Before the
Federal Communications Commission
Washington, D.C. 20554

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

Initial Regulatory Flexibility Analysis

Comments

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I. Introduction and Summary of Relief Requested.

The American Cable Association ("ACA") submits these Comments in response to the Initial Regulatory Flexibility Analysis ("IFRA") appended to the Commission's Second Further Notice of Proposed Rulemaking (*"Second FNPRM"*).[1]

The American Cable Association ("ACA") and its members strongly support the Commission's initiatives to facilitate the delivery of digital broadcast signals to all Americans. Approximately 46% of ACA's members already deliver digital broadcast signals to some or all of their subscribers. Approximately 75% expect to deliver digital broadcast signals by the February 17, 2009 digital transition.[2]

That said, ACA files comments[3] in the *Second FRNPM* to place on the record its extreme concern about the proposals and conclusions reached by the Commission in its *Second FNPRM.*[4] As explained more fully in ACA's *DTV Must Carry Comments*:

- The Commission does not have the authority to implement its post-DTV transition proposal ("DTV Must-Carry Proposal") for cable carriage of digital must-carry signals;[5]

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[1] *See In the Matter of: Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Second Further Notice of Proposed Rulemaking*, CS Docket No. 98-120, FCC 07-71 (rel. May 4, 2007) ("*Second FNPRM*"), Appendix, Initial Regulatory Flexibility Analysis For the *Second FNPRM*.

[2] These statistics are based on over one hundred ACA member responses to a June 2007 ACA Internet survey.

[3] Comments of the American Cable Association (filed July 16, 2007) ("*DTV Must Carry Comments*").

[4] *See In the Matter of: Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Second Further Notice of Proposed Rulemaking*, CS Docket No. 98-120, FCC 07-71 (rel. May 4, 2007) ("*Second FNPRM*").

[5] *See ACA DTV Must Carry Comments* at 3-5.

- Even if the Commission had the authority to implement its DTV Must-Carry Proposal, the cost of implementation would be financially impossible for many independent cable operators;[6]

- The Commission does not have the authority to require cable systems without HD capability to cablecast must-carry broadcast signals in HD format;[7] and

- There is no evidence supporting the imposition of new measurements for material degradation.[8]

Far from encouraging the efficient delivery of digital signals, these expensive, burdensome - and, in some cases unconstitutional – approaches to the DTV transition could eliminate independent MVPD competitors from the small and rural markets served by ACA's members.

To address the special circumstances of small cable companies, the Commission should revise its DTV Must-Carry Proposal as follows[9]:

- Allow cable operators to convert digital signals into a format that they can cablecast to <u>all</u> their subscribers, and to choose whether or not to provide dual carriage for must-carry signals.

- Maintain the current standard for material degradation.

- Require broadcasters electing must-carry to pay the cost for conversion of digitals signals to a format the cable operator can cablecast to all its subscribers.

By implementing ACA's recommendations, the Commission can help facilitate the digital transition in the smaller and rural communities served by ACA's members.

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[6] *See ACA DTV Must Carry Comments* at 5-6.

[7] *See ACA DTV Must Carry Comments* at 6-8.

[8] *See ACA DTV Must Carry Comments* at 8.

[9] *See ACA DTV Must Carry Comments* at 2, 9-10.

American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. The Regulatory Flexibility Act.

The Regulatory Flexibility Act ("RFA") requires the Commission in its initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities.[10] The IRFA must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objective of the statute and that would minimize any significant economic impact of the proposed rule on small entities.[11]

The Commission has a statutory obligation to consider the impact any Commission action would have on small entities. Economic realities require the Commission to establish an alternative treatment for small cable companies. Because of the impact to small cable as discussed above and in ACA's *DTV Must Carry Comments*, the Commission must address these issues and include a comprehensive discussion of the impact its actions will have on small cable in its Final Regulatory Flexibility Analysis.

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[10] 5 U.S.C. § 603(a).

[11] 5 U.S.C. § 603(c).

III. Conclusion.

A viable independent cable sector is critical to the provision of competitive advanced digital services to smaller and rural communities.[12] The Commission's proposals outlined in the *Second FNPRM* could have the unintended effect of eliminating independent cable competitors from low-density service areas. By implementing ACA's recommendations outlined above and more fully in its *DTV Must Carry Comments*, the Commission can help facilitate the digital transition in the smaller and rural communities served by ACA's members.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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[12] Despite the cost of providing digital broadcast signals, 46.4% of ACA members responding to a June 2007 Internet survey already provide these signals on some or all of their systems. 38.4% provide HD signals on some or all of their systems.