Before the
Federal Communications Commission
Washington DC 20554

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

REPLY COMMENTS OF VERIZON

Michael Glover
Of Counsel

Edward Shakin
William H. Johnson
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3060

August 16, 2007

TABLE OF CONTENTS

Page

I. Introduction and Summary 1

II. Current Rules Concerning "Material Degradation" Are Effective, and Some of the Proposed Standards Could Hamper Innovation, Efficient Network Management and the Diversity of Available Programming 2

III. Video Providers That Go "All Digital" Should Be Allowed Flexibility to Address Viewability Concerns 8

IV. Conclusion 12

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

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

REPLY COMMENTS OF VERIZON[1] ON CARRIAGE OBLIGATIONS FOLLOWING DTV TRANSITION

I. Introduction and Summary

As it considers the must-carry rules that will apply following the broadcast DTV transition in 2009, the Commission should retain its customer-focused approach, and should ensure that any new rules do not inhibit technological innovation and efficient network management. Likewise, the Commission should ensure that its must-carry rules do not place unreasonable burdens on video providers, thus preventing providers from being able to offer more HDTV programming and a wider diversity of other digital programming.

First, the Commission should retain its current custom-focused "degradation" standards, that ensure that the picture quality for broadcasters electing must-carry is on par with – but not artificially advantaged over – other programming carried by the video provider. The record in this proceeding demonstrates that there is no problem that warrants Commission's adoption of expansive new rules, such as some of those mentioned in the *Second Further Notice*, and that

[1] The Verizon companies ("Verizon") participating in this filing are the regulated, wholly-owned affiliates of Verizon Communications Inc.

consumers will be better served by the Commission's current "material degradation" standards.[2] Moreover, the proposed standards could undermine technological advances, especially with respect to compression technology, and network management that benefit consumers and enable the provision of a greater diversity of high quality programming.

Second, with respect to the proposed "viewability" rules, the Commission should recognize that providers committing to going "all-digital" should be allowed substantial flexibility in order to accomplish that transition in a manner that best meets the needs of their subscribers. Such providers have a strong, competitive interest in minimizing the disruption to, and burden on, their subscribers, as well as ensuring that their video services are viewable on their customers' television sets.

II. Current Rules Concerning "Material Degradation" Are Effective, and Some of the Proposed Standards Could Hamper Innovation, Efficient Network Management and the Diversity of Available Programming.

The record in this proceeding illustrates that the Commission's current, customer-focused degradation rules are working well, and there is no problem that needs to be addressed through heightened standards for assessing whether there is "material degradation" of must-carry signals. The Commission should maintain its current approach rather than adopting new "objective" standards or a requirement to transmit "all bits" that would give unnecessary advantages to must-carry broadcasters over other programming carried by the provider. In addition to there being no evident need for such rules, the proposed heightened standards would be bad for consumers because such rules could undermine technological innovation and efficient network

[2] Second Further Notice of Proposed Rulemaking, *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, 22 FCC Rcd 8803 (2007) ("*Second Further Notice*").

management, and could deny consumers the additional HDTV programming and other, diverse programming that would be crowded out by overly broad must-carry rules.

The Commission previously determined that its degradation rules are about "the picture quality the consumer receives and is capable of perceiving and not about the number of bits transmitted by the broadcaster if the difference is not really perceptible to the viewer."[3] After recognizing that "fewer bits are needed [to transmit a digital signal over a cable system] than to transmit the signal over the air," the Commission declined to adopt an objective degradation standard based on "any specific number of bits." *Id.* Instead, the Commission concluded that it would be sufficient – and most consistent with the statutory language – to require that "a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any digital programmer (e.g., non-broadcast cable programming, other broadcast digital program, etc.) carried on the cable system, provided, however, that a broadcast signal delivered in HDTV must be carried in HDTV." *Id.* ¶ 73. Such a rule protects both consumers and must-carry broadcasters, but does not place artificial constraints on video providers or mandate a preferred status for must-carry broadcasters' programming over all others'.

As an initial matter, the record in this proceeding demonstrates that the Commission's current rules concerning signal degradation have been effective, and that there is no reason to impose new, more burdensome regulations on video providers at this time. For example, Comcast notes that "during the more than six years that the existing standard has been in effect, not a single broadcaster has ever filed a complaint alleging that a cable operator has materially degraded its DTV signal." *Comcast Comments* at 12; *see also Time Warner Comments* at 26

---

[3] First Report and Order and Further Notice of Proposed Rulemaking, *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, 16 FCC Rcd 2598, ¶ 72 (2001) ("*2001 DTV Order*").

