

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

In the Matter of:

Carriage of Digital Television Broadcast
Signals: Amendments to Part 76 of the
Commission's Rules

Docket No. 98-120

To: The Commission

**OPPOSITION OF THE WEATHER CHANNEL, INC.
TO PETITIONS FOR RECONSIDERATION**

Burt A. Braverman
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

May 26, 2005

Its Attorney

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The Weather Channel, Inc. hereby opposes the petitions for reconsideration of the Commission's *Second Report and Order and First Order on Reconsideration*¹.

I. INTRODUCTION

The Weather Channel, Inc. ("TWCI") owns and operates The Weather Channel[®] ("TWC"), the preeminent television network that focuses on weather information, and Weatherscan[®] by The Weather Channel ("Weatherscan"), a more recently launched network that provides local and regional weather information to its viewers (collectively, the "Networks").

Launched in 1982, TWC currently serves approximately 88.5 million homes in the United States, primarily through expanded basic cable analog tiers. TWC provides comprehensive forecasts, special segments highlighting the impact of weather on every day life, seasonal reports, and other weather-related features. Among the vital services

¹ *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, Second Report and Order and First Order on Reconsideration*, CS Docket No. 98-120, 20 FCC Rcd 4516 (February 23, 2005) (hereinafter "*Order on Reconsideration*").

provided by TWC are its coverage of severe weather conditions and the immediate real-time relay to cable systems of severe weather watches and warnings from the National Weather Service.

In 1998, TWC launched Weatherscan, a 24-hour, all-local weather information service. This service is carried primarily on the digital tiers of cable systems and currently serves approximately 8.5 million homes. Weatherscan is customized on a market by market basis. Based on the particular needs of each community, it provides a combination of local weather information and relevant lifestyle information, such as boat and beach conditions, ski reports, golf conditions and health reports.

TWC and Weatherscan have a significant interest in the outcome of this proceeding, as the dual carriage and multicast must-carry requirements that Petitioners seek would have a significant adverse impact on their businesses.

II. TWC's PRIOR PARTICIPATION IN THIS PROCEEDING

TWC joined with other programming networks in 2001 to participate in an earlier stage of this proceeding and to voice its strong opposition to the dual carriage and multicast must carry proposals that the Commission was considering. TWC submitted to the Commission information concerning the importance of broad distribution to its business model and the adverse impact that such additional governmentally-imposed carriage requirements would have on TWC and Weatherscan.² The factors cited by TWC in its earlier filing remain equally relevant today.

² See *Order on Reconsideration* at ¶21 n.88.

III. THE COMMISSION SHOULD DENY THE PETITIONS FOR RECONSIDERATION

A. Broadcasters Have Sufficient Market-Based Incentives and Leverage to Successfully Launch Their Multicast Channels

The five petitions now pending before the Commission argue that, notwithstanding the solid reasoning underlying the Commission's decision, the substantial record on which it is based, and the clear articulation of its reasoning, the FCC should grant reconsideration of its *Order on Reconsideration* so that it can again consider the very same arguments that it previously has rejected. Petitioners argue, among other things, that multicast must carry will further the transition to digital broadcast service by facilitating the success of broadcast multicast services and providing incentives for broadcasters to invest in such services. Among the services that Petitioners claim broadcasters are introducing on their digital streams, and for which they need additional mandatory carriage rights if such services are to succeed, are local weather services.³

One such digital broadcast service is NBC's Weather Plus, a 50/50 joint venture of NBC and its affiliates, which launched in November 2004.⁴ NBC has publicly touted the success of this service, which has acquired widespread distribution without the assistance of multicast must carry. According to NBC press releases and news articles, Weather Plus will feature a mix of national, regional and local weather information.⁵ Weather Plus claims to have entered distribution agreements with most of the major

³ See, e.g., *Broadcast Affiliates Petition for Reconsideration*, CS Docket No. 98-120 (filed April 21, 2005) at 13, 20, 212; *National Association of Broadcasters Petition for Reconsideration*, CS Docket No. 98-120 (filed April 21, 2005) at 22.

⁴ Steve Donohue, *NBC Weather Net Seeks Affils*, MULTICHANNEL NEWS, Nov. 22, 2004, at 12.

