

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

**COMMENTS ON PETITIONS FOR RECONSIDERATION**

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**COMMENTS ON PETITIONS FOR RECONSIDERATION**

The Office of Communication of the United Church of Christ, Inc., Campaign Legal Center, and Common Cause (UCC *et al.*) respectfully comment with regard to Petitions for Reconsideration of the Commission's decision in *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, CS Docket No. 98-120 (Second Must-Carry Order). UCC *et al.* argue that before the Commission acts on Petitions for Reconsideration, it must adopt meaningful public interest obligations in *Notice of Inquiry on the Public Interest Obligations of TV Broadcast Licensees*, MM Docket No. 99-360, as well as disclosure requirements in *Standardized and Enhanced Disclosure Requirements for Television Broadcast License Public Interest Obligations*, MM Docket No. 00-168.

**I. BACKGROUND**

The Commission released the Second Must-Carry Order on February 3, 2005, affirming an earlier Order holding that cable systems are not required to carry multiple broadcast streams after the transition to digital television.<sup>1</sup> In the Second Must-Carry Order, the Commission went further than the narrow multicast must-carry issue before it and stated that the open public interest proceedings will be completed by the end of 2005. As the Commission explained:

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<sup>1</sup> Second Must-Carry Order at 3.

Nothing in this Order diminishes the Commission's commitment to completing action on the multiple open proceedings on localism and on the public interest obligations of digital broadcasters. We believe the public interest and localism proceedings are essential components of the Commission's efforts to complete the transition to digital television. The Commission intends to move forward on these decisions within the next few months and complete action in these dockets by the end of the year.<sup>2</sup>

Two Commissioners issued separate statements further attesting to the importance of completing the open public interest dockets. Commissioner Jonathan Adelstein wrote that "the Commission has thus far failed to address the public interest proceedings. So, in many ways, this decision is the unfortunate result of neglect, during the past two years that I so strongly pressed for the public interest."<sup>3</sup> Commissioner Michael Copps stated that "we have not done our work. Other items integral to this one, prerequisites for today's vote, have been around even longer."<sup>4</sup>

Several parties representing broadcast interests filed Petitions for Reconsideration of the FCC's Second Must-Carry Order. Some petitioners agree that the open public interest proceedings, including public interest obligations and disclosure requirements, should be resolved expeditiously. For example, Paxson advocates that, in addition to digital carriage, the Commission "must resolve broadcasters' DTV public interest responsibilities,"<sup>5</sup> and "reconsideration of the *Second Report and Order* gives the Commission a golden opportunity to accomplish both these objectives simultaneously."<sup>6</sup> Paxson also approves of that fact that the Commission's intention "always had been to resolve broadcasters' children's programming obligations and public interest requirements before deciding the multicast must-carry issue."<sup>7</sup> Paxson argues that while the Commission has addressed children's programming obligations,

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<sup>2</sup> *Id.* at 22

<sup>3</sup> *Id.* at 36.

<sup>4</sup> *Id.* at 32.

<sup>5</sup> Paxson Petition at 2-3.

<sup>6</sup> Petition for Reconsideration of Paxson Communications Corporation, CS Docket No. 98-120, at 3, filed Apr. 21, 2005 (Paxson Petition).

<sup>7</sup> Paxson Petition at 3.

“its failure to complete the second [step] led to a *Second Report and Order* that is shot through with dissention and unfinished business.”<sup>8</sup> The Network Affiliates similarly argue that if “the Commission believes, as Commissioners Copps and Adelstein did, that resolution of the public interest proceeding should precede resolution of the multicast issue, the proper course is to vacate this *Order* and reconsider this issue after the public interest issues have been decided.”<sup>9</sup>

**II. THE COMMISSION SHOULD ADOPT MEANINGFUL AND MEASURABLE PUBLIC INTEREST OBLIGATIONS AND DISCLOSURE REQUIREMENTS BEFORE ACTING ON PETITIONS FOR RECONSIDERATION**

UCC *et al.* neither support nor oppose multicast must-carry. However, if the Commission is inclined on reconsideration to adopt some form of multicast must-carry, UCC *et al.* believe that it is not appropriate to require cable systems to carry additional multicast channels unless the public can be assured that as a result, it will receive meaningful and measurable increases in public interest programming. Thus, before acting on the petitions for reconsideration, the FCC should first resolve broadcasters’ public interest obligations in *Notice of Inquiry on the Public Interest Obligations of TV Broadcast Licensees*, MM Docket No. 99-360, and broadcasters’ disclosure requirements in *Standardized and Enhanced Disclosure Requirements for Television Broadcast License Public Interest Obligations*, MM Docket No. 00-168.

