time when Congress had not completed its work on what became the Telecommunications Act of 1996. And when that subject arose, Congress reacted by starting to explore whether, instead of giving broadcasters spectrum for the digital transition, it should instead auction it to the highest bidder (at the time, the Commission had just conducted enormously successful PCS spectrum auctions). Faced with the prospect of auctions, the broadcasters quickly united to assure Congress that *their intention was to provide HDTV*.

These final developments were capably summarized by one of the broadcast industry's own attorneys:

During the deliberations over the 1996 Act and prior to the first congressional hearings on DTV spectrum, *broadcasters increased their commitment to HDTV as they returned to first principles in seeking to make Congress and the public understand what was at stake*. The first public forum in which representatives of the broadcast industry as a whole affirmed this commitment was another FCC rulemaking begun in August 1995. Responding in November 1995 to a request for comments on how the DTV channel should be used, *a group of more than 100 broadcasters, including all the major networks and trade associations, deemphasized ancillary and supplementary services, stressed the importance of HDTV and their support of the transition plan contemplated by the then-pending legislation*. Equipment manufacturers and others agreed.

Broadcasters amplified this commitment to HDTV in the FCC's En Banc Hearing on DTV implementation held in December 1995, while the 1996 Act was stalled in conference. Witnesses articulated three basic points that would be elaborated in the congressional hearings to follow: (1) that the very survival of broadcast television as a viable competitor to cable and other video services depended on television transmission of *higher quality digital pictures*; (2) that *HDTV, not ancillary and supplementary services*, would be the engine of DTV; and (3) that most broadcasters would have to struggle to afford the transition and would not be able to compete in an auction.

For example, the general counsel of ABC testified that the transition to DTV was a matter of life or death for the broadcast service and that *HDTV must be central to that service . . .*²⁵

²⁴ See *Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry*, 10 FCC Rcd. 10540 (1995). The broadcasters had begun to recognize the potential for multicasting in late 1993 or early 1994 but sought to keep this out of the public eye because it would undercut their claimed support for HDTV. *Brinkley* at 289-291.

²⁵ Ellen P. Goodman, *Digital Television and the Allure of Auctions: The Birth and Stillbirth of DTV Legislation*, 49 Fed. Comm. L.J. 517, 540-41 (1997) (footnotes omitted; emphasis added).

The pleading mentioned by Ms. Goodman and signed by “more than 100 broadcasters, including all the major networks and trade associations” is further enlightening:

In conducting its reevaluation of ATV, we believe it is vital that the Commission remain focused on the principal purpose underlying its original decision to award broadcasters a second 6 MHz channel: namely, to enable broadcasters to offer to the public the *same* free over-the-air programming service they have historically offered but with the *highest possible picture resolution and sound quality*. The rules the Commission promulgates to guide the transition to this *technically superior service* should be geared to accomplish this purpose and should be designed to stimulate the market for ATV so that the transition occurs in the fastest possible time.

Consistent with this approach, the Notice conceives of the second channel *not as a separate or new program service, but instead as a higher-quality replacement channel* to facilitate higher quality transmissions, with one of the two channels to be returned at the end of the transition period. While the flexibility that technology has made possible may lead to beneficial *subsidiary* uses, these uses will not deflect broadcasters from serving the public interest with the *high-quality program services they offer today, but with tomorrow’s technical quality*.²⁶

The pleading from the 100-plus broadcast owners and associations also provides a useful insight into the proper construction of the must-carry requirement. After quoting the language of Section 614(b)(4)(B) of the Communications Act, the broadcasters explained “*the purpose of requiring the Commission to reassess the must-carry regime in light of the ATV transition was to ensure that HDTV signals would be carried ‘in accordance with the objectives’ of section 614 of the Communications Act.*”²⁷

This history and these quotations -- most particularly the last -- show that the must-carry provision dealing with advanced television was understood at the time by one and all to govern carriage of HDTV, not multiple channels of programming.

In closing, it is important to note that the debate in this proceeding is solely about *government-compelled carriage* of broadcast channels, not about the possibility or impossibility of voluntary commercial negotiations. In fact, Comcast has entered into numerous agreements -- with commercial and noncommercial broadcasters alike -- to carry additional channels of digital programming.

²⁶ Broadcasters’ Comments on the Fourth Notice of Proposed Rulemaking, MM Docket No. 87-268, at 3 (Nov. 20, 1995) (emphasis added), *available at* http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1523890001.

²⁷ *Id.* at 32 (emphasis added). A review of the record will reveal that many of the organizations and counsel that signed onto those representations have in the past year made wholly inconsistent statements in the must-carry proceeding.

James L. Casserly
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Comcast is carrying many digital multicast channels today (long before the broadcasters have relinquished their analog spectrum) and more are sure to come -- both as a result of this week's landmark NCTA/APTS agreement and as a result of commercial negotiations that take into account "the nature of the programming involved, its target demographics, its similarities to and differences from other programming that Comcast has available to it, and other factors."²⁸ Comcast's carriage of high-quality local and regional programming -- including that which is available from local broadcasters -- is one of the primary means by which Comcast differentiates its video services from those offered by DBS competitors. The marketplace incentives to carry such programming will inevitably lead to additional multicast carriage agreements. But decisions regarding cable carriage of anything more than a single program stream per broadcast licensee are, and should remain, voluntary decisions, guided by the editorial judgment of cable operators, protected by the same First Amendment that enables broadcasters to choose what programming to air over *their* facilities.