("The NPRM does not point to a single instance in which a broadcaster complained that a cable operator's digital signal failed to meet the existing standard – much less any instance in which the existing standard proved inadequate."); *NCTA Comments* at 28 (noting that "there is no evidence of a problem with the hundreds of broadcaster digital signals which have been carried by cable during the transition"). In fact, even the handful of parties that support changing the rules – most notably, the National Association of Broadcasters (NAB) – provides no facts whatsoever to show that the current rules have been inadequate to prevent the material degradation of digital signals, or any reason to believe that they would be inadequate following the broadcast DTV transition. Given the success of the current rules, there is no reason for the Commission to impose new obligations on video providers.

Moreover, the proposed new rules to enforce the prohibition on "material degradation" would harm consumers by threatening continued technological innovation, efficient network management, and increased diversity of programming. As early as its 1993 order implementing the must carry rules, the Commission recognized that that statute's "material degradation" provision was not intended to "imped[e] technological advances and experimentation by the cable industry," including specifically "signal compression" technologies.[4] And again in its *2001 DTV Order*, the Commission recognized that as a result of "remodulat[ion]" or other techniques used by cable operators to create "a greater degree of operating efficiency," it would be inappropriate to require cable operators to pass along all bits that the broadcaster may transmit for its over-the-air signal. *Id.* ¶¶ 72, 76. Likewise, in the context of DBS, the Commission recognized that "compression technology is rapidly evolving and we do not want to impede

[4] Report and Order, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, ¶ 98 (1993).

innovation by proscribing certain techniques" that could benefit consumers.[5] In fact, as NCTA points out, even broadcasters themselves employ various compression techniques in order to better utilize their spectrum, without significantly degrading the quality of their signal. *See NCTA Comments* at 28-29.

The proposed rules – including in particular the "all bits" rule – would undermine the technological innovation, and associated network management practices, that benefit consumers, and such rules would provide an unnecessary advantage to must-carry broadcasters over all other sources of programming (*e.g.,* broadcasters electing retransmission consent, non-broadcast programmers). As AT&T notes, "[o]ver the past six years, digital transmission technologies, and in particular compression technologies, have continued to develop and improve, enabling video service providers to transmit high quality video signals with vastly greater efficiency, but without causing any reduction in picture quality discernible to the naked eye." *AT&T Comments* at 2-3. These approaches allow a video provider to "efficiently manage its video distribution assets," thus making better use of "its finite bandwidth." *Qwest Comments* at 3-4. On the other hand, "[s]tymieing efficiency-improving transmission methods would hurt consumers: it would require cable operators to set aside large amounts of additional spectrum to transmit broadcast video, even when the additional spectrum does not improve transmission quality." *Time Warner Comments* at 26; *see also Discovery Comments* at 6 (noting that "proposal to limit cable operators' ability to use digital compression to conserve spectrum would exacerbate the issue [of insufficient bandwidth to support diverse programming] by shrinking the number of channels that a system can offer"). The Commission should continue to allow video providers to employ

[5] Report and Order, *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918 ¶ 118 (2000).

new technological approaches and to manage their networks efficiently, so long as those approaches continue to deliver a high quality signal to their subscribers.

The Commission likewise should reject other proposals that would restrict continued innovation or alternative technological approaches to providing video services. For example, the Commission should reject proposals that would permanently lock in place current, cable-centric technological approaches, such as by requiring that all digital signals be transmitted in "clear QAM," by prohibiting the implementation of "codecs" other than the current MPEG-2 standard, or by prohibiting the use of "switched digital" for broadcast channels. *CEA Comments* at 6-10. These proposals would mandate a particular technological approach to delivering digital broadcast signals, and would not provide sufficient flexibility for continued technological innovation or for alternative approaches, such as IPTV. For example, these proposals would seem to prohibit the approach already being employed by AT&T, which relies on "H.264 video compression technology . . . MPEG-4 Part 10," rather than QAM signals or MPEG-2. *AT&T Comments* at 3. And the proposed prohibition on "switched digital" would seem to prohibit the use of IPTV technology altogether. The Commission should encourage, rather than prohibit, continued technological innovation and should recognize that providers using alternative technological approaches – particularly providers that are new entrants – have a strong incentive to work with consumer electronics manufacturers to ensure that their video services will work well on their subscribers' devices.

Finally, the proposed heightened standards would be inconsistent with the Cable Act and would raise substantial constitutional concerns. As other commenters explain in more detail, the proposed rules would go further than is justified by Section 614. For example, a requirement to transmit "all bits," regardless of the impact on picture quality perceived by the subscribers,

would "read[] the word 'material' out of the statute, and would entitle [broadcasters electing must carry] to preferred treatment vis-à-vis retransmission consent broadcasters, non-broadcast networks, and other suppliers of highly valued content." *Comcast Comments* at 13; *see also Qwest Comments* at 3. Likewise, as the Commission previously recognized when it found "that [the] language of the Act provides the answer to the material degradation question," *2001 DTV Order* ¶ 73, the current rules are more consistent with the statutory language, which provides that the quality of must-carry signals be "no less than that provided by the system for carriage of any other type of signal." 47 U.S.C. § 534(b)(4)(A). Moreover, as Time Warner notes, the proposed requirements would raise substantial First Amendment concerns because they would "allow must-carry signals to consume more bandwidth to provide the same picture quality," thus placing an unjustified burden on the ability of video providers to engage in other, protected speech, such as the transmission of more HDTV or additional, diverse programming. *Time Warner Comments* at 27.