⁵ Press Release, NBC Universal Cable Networks, NBC Affiliates Launch the First All-Digital Broadcast Network: NBC Weather Plus (Nov. 15, 2004), available at <http://www.nbccableinfo.com/insidenbccable/networks/weather/resources/inthenews/111504.html>; Press Release, NBC Universal Cable Networks, NBC Weather Plus Extends its Reach (Jan. 31, 2005), available at <http://www.nbccableinfo.com/insidenbccable/networks/weather/resources/inthenews/020705.html>.

broadcast station ownership groups like Gannett, Clear Channel, Raycom, Sinclair, Hearst-Argyle, Post-Newsweek, The New York Times Company Broadcast Group, and Belo.⁶ The service has launched in at least 20 different markets (including NBC's flagship market, New York City), has acquired a reach of 67% of U.S. television households⁷ and serves 7 million subscribers,⁸ an astounding feat for a brand new programming service. And NBC predicts that Weather Plus will achieve nationwide coverage by year-end. In addition, Weather Plus has secured carriage on major cable television systems – including Time Warner's New York City system – both through direct negotiations and retransmission consent. Similar services are being launched by ABC and other major broadcasters.

The success of Weather Plus demonstrates that broadcasters already have sufficient marketplace leverage to launch new digital networks. The existing tools at the broadcasters' disposal include the following:

- Cross promotion by a local broadcaster of its multicast services over its main broadcast channel;
- National broadcast network promotion on widely viewed programs such as *Good Morning America*;
- Cross-promotion on affiliated cable services (i.e., ESPN for ABC, or CNBC for NBC) and other electronic media;
- Requiring multicast network carriage through corporate level retransmission consent agreements between network O&Os and major cable television operators as well as through local retransmission consent agreements between broadcast affiliates and cable operators; and
- Bundling multicast services with more established cable programming networks as part of package deals for carriage.

Clearly, broadcasters' digital multcasted weather services can gain substantial cable carriage, not to mention widespread broadcast distribution, without need for the

⁶ Katy Bachman, *NBC Weather Plus Strikes TV Distribution Deals*, ADWEEK, Jan. 31, 2005, available at http://www.adweek.com/aw/search/article_display.jsp?schema=&vnu_content_id=1000780420.

⁷ Katy Bachman, *NBC Weather Extends Net Reach to 67 Pct.*, MEDIAWEEK.COM, Mar. 30, 2005.

⁸ Mary C. Gruszka, *NBC Adds DTV Value With Weather Plus*, TV TECHNOLOGY, May 4, 2005.

crutch of government-imposed multicast must carry. NBC Executive Vice President Brandon Burgess admitted as much when he told *Broadcasting & Cable* that “The FCC’s ruling is not a roadblock . . . ‘It comes down to the quality of the idea,’” and stated that “NBC will launch a second multicast service in the next year or two.”⁹ By their own admission, broadcasters already have powerful market-based incentives to invest in quality digital programming for their multicast channels without need for a government subsidy in the form of multicast must carry.

B. Multicast Must Carry Would Be Unfair and Would Impose a Substantial Burden on TWC and Weatherscan

It has taken TWC twenty-three years to obtain ubiquitous nationwide distribution – twenty-three years of investment, innovation, competition and excellence. The development and launch of Weatherscan, tailored to serve the unique needs of local markets, exemplifies the degree of investment, innovation and risk that TWC is willing to make in order to continue to provide valuable, high quality service. It has done so and will continue to do so without government carriage guarantees. It is notable that Weatherscan, which launched in 1998 and, as of 2001 had approximately 2 million subscribers, now has gained distribution to approximately 8.5 million households and is available to 22 million households. Over the past seven years, Weatherscan has obtained this hard-won distribution by going from cable system to cable system demonstrating the value it can provide.

The imposition of a regulatory requirement that every cable system carry every multicast signal of every broadcast station in its market would distort the marketplace, and subject TWC and Weatherscan to unfair and discriminatory competitive conditions.

⁹ Allison Romano, *Stations Tap a Digital Revenue Stream*, BROADCASTING AND CABLE, Apr. 18, 2005, at 16.

