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September 7, 2007

Ms. Michelle Carey
Legal Advisor to Chairman Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 98-120

Dear Ms. Carey:

At a meeting with you on August 29, 2007, we reiterated the points made in NCTA's comments in the DTV must-carry proceeding, as well as the points made in our comments in the program access proceeding.

During our discussion of digital must-carry, we emphasized in particular how inappropriate and counterproductive it would be for the Commission to adopt its proposal that cable operators be required to carry "all content bits" in a must-carry broadcaster's primary video signal, and as a result would prohibit the cable operator's use of statistical multiplexing techniques for carriage of that signal. Recognizing that cable operators are required to carry such signals without "material degradation," we pointed out that cable operators implemented digital technology precisely because it enables them to provide crystal clear pictures in the most efficient manner *without* carrying all content bits. By eliminating bits that are unnecessary to ensure delivery of such pictures, statistical multiplexing makes it possible to increase the number of channels of digital programming that can be carried in a single 6 MHz channel. The use of these techniques to maximize capacity is therefore critical for the digital transition, since there are so many video and non-video broadband services competing for use of a system's bandwidth.

As we pointed out in our comments, the process of statistical multiplexing – which allocates available bits as needed among digital programs – is "source agnostic: statistical multiplexing simply looks at the complexity of the content (*e.g.*, fast action vs. talking heads) to determine how many bits to allocate to any particular picture."¹ Cable operators do not discriminate on the basis of the *provider* of the programming. Specifically, operators do not discriminate between must-carry signals and non-must-carry signals. The point of statistical multiplexing is not to favor and enhance the picture quality of some channels of programming while discriminating against and degrading the picture quality of others. To the contrary, the

¹ NCTA Comments at 29.

objective is to ensure, in the most efficient manner, that *all* programming is given sufficient bandwidth to deliver a high quality picture *without* noticeable degradation.

Requiring the transmission of “all content bits,” therefore, is utterly unnecessary to prevent material degradation of, or discrimination against, broadcast signals. *The only effect of such a requirement would be to undermine all the efficiencies and bandwidth conservation made possible by statistical multiplexing technology and jeopardize the DTV transition.*

Concerns that cable operators would intentionally degrade must carry broadcasters’ signals are, in any event, unwarranted. As is evident from advertising, promotional materials, and litigation,² cable operators, DBS providers and other multichannel video programming distributors are today vigorously attempting to convince customers that their picture quality is superior to their competitors’. The idea that they would deliberately make any of their programming look *worse* is speculative and hypothetical – there is no evidence that any such degradation has occurred. And, in today’s highly competitive video marketplace, it is also implausible.

Even if there were reason to worry, a rule that required carriage of all bits – and effectively prohibits statistical multiplexing – would not be the appropriate safeguard and would in fact stifle innovation to continue to improve cable network bandwidth efficiencies. In fact, given the dynamic process of statistical multiplexing, there is no “objective” standard that can satisfactorily predict and specify how many bits are necessary to ensure that a signal is not “materially degraded.” To a large extent, detecting material degradation is inherently *subjective*, because degradation of a signal can hardly be deemed “material” if it is imperceptible to viewers.

As our comments pointed out, the Commission has previously recognized that this is the case. In its First Report and Order, it adopted a standard of material degradation that “protects the interest of cable subscribers by focusing on the comparable resolution of the picture, as visible to a consumer, rather than the number of ... bits transmitted, which may not make a viewable difference on a consumer’s equipment.” That standard requires that “in the context of mandatory carriage of digital broadcast signals, 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.”

In our meeting, you asked how the FCC might enforce the current standard. Where a broadcaster can demonstrate that its signal, as carried by a cable operator, is, in fact, perceptibly inferior to the signals of other programming carried on the system, a cable operator should be required to show, pursuant to the current rules, that the signal is “to the extent technically

² See, *e.g.*, “Comcast Trumps DirecTV in Legal Spat over Picture Quality Claims: Ruling underscores fierce battle between cable operators and DirecTV as it prepares to start launching 100 HD channels next month,” *Cable360.net.*, Aug. 17, 2007, <http://www.cable360.net/competition/25191.html>.

feasible and consistent with good engineering practice, be[ing] provided no less than the quality of signal processing and carriage of any other type of standard television signal.”³

This case-by-case approach is a far more sensible way to enforce the prohibition against material degradation than to require carriage of “all content bits.” In light of the paucity of evidence that such degradation is likely to occur, a case-by-case approach, governed by FCC rules and procedures, would not be unduly burdensome. Unlike the overbroad proposed approach, it would be narrowly tailored to prohibit only degradation that is, in fact, material and discriminatory. And, unlike the proposed approach, it would preserve the benefits and efficiencies of statistical multiplexing technology and thereby maximize the quantity and quality of broadband services available to consumers.

If you have any further questions, regarding this matter, please let us know.

Sincerely,

/s/

Daniel L. Brenner
Michael S. Schooler
Diane B. Burstein

cc: R. Brioché
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A. Blankenship
C. Pauzé

³ 47 C.F.R. § 76.62(c).