Please let me know if you have any questions.

Respectfully submitted,

/s/ James L. Casserly
James L. Casserly
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1119

Attachments

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
W. Kenneth Ferree
Austin Schlick
Jon Cody
Matt Brill
Jordan Goldstein
Catherine C. Bohigian
Eric Bash

²⁸ See Comcast Ex Parte Letter, CS Docket No. 98-120 (Sept. 6, 2002).

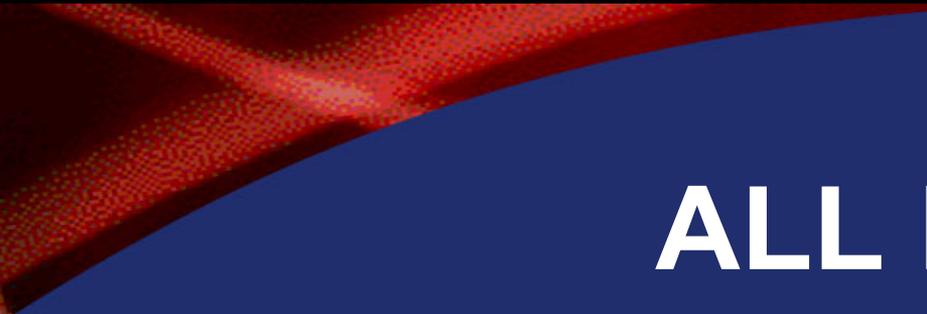
ATTACHMENT A

That Was Then; This Is Now:
Seismic Changes in Video Marketplace
Destroy Legal Foundation for Must-Carry

Factor	1992	Today
Extent of video competition.	Only one MVPD in virtually every community.	A minimum of three MVPDs in every community, including two with nationwide reach and all-digital platforms. Plus, consumers procure video programming from DVD and videotape (sales and leasing), overbuilders, streaming video. RBOCs have deals with DBS and are building own FTTX networks.
Vertical integration between cable operators and programming networks.	High, and rising (Supreme Court said 64%).	Low and dropping (20-30% last year, depending on how you count).
Consumer dependence on over-the-air broadcasting.	40%.	Less than 15%.
Consumer preferences in programming.	Vast majority of audience watched broadcast programming; cable networks' audience share was less than 25%.	Ever-increasing majority of viewers now prefer cable programming to broadcast programming.
Broadcast ownership rules.	Limited to one license per community. National audience cap of 25%.	Duopolies allowed in large markets. National audience cap of 39%.
Broadcasters' other programming interests.	Virtually no ownership of other networks.	Now own dozens of other networks: ESPN, FX, Fox News, Toon Disney, CNBC, MSNBC, SoapNet, MTV, CMT, BET, TV Land, etc.
Broadcasters' public interest responsibilities.	Significant, with exposure to competing applications after 7-year license term.	8-year licenses, with competing applications very difficult. DTV public interest responsibilities undefined, except for kidvid rules. Many

Factor	1992	Today
		broadcast rules have been eliminated; all others are subject to biennial review and must be eliminated unless FCC can justify them.
Programming displaced by must-carry.	Only miniscule number of networks would be displaced by must-carry; evidence showed that 87% of must-carry could be handled with previously unused channel capacity.	Near-certainty that each channel of broadcast programming carried under government compulsion will displace other programming or services that cable customers would prefer.
Local and regional news.	Broadcasters offered in abundance; cable scarcely offered.	Many broadcasters have cut back (and many news operations are staffed remotely); cable now offers much local and regional news and public affairs programming (like CN8).
Broadcasters' dependence on cable for distribution.	Consumers believed to be incapable of working A/B switch to connect exterior antenna.	Indoor DTV antennas improving; over 20% of multichannel homes get DBS (which carries local signals); vast numbers of consumers successfully connect TVs, stereos, VCRs, DVD players, TiVos, etc. and manage multiple remotes. Some broadcasters are banding together to create their own multichannel service in competition with cable.
Explicit congressional guidance.	No question about scope of analog must-carry requirement; explicit congressional determination that analog must-carry was crucial to health of free, over-the-air broadcasting.	No evidence at all that Congress intended to require multicast must-carry, and no congressional findings that multicast must-carry is essential to health of broadcasting.

ATTACHMENT B



ALL DIGITAL AND CABLE CUSTOMERS: MYTHS AND TRUTHS

CTAM Summit 2004

David Fellows, Executive Vice President
and Chief Technology Officer



All Digital is NOT No Analog!!!

- There will be analog channels present
- At least the off-air/must carry for foreseeable future
- Probably a relatively full analog lineup
- BUT all services are available in a digital format!

Why All Digital?

- Picture quality
- Set-top cost
- Spectrum efficiencies
- Packaging flexibility
- Interactive to everyone
- IP convergence

Why Not All Digital?

- Box on every TV not friendly
- Cost of set-tops
- Stress to the infrastructure

How Get There From Here?

- Digital Simulcast
 - Duplicate all analog services in digital
 - But keep analog lineup intact
- Watch carefully: Ad Insertion (DPI), and PEG channels
- Additional outlets and basic-only = no box
- Use spectrum while have it
- Controlled transition