The current rules strike the right balance for consumers – ensuring that must-carry signals are treated on par with other programming transmitted by a video provider, while leaving room for pro-consumer innovation and network management by video providers as well as additional spectrum for more HDTV and other, diverse programming. With this approach, video providers are able to better utilize the bandwidth on their networks to provide a diverse array of high quality programming, including HD programming, to their subscribers. At the same time, if a video provider were to materially degrade the digital signal of a must-carry broadcaster – something that has apparently never happened up to this point – the broadcaster has procedures available to seek recourse from the Commission. In any event, the Commission's concerns regarding signal quality will be effectively addressed by increasing video competition. Signal

quality is a key differentiator that competitors highlight for consumers. And as video competition becomes more intense and widespread, any provider that fails to deliver a high quality signal will suffer in the marketplace.

III. Video Providers That Go "All Digital" Should Be Allowed Flexibility to Address Viewability Concerns.

The *Second Further Notice* also proposes significant changes to the Commission's rules concerning the statutory "viewability" requirement, proposing that video providers have the option of electing "dual carriage" of analog and digital signals for must-carry broadcasters or "carrying the signal only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content." *Id.* ¶ 4. For providers, like Verizon, that choose the latter, "all-digital" approach,[6] the Commission should allow considerable flexibility to implement and manage this transition, so that providers can address the unique concerns of their subscribers without unnecessary regulatory constraints. Providers going "all digital" – particularly competitive providers like Verizon – already have a strong interest in ensuring the viewabilility of their services on subscribers' television sets, while avoiding unnecessary disruptions or burdens for subscribers.

As the Commission has repeatedly acknowledged, significant "'non-speculative public benefits'" result when providers take the significant, and potentially risky, step of going all digital, "particularly when considered in the context of the Commission's goal of promoting the broadcast television digital transition." *Consolidated STB Waiver* ¶ 58. Among other things, the transition to an all-digital network frees up spectrum that can be used for "additional HD content,

---

[6] Memorandum Opinion and Order, *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 11780, ¶ 59 (2007) ("*Consolidated STB Waiver*"); *see also* Declaration of Shawn Strickland, attached to Verizon ex parte, CS Docket 97-80 (July 9, 2007)..

which may facilitate the DTV transition by creating greater incentives for its subscribers to acquire digital television sets."[7] Consumers who are encouraged to purchase digital television sets not only benefit from the many advances enabled by digital technology, but also avoid any disruption from the cessation of analog broadcasts in 2009.

In order to encourage providers to take this desirable step of going "all-digital," the Commission should ensure that its "viewability" rules allow considerable flexibility so that providers may manage this transition in manner that makes sense both for the provider and its customers. However, some commenters question whether burdensome new requirements – such as rules dictating what equipment a provider must make available to subscribers and on what terms – could flow from the proposed rule's requirement that "all subscribers with analog television sets have the necessary equipment to view the broadcast content." *Second Further Notice* ¶ 17. For example, NCTA and Time Warner highlight some of the legal and policy concerns that would result if such a requirement were interpreted to require a video provider to give away digital converters to subscribers for each of their analog television sets. *See, e.g., NCTA Comments* at 2-3 & 12; *Time Warner Comments* at 20-21. NCTA notes that there may be 126 million analog television sets in cable customers' home in 2009, and suggests that the costs to "the industry" of equipping each of these sets with converter boxes could be $6.3 billion dollars. *NCTA Comments* at 6. Likewise, Time Warner warns that "reading Section 614(b)(7) to require cable operators to provide digital tuners to all subscribers would cause significant disruption," in terms of costs and customer dissatisfaction. *Time Warner Comments* at 21.

---

[7] Memorandum Opinion and Order, *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 209, ¶ 24 (2007) ("*BendBroadband Order*").

Based on such concerns, these commenters conclude that the "all-digital" option is not really an option at all.