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<sup>8</sup> *Id.*

<sup>9</sup> Petition for Reconsideration of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, NBC Television Affiliates, ABC Owned Television Stations, NBC and Telemundo Stations, CS Docket No. 98-120, at 23, filed Apr. 21, 2005 (Network Affiliates’ Petition).

**A. Commission Action on the Public Interest and Disclosure Dockets is Long Overdue**

The Commission has been aware of the need to adopt public interest obligations for digital broadcasters for almost a decade. President Clinton issued an executive order to form an advisory committee to make recommendations in March 1997. That Committee issued its report on December 18, 1998.<sup>10</sup> Yet, the Commission waited an entire year, until December 20, 1999, to issue a notice of inquiry seeking comment on public interest obligations for digital broadcasters.<sup>11</sup>

After considering the comments in this proceeding, the FCC issued notices of proposed rulemaking on two aspects of public interest requirements on October 5, 2000. One NPRM concerned the obligations of digital broadcasters with respect to children,<sup>12</sup> and the other concerned disclosure.<sup>13</sup> While the Commission recently concluded the children's rulemaking,<sup>14</sup> it has not issued an order in the disclosure proceeding. Nor has the Commission even issued an NPRM on the other public interest issues raised in the NOI. Yet, in the more than five and a half years since the NOI, the Commission has already issued two orders on the subject of multicast must-carry during and after the digital transition. Before reconsidering digital carriage and issuing yet a *third* order on the matter, the Commission needs to follow through on the pledge it made in the Second Must-Carry Order to address the open public interest obligations and disclosure proceedings.

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<sup>10</sup> Charting the Digital Broadcasting Future, Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters at p.iii (Dec. 18, 1998).

<sup>11</sup> *Public Interest Obligations of TV Broadcast Licensees, NOI*, 14 FCC Rcd 21633 (1999).

<sup>12</sup> *Children's Television Obligations of Digital Television Broadcasters*, 15 FCC Rcd 22946 (2000)

<sup>13</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, NPRM*, 15 FCC Rcd 19816 (2000).

<sup>14</sup> *Children's Television Obligations Of Digital Television Broadcasters*, MM Docket No. 00-167 (Nov. 23, 2004).

**B. The Commission Cannot Properly Balance the Pros and Cons of Multicast Must-Carry without Knowing What Public Interest Programming will be Offered by Broadcasters**

UCC *et al.* agree with Paxson and the Network Affiliates that if multicast must-carry has any hope of being adopted and sustained, clear and enforceable public interest obligations must first be established. It is largely unknown what kind of programming will be carried on multicast channels. Without well-defined public interest obligations there is no way to know whether and to what extent the programming on the multicast channels will benefit the public. Thus, it is impossible for the Commission to pass rational digital carriage regulations without first defining broadcasters' public interest obligations.

Must-carry exists to serve two purposes: 1) preserving the benefits of free, over-the-air local broadcast television, and 2) promoting the widespread dissemination of information from a multiplicity of sources.<sup>15</sup> Public interest obligations will help ensure that an increase in the number of multicast channels means more of the benefits associated with local broadcasting. Public interest obligations will also help promote source and program diversity on multicast channels. Thus, the existence of public interest obligations strengthens the case for broad carriage of digital signals.

**C. The Commission Must Adopt Meaningful and Measurable Public Interest Guidelines**

It is not enough that the Commission merely conclude the open public interest proceedings, but the Commission must ultimately adopt meaningful and measurable guidelines to ensure that the public receives adequate service. Some Petitioners claim that broadcasters will use the multicast channels to serve the public interest. The Network Affiliates point out that they

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<sup>15</sup> See *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180 (1997).

