Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS

The Association for Maximum Service Television, Inc. ("MSTV")[1] and the National Association of Broadcasters ("NAB")[2] submit these comments in response to the Commission's release of the *Third Further Notice of Proposed Rulemaking* in the Viewability and Material Degradation proceeding.[3] We urge the Commission to protect consumers and to ensure that they reap the full benefits of the digital transition by fully implementing the statutory viewability and material degradation requirements. In addition to securing these basic rights for all cable subscribers, the Commission should adopt rules and policies that will help to avoid viewer confusion and will encourage the adoption of pro-consumer technologies.

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[1] MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality of the local broadcast system.

[2] NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

[3] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Third Report and Order and Third Further Notice of Proposed Rulemaking, CS Docket No. 98-120, FCC 07-170 (rel. Nov. 30, 2007) ("*Third FNPRM*").

I. CHANNEL PLACEMENT

In the *Third FNPRM*, the Commission noted that commercial must-carry stations and noncommercial stations are entitled to carriage on the same channel numbers on which the stations broadcast over-the-air, and that television stations may negotiate with cable operators regarding channel positioning.[4] The Commission inquired into how the channel positioning rules apply to operators carrying more than one version of a station's signal, and proposed that for systems providing analog service, the analog version of the broadcast signal be physically located on the appropriate channel (as determined by channel placement rules), and that the version "as broadcast" appear on the same channel for digital subscribers who can view it.[5] MSTV and NAB agree with this proposal. This approach would prevent viewer confusion, as the channel would appear to be correctly positioned regardless of whether the viewer was an analog or digital cable subscriber.

The Commission also asked if it would be technically possible, and if so whether it should require, that multiple digital versions of a station's broadcast signal (*e.g.*, high definition ("HD") and standard definition ("SD")) appear on the same channel (from a subscriber's perspective). We believe that this would be possible on most digital cable systems, and very desirable. The Commission should require cable systems to retransmit broadcasters' major-minor channel numbers. This use of broadcasters' major-minor channel numbers is defined in the applicable cable standard.[6] This requirement would eliminate the need for

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[4] *See id.* at para. 76.

[5] *See id.*

[6] *See* American National Standard ANSI/SCTE 65 2002, Service Information Delivered Out-Of-Band for Digital Cable Television.

broadcasters to separately brand over-the-air and cable channel numbers and would help viewers easily find local broadcast stations.[7]

II. FORMAT AND MATERIAL DEGRADATION

The Commission has asked how the format of downconverted signals should be adjusted (letterboxing, centering, etc.), and has sought comment on who should make the decision if the Commission does not adopt an across-the-board rule on format adjustment.[8] MSTV and NAB urge the Commission to ensure that downconversion of digital signals to analog be accomplished without material degradation. In part, this requires that there be no discrimination when digital pictures are reformatted to meet the aspect ratios of analog television sets. Broadcasters and their viewers, not cable operators, should be able to determine the format in which their downconverted programming is displayed on an analog television set. This decision should not be left to cable operators' sole discretion.

Allowing cable operators to determine the particular format in which downconverted programming is displayed, rather than broadcasters or the viewing public, can materially degrade and otherwise disadvantage broadcast signals as compared to other signals provided on the cable system. Such a result is contrary to the express purpose of the 1992 Cable

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[7] The technology now permits return to the use of the broadcaster's major channel number as the prime identifier on cable. The PSIP major-minor channel number method can be used to clearly identify each service associated with a broadcaster. The American National Standard for carriage of system information for cable (ANSI-SCTE 65) identifies this use of the data field to carry either the two-part number or a one-part number to enable tuning of channels. While cable–ready DTV sets will display the broadcaster's channel number correctly, some cable set top boxes may need an overnight software download to enable a correct display as they may currently be programmed only to display the one-part number.

[8] *See Third FNPRM* at para. 77.

