

**Before the
Federal Communications Commission
Washington, D.C. 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)	

**REPLY COMMENTS OF
AMERICANS FOR TAX REFORM, MEDIA FREEDOM PROJECT AND
PROPERTY RIGHTS ALLIANCE**

The Americans for Tax Reform and the Media Freedom Project hereby submit this comment on the issue of Dual Must-Carry, Docket 98-120.

The Federal Communications Commission's dual-carry proposal would violate the takings clause of the Constitution by requiring providers to set aside even more of their limited bandwidth without just compensation. The resulting bandwidth loss would be a potential revenue loss mandated by the government, thereby violating the Fifth Amendment rights of the providers.

This has come about because of the transition from an analog signal to a digital signal. Cable operators have been obligated to carry local broadcasting stations in their current analog form, and have done so. Starting in February of 2009, broadcasters will be required to convert to a digital signal, and cable will continue to honor that requirement by carrying their digital signal.

Once the conversion is complete, analog television will no longer be able to decipher the digital signal without a converter box. This affects only broadcast television channels, not cable exclusive networks.

Customers who fail to obtain converter boxes by the time of this transition will, therefore, no longer be able to view their local broadcast stations. Out of concern for that possibility, the idea of requiring cable providers to carry both an analog and digital signal for broadcast stations was born.

The regulation is being considered because of the small percentage of customers who will either be uninformed about their need to obtain a converter box or refuse to. Neither of which is the responsibility of cable providers, but the responsibility of the individuals.

Must-carry regulations violate the Fifth Amendment's "takings clause" because it would be using regulation to restrict a private property owner's use of their own property. Must-carry regulations would render unusable for other purposes a significant portion of the

finite amount of bandwidth currently available. That is why in 2005, the Commission found that forcing cable providers to carry both analog and digital signals was unconstitutional. We believe this ruling to be the correct ruling.

We urge the Commission to reject the idea of dual must-carry and focus on educating the public about the need to upgrade their televisions or obtain a converter box. The resulting litigation that would result from this regulation would run serious risk of unnecessarily delaying the final conversion from analog to digital, and we believe the end result would not be in favor of the Commission.

While some individuals will inevitably miss the deadline of the conversion, this is the responsibility of those individuals, no one else. Cable companies are unlikely to disenfranchise these customers and may well carry both signals for a time. This is a far cry from a government mandate and should be how this situation is handled. Let the market work.

Thank you,



Grover Norquist
President, Americans for Tax Reform



Derek Hunter
Executive Director, Media Freedom Project



Kelsey Zahourek
Executive Director, Property Rights Alliance