“are not aware of any stations out of the approximately 300 commercial stations multicasting that are airing primarily infomercials or home shopping programs or that have intentions to do so.”<sup>16</sup>

Paxson argues that “the market will demand that the vast new quantities of air time are filled, at least in part, with new local services.”<sup>17</sup>

But, even if that is true, the presence of some programming other than home shopping or infomercials does not mean that the public’s need for programming about local and civic affairs, electoral coverage, and other community interests are being met. Numerous studies suggest that broadcasters have not been using their single analog channel to meet public needs. For example, a study by the Lear Center found that local newscasts dedicated eight times more coverage to accidental injuries than to all local political races during the 2004 campaign.<sup>18</sup> In Seattle, where there was an extremely close gubernatorial race, 95% of newscasts contained no stories about the race for governor.<sup>19</sup> Even when stations cover local elections, they tend to focus solely on the latest polling numbers or voting procedures, rather than covering campaign issues. In fact, less than one-third of all local election coverage was dedicated to campaign issues.<sup>20</sup>

This inadequate performance by broadcasters came after public statements by Senator John McCain, then-Chairman Michael K. Powell, and Commissioner Jonathan Adelstein that Congress and the FCC would be watching how broadcasters behaved in the run-up to the 2004

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<sup>16</sup> Network Affiliates’ Petition at 21. PIPA’s proposed processing guidelines would work to limit excess commercialization, as well as promote local civic and electoral programming. *See* Letter from Karen Henein to Marlene H. Dortch, Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120 (Feb. 4, 2005) for complete PIPA Coalition Proposal (“PIPA Coalition Proposal”).

<sup>17</sup> Paxson Petition at 6.

<sup>18</sup> Martin Kaplan, Ken Goldstein and Matthew Hale, Local News Coverage of the 2004 Campaigns: An Analysis of Nightly Broadcasts in 11 Markets, The Lear Center Local News Archive (2005).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

elections.<sup>21</sup> Senator McCain, Chairman Powell and Commissioner Adelstein asked broadcasters to put their best effort forward and even that warning did not encourage broadcasters to improve their public interest programming during the election. Thus, it is questionable that broadcasters will dedicate adequate airtime to local news and public affairs without regulatory standards.<sup>22</sup>

Another study suggests that current digital broadcasts do not increase the amount of public interest programming available to the public and, in fact, provide even less than analog. A study by the Campaign Legal Center shows that little local public affairs programming is shown on digital television, with only 0.3% of digital programming focused on local public affairs – compared with 8.8% for reality shows, 6.9% for paid programming and 2.5% for celebrity news shows (such as *Access Hollywood*).<sup>23</sup> This performance is slightly worse than that of analog television, which programmed only 0.4% local public affairs.<sup>24</sup>

For this reason, the Public Interest Public Airwaves (PIPA) Coalition<sup>25</sup> has proposed reasonable public interest obligations processing guidelines that will create an incentive for all broadcasters to meet minimum standards for public service.<sup>26</sup> The PIPA Coalition’s proposal contains four elements: 1) local civic and electoral affairs programming, 2) independently produced programming, 3) disclosure, and 4) excessive commercialization.<sup>27</sup> If a licensee meets

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<sup>21</sup> Second Must-Carry Order at 40.

<sup>22</sup> Even if one accepts the petitioners’ assertions, Paxson recognizes, “Nonetheless, the Commission is not required to trust that this expansion of public interest programming will happen without any means of ensuring that the predicted expansion of programming actually occurs.” Paxson Petition at 6.

<sup>23</sup> *Broken Promises: How Digital Broadcasters Are Failing to Serve the Public Interest*, Campaign Legal Center Report, available at: <http://www.campaignlegalcenter.org/attachments/1379.pdf> (last visited May 26, 2005).

<sup>24</sup> *Id.* at 11 (citing *All Politics is Local, But You Wouldn’t Know It By Watching Local TV*, Alliance for Better Campaigns Report).

<sup>25</sup> UCC, Campaign Legal Center, and Common Cause are members of the PIPA Coalition.

<sup>26</sup> PIPA Coalition Proposal.