Act and the Commission's rules.[9] Where an analog-converted program is displayed in letterbox format, while other programming is available in a full screen format, viewers may find the letterbox analog-converted programming to be less appealing. At the same time, however, center-cutting a broadcaster's analog-converted programming provides a full-screen picture, but also results in the removal of content from either side of the picture.

To ensure that broadcasters' digital signals are not "materially degraded" through aspect-ratio conversion, the Commission should require that broadcasters and viewers − not cable operators − be in control of the process. Specifically, where downconversion is performed by the cable operator at the headend, broadcasters must be able to designate the manner in which the cable operator will convert the aspect ratio of their programming, either through a letterbox or centercut approach. In the event that a broadcaster is voluntarily providing active format description ("AFD") and the cable operator has AFD-capable equipment, the Commission should clarify that the cable operator's use of such equipment would satisfy this requirement for the station using AFD, provided the station opted for this approach. When downconversion is performed at the home, cable operators must provide equipment that meets the downconversion specifications established by NTIA in connection with its converter box program, which would permit the viewer and the broadcaster to select the aspect ratio.[10]

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[9] *See* Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), P.L. 102-385 (1992) at § 2(a)(14) (finding that "[c]able television systems and broadcast television stations increasingly compete for television advertising revenues") and § 2(a)(15) (finding that "there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.").

[10] The Commission should encourage cable systems that downconvert signals at the headend to install AFD-capable equipment at the headend, while all-digital systems should ensure that (continued…)

A rule putting broadcasters and viewers in control of the format of downconverted programming is necessary to give full effect to Congress's goal of preventing cable operators from disadvantaging broadcasters in cable carriage. *See* 1992 Cable Act at § 2(a)(15). Such a rule would allow broadcast programming to be provided to viewers on a basis that is no less favorable than other programming a cable operator carries, and would prevent the cable operator from materially degrading a broadcast signal through unacceptable formatting.

AFD is a consumer-friendly technology that permits broadcasters to optimize the viewer experience in the digital era. It permits broadcasters to specify a different aspect ratio (*e.g.*, 16:9 or 4:3) for each program. We believe that a number of stations anticipate using AFD technology voluntarily, and we hope that cable will embrace this consumer-friendly technology as well. Cable operators should invest in equipment that is AFD-capable. If appropriate, the Commission should advise cable operators that, as they upgrade their systems and make equipment purchases, they should be mindful that AFD will provide a superior viewing experience for cable subscribers.

The Commission is also seeking comment on the applicability of the material degradation rules to stations carried pursuant to retransmission consent.[11] Both Congress and the Commission have already settled this issue clearly and definitively. The statutory material degradation requirement applies to all "local commercial television stations" that a cable

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subscribers' leased equipment can process AFD. The NTIA's converter box specifications are suitable for cable systems in the latter category. *See* 47 C.F.R. Pt. 301, Tech. Apx. 1, at para. 2 (providing that for output formats, "[e]quipment shall support 4:3 center cut-out of 16:9 transmitted image, letterbox output of 16:9 letterbox transmitted image, and a full or partially zoomed output of unknown transmitted image").

[11] *See Third FNPRM* at para. 78.

operator carries. It is not limited to must-carry stations.[12]

The Commission found in 1993 when it first implemented the statute that the material degradation rules apply equally to must-carry and to retransmission consent stations, and there is nothing in the statute to justify a change in position on this basic point of statutory interpretation because of the digital transition. The Commission determined that:

> we also now review the three other provisions of Section 614(b) whose plain language indicates applicability to more than just television signals carried pursuant to the must-carry rules. Section 614(b)(3)(A) and (b)(4)(A) [the prohibition on material degradation] each refer to "local commercial television stations," and Section 614(b)(9) refers to "a local commercial television station." Using the same "plain language" approach we used in analyzing Section 614(b)(3)(B), we find that these three provisions, in fact, apply to all local commercial television stations carried by a cable system, and not just to must-carry stations.[13]

In light of this long-standing statutory interpretation, Section 76.62(b) and (c) of the Commission's rules apply to "each" television station carried by cable operators and are not limited to must-carry stations. The Commission did not change this statutory interpretation in the *First Report and Order*.[14] The language cited by the NCTA[15] does not indicate that the

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[12] *See* 47 U.S.C. § 614(b)(3)(B)(4); *compare* § 614(b)(6) and (7) (explicitly limiting channel positioning and viewability requirements to must-carry stations).

