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**VIA ECFS**

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Provision; MB Docket No. 07-29

Implementation of Section 621(a) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311

Dear Ms. Dortch:

On August 27, 2007, Jim Coltharp of Comcast Corporation and Jim Casserly and the undersigned of Willkie Farr & Gallagher LLP met with Amy Blankenship, Legal Advisor to Commissioner Deborah Taylor Tate, to discuss the above-captioned proceedings. Our presentation focused mainly on Docket No. 98-120, as to which we summarized the arguments contained in Comcast's written comments and reply comments (which are further condensed in the attached summary).

In addition, we called Ms. Blankenship's attention to the proposals submitted in MB Docket No. 07-91 by the National Association of Broadcasters and the Association for Maximum Service Television ("NAB/MSTV"). There, just one day before professing anew (in the must-carry docket, 98-120) their purported concern about the need to prevent cable subscribers from being "disenfranchised" by the transition to digital-only broadcasting, NAB/MSTV urged the Commission to permit broadcasters to reduce the areas and viewers served by their over-the-air analog signals upon 15 days

notice to the Commission beginning 2/17/08, and to discontinue those analog signals entirely beginning 8/17/08, a full six months before Congress and consumers expect them to cease. NAB/MSTV would allow broadcasters to take these actions -- with their attendant adverse consequences for households that rely on analog over-the-air broadcast transmissions -- entirely at their discretion and with only after-the-fact notification ("within 15 days") to the Commission. Both with respect to curtailment of analog service and with respect to early cessation of analog service, NAB/MSTV's proposals contain no provision for any notice to affected households.

Regarding Docket No. 07-29, we explained that the Commission should limit its review to the question of whether the exclusivity prohibition should be extended and should not consider regulatory proposals that it has already determined are beyond its statutory authority, e.g., the extension of the exclusivity prohibition to terrestrially-delivered programming.

Finally, regarding Docket No. 05-311, we explained that the Commission's interpretations of Sections 611 and 622 of the Communications Act necessarily apply equally to all cable operators and that there is no legal or policy basis for Commission abrogation of most-favored-nation provisions in existing franchises.

Kindly direct any questions regarding this matter to my attention.

Respectfully submitted,

*/s/ Ryan G. Wallach*
Ryan G. Wallach
*Counsel for Comcast Corporation*

Attachment

cc: Amy Blankenship

## ANY EXPANSION OF "MUST-CARRY" WOULD BE ILLEGAL AND COUNTERPRODUCTIVE.

### I. DUAL MUST-CARRY IS UNCONSTITUTIONAL; CLOAKING DUAL MUST-CARRY AS BEING ABOUT "VIEWABILITY" DOES NOT CHANGE THAT FACT.

- All programming that cable operators deliver -- whether in analog or digital -- is "viewable" by cable customers. If it weren't, cable wouldn't have a business!
- *Most* cable programming is delivered only in digital formats. *All* satellite programming is delivered only in digital formats. *All* broadcast programming will be delivered only in digital formats after February 17, 2009. The notion that cable -- and cable alone -- should be required to carry broadcast signals in both analog and digital formats is indefensible.
- The "viewability" provision of the Communications Act cannot justify dual must-carry. That provision expressly recognizes that broadcast signals viewed with a converter box are "viewable." Thus, carriage of broadcast signals in their digital format is all that can lawfully be required, so long as cable operators ensure that their customers can obtain the necessary equipment to view them.
- The Commission previously found dual must-carry to be unconstitutional in two unanimous decisions. Dual must-carry would not further any important governmental interest, and it would unduly burden the First Amendment rights of cable operators and programmers. It would also violate the Takings Clause of the Fifth Amendment. It remains unconstitutional, and its adoption by the Commission would open up the question of whether *any* must-carry requirements can be legally justified today.
- Some broadcasters claim that dual must-carry will not unduly burden cable operators because cable has virtually unlimited capacity. The record, however, shows that cable capacity is tight, with programmers competing fiercely for carriage. Recognizing the weakness of its capacity arguments, NAB attempts to defend the constitutionality of the proposal by characterizing dual carriage as merely an option. But, dual carriage is the only realistic choice being offered to most cable operators.
- Forced dual carriage of broadcast signals would inevitably -- and impermissibly -- crowd out other programming, including more HD signals. It would reduce programming choices for consumers and diminish video competition.

### II. THERE IS NO RATIONAL BASIS FOR REVISING "MATERIAL DEGRADATION" RULES.

- The statute prohibits "*material* degradation," not "degradation," of must-carry signals. The *Notice*'s proposed rule would read the word "material" out of the statute. The effect would be to forbid the use of compression technologies that are in common use today and essential for managing capacity.
- Six years ago, the Commission determined that the plain language of the "material degradation" provision of the Communications Act prohibits cable operators from carrying must-carry broadcast signals in a way that produces lower quality than is used for non-broadcast signals, and it mandated that HD broadcast signals had to be carried in HD. The Commission expressly rejected broadcasters' claim that cable operators should be required to carry *all* of a broadcaster's bits. The current proposal would reverse this precedent and reinterpret the statutory language, with no reason.
- The need for new material degradation rules has been strongly refuted by virtually every commenter. If cable operators were to be precluded from using compression technologies, they would have less bandwidth available for more HD channels and other services that consumers want.
- There is no need to revise the Commission's process for addressing any legitimate concern about "material degradation." If a broadcaster suspects that its signal is being materially degraded, it can file a complaint under existing Commission procedures. To date, despite years of signal carriage under this standard, *zero* complaints have been filed. Broadcasters have provided no evidence that any broadcast signals have been materially degraded by cable operators.