

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

In the Matter of:)	
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Carriage of Digital Television Broadcast)	CS Docket No. 98-120
Signals: Amendment of Part 76 of the)	
Commission's Rules)	
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**COMMENTS OF VERIZON¹ ON THIRD FURTHER NOTICE CONCERNING
DIGITAL CARRIAGE OBLIGATIONS**

Introduction and Summary

As it considers the issues presented in the *Third Further Notice* concerning the must-carry rules that will apply following the broadcast DTV transition in 2009,² the Commission should retain its customer-focused approach, and should ensure that its rules allow video providers flexibility to meet the needs of their customers, without unnecessary regulatory burden or micromanagement. In particular, the Commission should (1) allow video providers to address channel placement and issues concerning the down-conversion of digital signals for viewing on analog television sets in a way that makes sense for their customers and takes into account technological and system limitations; (2) limit statutory “material degradation” standards to must-carry channels; and (3) rely on existing notice requirements in the context of providers transition to “all-digital.”

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

² Third Report and Order and Third Further Notice of Proposed Rule Making, 22 FCC Rcd 21,064 (Nov. 30, 2007) (“*Third Further Notice*”).

I. Video Providers Should Have Flexibility to Determine the Best Way to Carry Multiple Versions of a Single Channel or to Handle Down-Conversion.

In the *Third Further Notice*, the Commission seeks comments on several issues related to channel placement and formatting that could arise when video providers receive and/or deliver multiple versions of must-carry channels, such as high definition (HD) and standard definition (SD) versions, or 16:9 and 4:3 aspect ratio versions. This could happen either when the broadcaster transmits in multiple formats or in the case of down-conversion of a must-carry channel's signal for viewing on an analog television set. Rather than dictating particular approaches to these issues, the Commission should leave it to the video provider to determine, in light of the provider's technological approach and service configuration, how best to deliver these signals to its customers.

First, the Commission asks how channel placement should be assigned when a video provider carries more than one version of a channel, as well as whether it would be “technically possible for multiple digital versions to appear on the same channel from a subscriber perspective (e.g., channel 35 in HD for subscribers with HD, and the same channel 35 for subscribers with SD).” *Third Further Notice* ¶ 76. Consumers will be served best if video providers are allowed to make these types of decisions in light of their particular circumstances.

To the extent that the *Third Further Notice* suggests that subscribers would benefit if channel assignments are handled the same way by all providers, or even if all versions of a channel somehow receive the same channel placement, it is mistaken. As the Commission predicted back in the *First Report* on these issues, different “technology-based solution[s]” are enabled by today's digital services,³ thus removing any need for a one-size-fits-all approach that

³ First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, ¶ 83 (2001) (“*First Report*”).

may not serve consumers as well as other alternatives. For example, even if it were technically possible for both HD and SD versions of a channel to share the same channel placement – something far from certain without replacing all of a provider’s set-top boxes to include this new functionality – it does not follow that such an approach would best serve consumers. For example, many consumers may well prefer to have the HD version of a channel assigned a number adjacent to other broadcast and non-broadcast HD channels, while the SD version of the same channel may be grouped together with other local channels.

In the absence of some indication of a problem that needs to be addressed, video providers are best positioned to make those determinations of how best to place the various versions of must-carry channels, in light of not only technical concerns but also concerns for ensuring a high quality user experience. In fact, a provider’s ability to develop different user interfaces, including logical channel groupings or various search functionalities, that better serve consumers’ demands and facilitate a subscriber’s navigation of the provider’s service can be an important differentiator in an increasingly competitive video marketplace.

Second, the Commission seeks comments on similar issues relating to the format of down-converted signals, including issues concerning the down-conversion of a signal transmitted in 16:9 aspect ratio for viewing on a 4:3 screen. Here again, video providers are best positioned to make appropriate decisions that will best serve their customers.

As with channel placement, a video provider’s primary goal in this regard will be to ensure a high quality experience for its customers. Depending on the provider’s network and technology, as well as the continued development of industry standards for addressing down-conversion issues, the available and reasonable alternatives could vary from provider to provider or over time. But there is no reason to assume that a video provider would select an approach

that would diminish the quality of the services that it delivers to its customers – particularly given the rules that the Commission has already adopted requiring that must-carry stations receive equal treatment, in terms of format or resolution, to other channels that a provider carries. *See Third Further Notice* ¶ 7. Moreover, a contrary rule that would allow broadcasters unilaterally to make decisions concerning a video provider’s approach to down-conversion issues could result in undue complexity and confusion – with a video provider forced to accommodate different elections by different broadcasters – that could harm the user experience.

Video providers are best positioned to determine – in light of their particular services and their unique network and technological approach – how best to meet their customer’s demands and provide a high quality user experience while delivering multiple versions of a single must-carry channel.