[13] *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 8 FCC Rcd 2965, at para. 171 (1993). Thus, the Commission has already considered and rejected NCTA's argument that Section 325(b)(4) precludes the application of Section 614's prohibition on material degradation to retransmission consent stations. *See also Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Memorandum Opinion and Order, MM Docket No. 92-259, 9 FCC Rcd 6723, at paras 103-105 (1994) (affirming the harmonization of Section 325(b)(4) and Section 614).

[14] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, First Report and Order, CS Docket No. 98-120, 16 FCC Rcd 2598, at para. 73 (2001).

[15] *See Third FNPRM* at para. 78, *citing First Report and Order* at para. 73.

material degradation rules do not apply to retransmission consent stations. Moreover, it is a passing reference that does not replace the careful statutory analysis that was already conducted by the Commission in 1993.

III. SMALL CABLE SYSTEMS

The Commission has asked whether special rules for small cable operators would comply with the statute, and if so, if they would be appropriate. We respectfully submit that special rules would be contrary to the pro-consumer framework that Congress has provided, and that in any event special relief would not be appropriate here. Thus, MSTV and NAB are seeking reconsideration of the Commission's decision that "operators of systems with an activated channel capacity of 552 MHz or less that do not have the capacity to carry the additional digital must-carry stations may seek a waiver from the Commission."[16] We believe that there is no statutory basis for the decision and that it would harm consumers.

In the event that the Commission retains this waiver procedure, MSTV and NAB disagree with any proposal to extend the waiver further. The American Cable Association ("ACA") has suggested that small cable operators be given what amounts to a blanket waiver from the viewability rules, calling for an exception that would allow those systems "to convert digital broadcast signals into a format that they have the ability to cablecast to all of their subscribers and to choose whether to provide" both the digital and analog signal to their customers after the transition.[17] MSTV and NAB strenuously oppose this blanket waiver proposal. The statutory requirement to ensure that signals are viewable to all subscribers and are not materially degraded is fundamental. All subscribers are entitled to a viewable signal and are

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[16] *See Third Report and Order* at para. 37.

[17] *See* Comments of the ACA in CS Docket No 98-120 at 4 (filed July 16, 2007).

entitled to be protected from material degradation. To the extent that there are capacity concerns with respect to certain smaller cable systems, the Commission has addressed those concerns in the *Report and Order* by determining that carriage of an analog version of a signal (to meet the viewability requirement) counts towards the capacity cap.[18] Moreover, the options that the Commission has provided for compliance with the viewability requirement already take into account the fact that different systems may want to take different approaches.

The Commission also seeks comment on the "long-standing requirement of HD carriage."[19] As noted above, there simply is no statutory basis for limiting the framework that Congress has provided for the viewability and material degradation requirements (aside from the statutorily-specified capacity caps). In any event, such a limitation would be unwarranted and anti-consumer. As the Commission has noted, "[t]he prohibition against material degradation ensures that cable subscribers who invest in a HDTV are not denied the ability to view broadcast signals transmitted in this improved format."[20] Nor would there be any basis for imposing the costs of downconversion on must-carry stations. The statutory obligation to provide a viewable signal to cable subscribers rests on the cable operator. There is no justification for shifting the cable operators' burden to must-carry stations, which themselves tend to have limited resources and may broadcast programming designed for niche and minority audiences.

Even if there were a statutory basis for further special relief for small systems – and there is not – there is no evidence that there is even any need for such relief. The burden is

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[18] *See Third Report and Order* at para. 36.

[19] *See Third FNPRM* at para. 83.