Every channel that is reserved to a broadcaster's multicast signal is one fewer channel that is available to carry TWC or Weatherscan, or any of the many other cable networks that are competing on the merits for carriage on the nation's cable systems.

Multicast must carry would take the evaluation of quality and viewer preference out of the cable operators' equation. A number of cable operators have told TWCI that they question the value of carrying multiple local weather services due to bandwidth constraints and redundancy. In this bandwidth-constrained environment, cable systems that are required to carry multicast weather services of a number of broadcasters would be unwilling to carry Weatherscan, regardless of its relative quality. The impact on Weatherscan would be significant and, depending on the number of mandated multicast weather services, even TWC's distribution could be adversely affected.

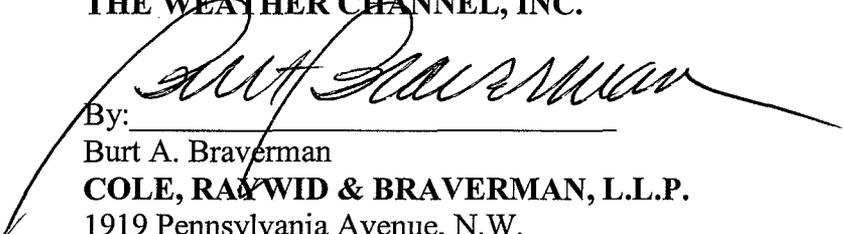
The Commission found that the statutory objectives of promoting a diversity of media sources, preserving for the viewing public the availability of free over-the-air television, and hastening the transition to digital broadcasting, are currently being met, and that multicast must carry would not appreciably further those goals.¹⁰ Accordingly, the government has no business intervening in and distorting the marketplace in a manner that would so clearly disfavor independent programming services such as TWC and Weatherscan. The Commission should instead maintain a level playing field in which the American viewing public, and the cable television operators who deliver their multichannel viewing services, decide what should or should not be carried. Only in that way will broadcasters truly have an incentive to invest in producing quality multicast television fare.

¹⁰ See *Order on Reconsideration* at ¶¶37-41.

IV. CONCLUSION

The goal of furthering the transition to digital broadcasting can be met by existing marketplace and regulatory forces, and will not appreciably be furthered by the additional regulatory subsidy of multicast must carry. The Weather Channel, Inc. respectfully submits that the Commission should deny the petitions for reconsideration of its *Second Report and Order*.

THE WEATHER CHANNEL, INC.

By: 

Burt A. Braverman

COLE, RAYWID & BRAVERMAN, L.L.P.

1919 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

(202) 659 - 9750

Its Attorney

May 26, 2005

CERTIFICATE OF SERVICE

I, Lena Mosley, do hereby certify on this 26th day of May, 2005 that a true and correct copy of the foregoing "*Opposition of the Weather Channel, Inc. to Petitions for Reconsideration*" has been sent via U.S. First-Class mail to the following:

David Honig
Executive Director
Minority Media and Telecommunications
Council
3636 16th Street N.W., #B-366
Washington, D.C. 20010

Wade H. Hargrove
Brooks, Pierce, McLendon, Humphrey &
Leonard L.L.P.
Wachovia Capital Center, Suite 1600
150 Fayetteville Street Mall
Raleigh, NC 27601

William L. Watson
Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

F. William LeBeau
NBC and Telemundo Stations
NBC Telemundo License Co.
1299 Pennsylvania Avenue, N.W.
11th Floor
Washington, D.C. 20004

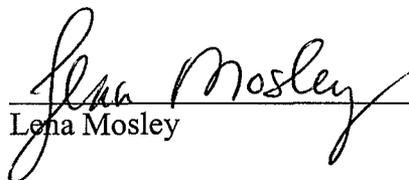
Jonathan D. Blake
Aaron Cooper
Darrin Hurwitz
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

David L. Donovan
Association for Maximum Service
Television, Inc.
P.O. Box 9897
4100 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Susan L. Fox
ABC Owned Television Stations
1150 17th Street, N.W.
Suite 400
Washington, D.C. 20036

Marsha J. MacBride
Jerianne Timmerman
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Stephen A. Weiswasser
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401


Lena Mosley