<sup>27</sup> *Id.*

the standard for each of the four guidelines, then it receives staff level approval for the general public interest portion of its license renewal application.<sup>28</sup> However, licensees who fail to meet all four standards will have their applications referred to the Commission for review.<sup>29</sup> As a processing guideline, rather than a mandate, the PIPA Proposal is a reasonable means of ensuring that broadcasters provide opportunities for citizens to become informed about and involved in local civic affairs and elections and have access to diverse sources of programming. The processing guidelines balance the First Amendment interests of the public and the broadcasters.

Although Paxson would prefer to rely on market forces, it indicates that it would not object to processing guidelines, stating that a “good model for this expansion of broadcasters’ responsibilities is the Commission’s recent order approving broadcasters’ DTV children’s programming requirements.”<sup>30</sup> UCC *et al.* agrees that the Children’s DTV rules provide a useful model. The children’s programming requirements create a processing guideline that increases based on the number of additional hours a broadcaster programs on multicast channels.<sup>31</sup> However, the children’s programming rule allows “broadcasters the flexibility to concentrate their children’s programming on a single multicast channel,” while maintaining the core requirement on the main channel.<sup>32</sup> UCC *et al.* believe that this type of programming concentration may be viable for children’s programming, it is not for local public affairs programming. It is important that local civic and electoral programming be carried on the most widely viewed channels and are not shunted off onto “specialty” channels with low viewership.

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<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 6-7.

Thus, the Commission has already received meaningful proposals with which to quickly release an NPRM regarding broadcasters' public interest obligations.

#### **D. The Commission Must Adopt Standardized Disclosure Requirements**

In addition to determining public interest obligations of broadcasters in the digital age, effective and standardized disclosure processes must also be adopted. Public interest obligations without disclosure are incomplete. Without disclosure, the FCC and the public are limited in their ability to evaluate broadcasters' compliance with public interest obligations and other important regulatory standards. The current issues/programs lists are not up to the task of informing the public and the FCC about the public interest service of broadcasters. Because the current requirements are so vague, many broadcasters list everything and anything they consider to qualify in no particular order. The lack of uniformity and consistency makes it nearly impossible for the public or the Commission to discern and compare how much and what types of public interest programming air on different stations.<sup>33</sup> Thus, UCC *et al.* do not agree with Paxson that the Commission "should maintain its current public interest programming reporting requirements."<sup>34</sup>

The PIPA Coalition has proposed a reasonable, standardized form and procedure for disclosure<sup>35</sup> PIPA's disclosure form gathers information about local civic affairs, local electoral affairs, and other local programming. It asks for information such as date, time, and length for each public interest item. It also asks for information about efforts to promote the program to the

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<sup>33</sup> For a more complete analysis of the ways that the issues/programs lists fail to adequately inform the public and the FCC, see *Comments of UCC, et al., Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee*, MM Docket No. 00-168 at 2-4.

<sup>34</sup> See Paxson Petition at 6.

<sup>35</sup> See Letter from Karen Henein to Marlene H. Dortch, Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120 (Feb. 4, 2005) for complete PIPA Coalition Proposal.

public and ensure the inclusion of diverse viewpoints.<sup>36</sup> At the end of each quarter, the station must place this form on its website.<sup>37</sup> Only with complete, standardized disclosure requirements can the FCC and the public monitor compliance with FCC rules and evaluate the effectiveness of new regulations.

### III. CONCLUSION

For the foregoing reasons, UCC *et al.* urge the Commission to fulfill the pledge it made in the Second Must-Carry Order to complete the open public interest proceedings by the end of 2005.<sup>38</sup> The Commission should adopt meaningful and measurable public interest guidelines and disclosure requirements before it acts on the Petitions for Reconsideration of the Second Must-Carry Order.

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Dated: May 26, 2005

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<sup>36</sup> *Id.*

<sup>37</sup> PIPA Coalition Proposal at 5.

<sup>38</sup> Second Must-Carry Order at 22.

## Certificate of Service

I, Karen Henein, hereby certify that on this 26th day of May, 2005, a copy of the foregoing was served by first-class mail, postage prepaid, upon the following:

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