[20] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Second Further Notice of Proposed Rulemaking, CS Docket No. 98-120, 22 FCC Rcd 8803, at para. 5 (rel. May 4, 2007) ("*Second NPRM*").

modest. As noted above, the Commission has provided cable systems with different compliance options, and carriage of an analog version of a signal counts towards the capacity cap. Moreover, cable systems have ever-increasing capacities with which to serve their viewers.[21] As the Commission has noted, "[a]s cable operators continue to convert to digital programming, must-carry signals will impose a decreasing relative capacity burden. Given that the cable channels devoted to the mandatory carriage of commercial broadcast signals is capped at one-third of the cable system's usable capacity and in practice is likely to be significantly less than one-third, we find the economic burden on cable operators to be modest."[22] Technological advances, including advances in fiber optics, digital compression technology, and switched digital video technology, continue to increase dramatically cable systems' ability to carry a wide variety of content and services.[23] Further, the carriage of digital broadcast signals takes up significantly less capacity than does carriage of the same signals in analog, thereby reducing the amount of spectrum capacity occupied by both broadcast and cable programming networks.[24]

Finally, to the extent that the Commission finds it appropriate to retain and/or adopt further relief for small systems, we urge the Commission to be mindful of the fact that just because a cable system is small, it does not necessary have limited capacity or financial

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[21] *See Third Report and Order* at para. 11; *see also id.* at paras. 58 *et seq.* (describing the minimal burden that the viewability rule imposes on cable operators).

[22] *See id.* at para. 69.

[23] *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 07-29 *et al*., Reply Comments of the NAB, at 24-26 (filed Feb. 12, 2008), *citing Large Cable Operators Gear up for Switched Digital Video Rollouts*, Communications Daily at 3 (Dec. 17, 2007) and *Cable Engineers Expect Multiple Tech Fixes for Rising Bandwidth Demand*, Communications Daily at 9 (Jan. 18, 2008).

[24] *See, e.g., Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Comments of NAB and MSTV at 13-15 (filed July 16, 2007).

resources. Cable subscribers are entitled to the benefits of the statutory viewability and material degradation requirements regardless of the size of the system to which they subscribe, subject to the limits that Congress expressly provided (*e.g.*, the one-third capacity cap). And research has shown that "most MVPDs have excess capacity that they can use to add additional channels" and "few cable operators are truly capacity constrained."[25] In the event that the Commission decides to permit further relief, cable systems should be required to show that they are technically and financially unable to comply with these requirements.[26]

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MSTV and NAB urge the Commission to protect consumers and to ensure that they reap the full benefits of the digital transition by fully implementing the statutory viewability and material degradation requirements. We also ask that the Commission adopt rules and policies that will help to avoid viewer confusion and will encourage the adoption of pro-consumer technologies.

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[25] See *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket No. 07-198, et al., Walt Disney Co. Comments (filed Jan. 4, 2008), at Ex. A, p. 28 (Jeffrey A. Eisenach, "Economic Implications of Bundling in the Market for Network Programming"). The study notes that even among "small" MVPDs (*i.e.*, those with the capacity to carry 36 or fewer channels), 765 of the 1,532 reporting systems (50%) report having excess capacity. *See id.* at 29. Dr. Eisenach also discovered that even small cable systems have the capacity to carry multiple programming services of the same type. For example, of the small systems that carried both ESPN and ESPN2, 99.9% also carried at least one additional (non-ESPN) sports channel. *See id.* at 29. Finally, Dr. Eisenach examined small cable operators that were members of the board of the ACA and found that virtually all were in the process of upgrading their systems to increase capacity. *See id.* at 30-31.

[26] With respect to the financial showing, MSTV and NAB urge the Commission to consider the annual revenues not only of the operating company but also the resources of its larger corporate family. *See, e.g.*, 47 U.S.C. § 543(m)(2) (providing that a small cable operator is one that "directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000").

Respectfully submitted,

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