II. “Material Degradation” Standards Only Apply to Must-Carry Channels.

The *Third Further Notice* also asks whether the statutory “material degradation” standard should apply to broadcasters electing to negotiate retransmission consent arrangements, rather than electing must-carry – it should not. *Id.* ¶ 78. Neither law nor policy supports the extension of that statutory provision to broadcasters that decide to negotiate the terms of their carriage, and the Commission should clarify that it does not apply, notwithstanding some ill-considered language to the contrary in one early Commission order.⁴

First, the statute expressly precludes the application of the “material degradation” standard in the context of retransmission consent arrangements. In fact, Section 325 – the provision governing retransmission consent – unambiguously recognizes that the statutory must-

⁴ *See Report and Order*, 8 FCC Rcd 2965, ¶ 171 (1993) (“*Report and Order*”) (the order notes that some provisions of Section 614 speak of “local commercial television stations” without limitation).

carry provisions in Section 614 – including the “material degradation” standard – do not apply, providing that “if an originating television station elects . . . to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of 614 shall not apply to carriage of the signal of such station by the cable system.” 47 U.S.C. § 325(b)(4). This clear statutory direction provides a complete answer to the question posed in the *Third Further Notice*.

Second, the statutory structure – allowing broadcasters to elect the protections and certainty of must-carry status or the potential benefits (and risks) of a negotiated, retransmission consent approach – further supports the conclusion that the provisions of Section 614 do not apply in the retransmission consent context. The statute gives broadcasters a choice in how to obtain carriage. A broadcaster may take advantage of the certainty and protections of the must-carry provisions of Section 614 and require a cable system, subject to limited statutory exceptions, to carry its signal. Alternatively, for broadcasters that decide they are in a strong bargaining position and would prefer a negotiated arrangement with a cable operator, Section 325 authorizes the broadcaster to pursue a “retransmission consent” arrangement. For broadcasters electing to go the negotiated route – typically only broadcasters carrying high-demand programming – there is no reason to import protections that Congress decided were appropriate in the context of must-carry broadcasters because they may negotiate any appropriate protections into their agreements, just like other terms of their arrangement. A contrary approach allows broadcasters to have their cake and eat it too – opting to negotiate any benefits they can, while still receiving the benefits of Section 614 that were intended for less-in-demand must-carry broadcasters. Indeed, a broadcaster concerned that it might not be able to negotiate such protections has the option of electing must-carry status, rather than negotiating in the first place.

Third, the Commission also has recognized that these provisions were designed to apply in the context of must-carry broadcasters. In the *First Report*, the Commission recognized that “in the context of mandatory carriage of digital 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 a cable system.” *Id.* ¶ 73. Given the express language of the Section 325 and the statutory structure, this interpretation of the limited scope of the “material degradation” provision was correct.

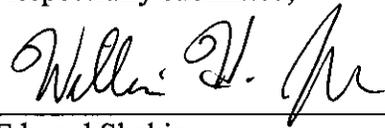
Finally, although one early Commission order suggested that the “plain language” of Section 614 applied to retransmission consent stations, *Report and Order* ¶ 171, that suggestion cannot be squared with the statutory text, statutory structure, or the subsequent statement by the Commission in the *First Report*. Also, as NCTA pointed out in its earlier comments in this proceeding, the Commission’s earlier statements suggesting that the “material degradation” standards apply in the context of retransmission consent dealt with the application of Section 614(b)(4)(A) to analog broadcast channels. In the current context addressing the carriage of digital signals, Section 614(b)(4)(B) controls. Therefore, given that the Commission has not held that rules adopted under this separate provision should apply in the context of retransmission consent stations – and for all of the reasons discussed above – the Commission need not and should not import the “material degradation” standard into retransmission consent arrangements.

III. The Commission’s Current Notice Requirements Suffice As Providers Transition to “All Digital” Services.

Finally, the Commission is correct in its tentative conclusion that its current rules addressing notice to consumers before system changes sufficiently protect consumers in the context of providers transitioning to “all-digital” services. *See Third Further Notice* ¶ 79. As

Verizon has explained previously in connection with its own transition to “all digital,” video providers have every incentive to ensure that their consumers are adequately informed about any such transition. In order to avoid confusion and ensure that customers have the information they need to avoid service disruption, providers should be allowed considerable flexibility in managing such a transition, including the timing and content of its communications with its customers. The Commission’s current rules concerning customer notifications provide an appropriate baseline that providers, by competitive necessity, are likely to exceed without regulatory compulsion. There is no reason for the Commission to micro-manage each provider’s transition process as they move to all-digital services.

Respectfully submitted,



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