

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Carriage of Digital Television Broadcast)	CS Docket No. 98-120
Signals: Amendments to Part 76)	
of the Commission's Rules)	
)	
To: The Commission)	

PETITION FOR RECONSIDERATION
OF
DIC ENTERTAINMENT CORPORATION

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April 21, 2005

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In refusing to mandate cable carriage of the free, over-the-air digital multicast programming services of broadcast stations, the Commission failed meaningfully to acknowledge either the extraordinary diversity such services could bring to the public or the importance of broadcast-based program diversity in preserving the competitive future of over-the-air television. Other petitioners will no doubt address the centrality of those issues to the Commission's core decision-making responsibility in this docket, and they will demonstrate that the Commission misapprehended the relevant legal standard and misinterpreted the facts in this record.

DIC Entertainment here seeks reconsideration because (1) it believes that the Commission's decision will necessarily damage if not destroy many plans for the creation of free over-the-air multicast digital services that could be delivered via the broadcasters' digital streams; (2) because the Commission's Order failed to engage the body of record evidence establishing the extent to which broadcasters are committed to using their digital channels to roll out a diverse range of digital program services; and (3) because the Commission failed to

recognize the value that free, over-the-air digital programming can have for localism, diversity and the economic vitality of the broadcast service.

The Commission's decision surely rendered virtually unachievable DIC Entertainment's plan to offer nationally a free advertiser-supported, over-the-air digital children's television service using broadcasters' digital signal capacities. DIC made clear in the record of this proceeding that it intended to create and distribute such a program service, but could do so only if it could also reach the substantial segment of the population that would receive digital broadcast signals via cable.¹

No non-subscription service that relies solely upon advertiser support – as the DIC service would – can survive if it is limited to the segment of the available audience that does not subscribe to cable. And no competitive children's service of the kind DIC wishes to introduce can expect to arrange reasonable carriage terms with cable MSO's that have significant reasons to protect the children's services they are already carrying. The evidence in this record accords with DIC's experience and observation – reasonable negotiated carriage arrangements for services of this kind will be virtually impossible to achieve.

Ultimately, of course, it is the public – particularly the disadvantaged part of the audience that cannot afford subscription services – that will suffer as a result of the Commission's decision. As the record makes clear, if the multicast Order had made it realistic to do so DIC intended to begin offering a full-time children's program channel almost immediately – and well before the digital transition. As the record also establishes, the channel would be available in both English and Spanish; would contain a diverse range of educational and informational

¹ See, e.g., Notices of Ex Parte Presentation by DIC Entertainment Corporation, CS Docket No. 98-120, November 4 and 6, 2003, and attachments thereto.

content, as well as age-appropriate entertainment content; and would provide participating stations with the opportunity to add local content in their own markets.

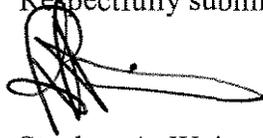
We believe that there is no other service providing comparable content – certainly not to an audience that is unserved by multi-channel operators. DIC’s existing children’s television library, its experience with educational and informational content, and its experience in negotiating programming carriage arrangements with broadcasters should make the Commission highly confident that DIC has the capacity to begin operations quickly. And speed-to-market in this context is not unimportant: We suggest that the early establishment of a digital free service uniquely responsive to the needs and interests of children not only serves the public interest in its own terms but also would help achieve the goal of hastening the digital transition.

The record is replete with examples of other programming plans that broadcasters had developed that realistically could be expected to reach operational status if multicast must-carry were to permit them to reach the cable audience as well as underserved cable non-subscribers. Those plans were largely ignored in the Commission’s decision. For the immediate purpose of this petition, DIC notes that its undertaking remains in effect: If the Commission creates an opportunity for the children’s service DIC had outlined by imposing a multicast must-carry obligation on cable operators, DIC will go forward with its plan.

For these reasons, and those set out in the other petitions, DIC urges the Commission to reconsider its decision in this docket and instead deny cable operators the right to strip out free digital broadcast multicast content from broadcast digital signals. That step will permit broadcast stations to provide over-the-air content diversity to the entirety of their

audiences and to compete effectively with cable gatekeepers that have been inappropriately empowered by the current resolution of the digital multicast carriage issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. Weiswasser', written over a horizontal line.

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