

**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  
GOSPEL MUSIC CHANNEL**

Gospel Musical Channel LLC (“Gospel Music Channel”) submits these Reply Comments on the Commission’s mandatory dual carriage proposal. Requiring cable operators to carry all must-carry broadcast channels in both digital and analog formats will severely limit the opportunity for carriage of the Gospel Music Channel and other independent programming services. Such dual carriage of the same channels runs contrary not only to the Commission’s goal of diversity, but also to the Gospel Music Channel’s First Amendment rights.

The Gospel Music Channel is devoted to the uplifting, inspiring and diverse music that is Gospel. Its goal is to entertain and inspire America’s families through high-quality music and Gospel/Christian music videos and original programming. However, Gospel/Christian music is much more than simply the music of America’s churches. It encompasses the soulful voices from the storied halls of Harlem to the contemporary sounds of today’s Christian pop, rock, hip hop and rhythm and blues, offering family-friendly programming without raising the indecency issues increasingly presented by broadcast programming.

The Commission appears to presume that cable operators have a limitless supply of bandwidth which can accommodate mandatory dual carriage without limiting the distribution of

multiple other programming services. Broadcasters would have the Commission believe that there is no limit on the bandwidth available to cable operators today. *See* NAB Comments at 13 (“any cable capacity constraints that may have once given rise to First Amendment concerns are long a thing of the past”). That presumption is plainly and demonstrably wrong. There already is a bandwidth crunch facing programmers today, as cable operators increasingly use their cable plant for much more than simply the distribution of video programming services. In addition to providing increasing numbers of high definition video services, cable operators face increased pressure to devote bandwidth capacity “to advanced new services, including high-speed data and telephony – each of which has revolutionized its respective industry....” Comments of Time Warner Inc. (“Time Warner Comments”) at 4-5; Comments of The National Cable & Telecommunications Association (“NCTA Comments”) at 19-20; Comments of Comcast Corporation at 20.

Because of these capacity constraints, very few channels, if any, have been added to analog packages recently and “programmers are locked in a fierce battle for carriage.” Time Warner Comments at 5. Other programmers “are being moved from analog to digital tiers so operators can reclaim the 6 MHz of capacity for other digital uses.” NCTA Comments at 19. Gospel Music Channel’s experience in gaining distribution confirms this bandwidth shortage and the intense competition among programmers for carriage. Launched in October 2004, Gospel Music Channel expects to have over 20 million subscribers by year-end. In order to achieve that distribution, Gospel Music Channel has made presentations to hundreds of cable system managers over the past three years and eventually managed to secure substantial additional distribution through complicated negotiations when another cable channel ceased to distribute its linear service.

In the context of the existing capacity constraints and this kind of intense competition for carriage, the Commission's dual carriage proposal would have a disastrous impact upon independent programmers such as the Gospel Music Channel in both large and small markets:

Additional spectrum demand from must-carry signals would be particularly strong in major urban areas, where the number of must-carry stations, particularly from geographically distant areas, is high. Compelled duplicate carriage of such stations would result in no digital carriage, or any carriage at all, for many cable programmers. Likewise, a dual carriage rule would have particularly significant impacts for smaller systems, many of which are in rural areas, where cable systems often are not upgraded to 750 MHz or even transmit only analog signals.

Time Warner Comments at 6; *see* Comments of the American Cable Association at 3-4. Thus, the Gospel Music Channel may be foreclosed from distribution in numerous cable systems throughout the United States so that the same broadcast channels may be carried in multiple formats.

Not surprisingly, dual carriage of the same channel is not required by any statute. Clearly, Section 614(b) of the Communications Act does not require such carriage as suggested in the Commission's Notice. Section 614(b)(7) expressly contemplates that "additional receiver connections" or a "converter box" leased or purchased by subscribers may be required.

When the Commission weighed the burdens of dual carriage during the digital transition against the constitutional rights of cable operators and programmers, it twice found such carriage to pose an unconstitutional burden. In 2001, it tentatively concluded that dual carriage "appears to burden cable operators' First Amendment interests substantially more than is necessary to further the government's substantial interests...." *First Report and Order*, 16 FCC Rcd. 2598 (2001) at ¶3. After developing a complete record, the Commission again concluded in 2005 that mandatory dual carriage would be unconstitutional. After analyzing the

full record and the “governmental interests proposed by the broadcast industry,” the Commission found that:

[T]here has not been an adequate showing that dual carriage is necessary to achieve any valid governmental interest. Therefore, in the absence of a clear statutory requirement for dual carriage, we decline to impose this burden on cable operators.

*Second Report and Order and First Order On Reconsideration*, 20 FCC Rcd. 4516 (2005) (“*Second Report and Order*”) at ¶27.

Nothing has changed in the last two years to justify a complete reversal of course. Mandatory dual carriage presents the same burdens that it presented two years ago, without any new or compelling governmental interest.<sup>1</sup> Continued carriage of broadcast signals in an analog format will delay the digital transition – not foster it. The 6 MHz used to provide an analog feed of the same broadcast signal could be used to distribute up to ten to twelve digital signals providing the kind of programming diversity previously valued by the Commission. Consequently, the conclusion that mandatory dual carriage presents an unconstitutional burden upon the rights of cable operators and programmers remains unchanged.

The right of the Gospel Music Channel and other independent programmers to compete fairly for distribution already is impaired by must-carry and retransmission consent. The Commission should not multiply that burden through dual carriage, particularly when such dual carriage serves no legitimate or compelling public interest purpose. To the contrary, mandatory carriage of broadcast signals in analog as well as digital formats appears to promote the continued use of analog television sets when the government already has determined that

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<sup>1</sup> The Commission previously has recognized that the proponents of mandatory dual carriage must prove that its benefits outweigh the burdens upon cable operators and programmers. See *Second Report and Order* at ¶22 (“We believe the burden is on the advocates of dual carriage to prove this competitive necessity and that speculative allegations in this regard are inadequate in light of the burden on cable operators and cable programmers competing for cable access.”).

the public interest would be better served through the conversion to digital. To the extent that consumers want to continue to use analog television sets, the record in this proceeding shows that there is a marketplace solution in the form of readily available digital/analog converters. *See, e.g.*, NAB Comments at 11.

Mandatory analog and digital carriage of broadcast channels inevitably would limit the distribution of numerous independent programming services such as the Gospel Music Channel thereby limiting the viewing choices available to American families – all without purpose or public benefit. The video marketplace has been working, and it has been and remains the correct solution for potential digital transition issues.

Respectfully submitted,

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