By giving providers the flexibility they need to manage the transition to all-digital networks and services, the Commission can make clear in any rules that it adopts that such concerns are unfounded. Providing that flexibility would best serve the Commission's longstanding policies aimed at encouraging the adoption of digital technology and at fostering the commercial availability of navigation devices, and would avoid the legal pitfalls highlighted by some commenters. For example, if, as some commenters suggest, the proposed rule could be read to require all-digital providers to give away digital converters for all analog sets, such a rule could place a prohibitively expensive price tag on the decision to go all-digital, thus undercutting the Commission's objective in encouraging video providers to do just that. Likewise, a converter giveaway rule also could lessen consumers' incentives to transition to digital devices – contrary to the Commission's longstanding policies – because consumers would be less likely to transition to digital equipment if they were supplied with digital converters for "free."[8]

A requirement micro-managing all-digital providers' policies with respect to providing conversion equipment also would be inconsistent with the Cable Act, including Section 614(b)(7)'s "viewability" provision. *See* 47 U.S.C. § 534(b)(7). As other commenters explain, Section 614(b)(7) is a narrow provision that "was crafted to deal with a specific problem that was slight and disappearing . . . . cases where subscribers had sets that could not tune above channel 13." *Time Warner Comments* at 20-21; *see also id.* at 18-19 (discussing legislative history of Section 614(b)(7)); *Discovery Communications Comments* at 3-4 (explaining limited purpose of Section 614(b)(7)). This provision, which only applies to "television receivers of a subscriber

which are connected to a cable system . . . or for which a cable operator provides a connection," would not provide a basis for requiring all-digital providers to give away converters. 47 U.S.C. § 534(b)(7) (emphasis added). This is especially true because Section 614(b)(7) expressly provides that any "viewability" obligation would be satisfied when a provider "offers to sell or lease" any conversion equipment necessary for television sets connected to the cable system to view signals. 47 U.S.C. § 534(b)(7); *see also 2001 DTV Order* ¶ 79.

The Commission's "navigation device" rules and policies would also be undermined by the rules that NCTA and Time Warner hypothesize. *See Time Warner Comments* at 20; *NCTA Comments* at 12. As the Commission previously recognized in the *2001 DTV Order*, "requiring cable operators to make available set top boxes capable of processing digital signals for display on analog sets might be inconsistent with section 629 of the Act." *Id.* ¶ 80. The Commission recognized that to "require cable operators to make such equipment available to subscribers would impede the overarching goal of [Section 629], that is to assure competition in the availability of set-top boxes and other customer premises equipment."[9] *Id.*

Finally, constitutional limitations weigh in favor of rules that would allow maximum flexibility to providers transitioning to all-digital. It is well established that the programming carried by video providers is a form of protected speech. *See Turner Broad. Sys. v. FCC*, 512 U.S. 622, 636 (1994) ("*Turner I*"). As the Commission has recognized, one of the significant benefits to providers of moving to an "all-digital" system is that this approach makes available

---

[8] Of course, additional costs incurred by video providers would necessarily be reflected in the prices that consumers would pay for video service.

[9] Section 629 also provides that the Commission's navigation device "regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming systems, to consumers, if the system operator's charges to

significant amounts of bandwidth that may be used to transmit additional programming, and thus engage in additional protected speech. *See, e.g., BendBroadband Order* ¶ 24. Therefore, regulations burdening a provider's ability to go "all-digital" and thus carry additional programming to its subscribers must "further[] an important or substantial governmental interest; . . . the governmental interest [must be] unrelated to the suppression of free expression; and . . . the incidental restriction on alleged First Amendment freedoms [must be] no greater than is essential to the furtherance of that interest." *Turner I*, 512 U.S. at 662 (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968) (internal quotation marks omitted)). *See generally* Charles J. Cooper, *et al.*, "The Commission's Proposed Digital Carriage Requirement Would Violate the Constitution," at 33-39, attached as Appendix A to *NCTA Comments* (discussing First Amendment concerns with proposed rule concerning all-digital providers). Such concerns would be minimized by providing flexibility to all-digital providers to manage the transition process.

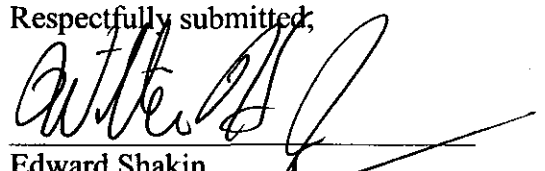
IV. Conclusion

Video providers – and in particular video providers like Verizon that are transitioning to "all-digital" networks and services – share the Commission's interest in making the digital transition as smooth as possible for consumers. If a competitive provider like Verizon does not adequately address consumers' interests in receiving an array of diverse programming, transmitted with the highest quality, and readily viewable on their television sets, it will not succeed in the marketplace. The Commission should ensure that its carriage rules continue to encourage technological innovation, to permit efficient network management, and to leave capacity for a wide array of diverse programming.

---

consumers for such devices and equipment are separately stated and not subsidized by charges

Respectfully submitted,



Edward Shakin
William H. Johnson

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3060
will.h.johnson@verizon.com

Michael E. Glover
Of Counsel

August 16, 2007

Attorneys for Verizon

---

for any such service." 47 U.S.C. § 549(a).