



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

PAUL GLIST
DIRECT (202) 973-4220
paulglist@dwt.com

SUITE 200
1919 PENNSYLVANIA AVE NW
WASHINGTON, DC 20006

TEL (202) 973-4200
FAX (202) 973-4499
www.dwt.com

April 30, 2008

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

Re: Small System Relief in CS Docket No. 98-120

Dear Ms. Dortch:

Charter Communications, Inc. (“Charter”), Mediacom Communications Corporation (“Mediacom”), and Cequel Communications, LLC d/b/a Suddenlink Communications (“Suddenlink”) are cable operators acutely affected by the terms of the small system relief under consideration by the Commission. We write today to thank Chairman Martin for his recognition of the unique concerns of small systems; to urge the Commission to promptly implement the relief announced to the American Cable Association’s 15th Annual Summit; and to recommend that the implementation avoid disproportionate harm to small and rural consumers by including relief for systems serving relatively few customers, such as 5,000 or some other threshold deemed suitable. We believe that this is as practical and realistic as the relief afforded last month to our largest competitors—DirecTV and DISH Network.

Meeting the Digital Transition in Smaller Communities

The digital transition exacts an unusually high cost on small systems. Like other cable operators, Charter, Mediacom and Suddenlink have been expending exceptional and exhaustive engineering effort to ensure that after the DTV transition our customers will continue to have access to local broadcasters who have ceased analog broadcasting. We have brought in new manpower and sacrificed other projects in order to accommodate multiple channel changes to all of our systems. Although we operate high-capacity, state-of-the-art cable systems, we also operate many small systems to provide service to a relatively small part of our customer base in smaller, usually rural communities. Such systems pose unique problems: they serve small populations in disperse communities, most frequently not interconnected with each other. While a large system serving many subscribers with a single headend in a metropolitan market is able to receive and process 10 broadcasters through a few receive points, operators of small systems serving the same population may have many more headends and broadcast receive points. In Charter’s case, for example, we have to convert 900 unique broadcasters and 3,400 receive

points to maintain analog carriage after terrestrial broadcasters cease analog broadcasts. This is a massive project requiring the careful marshalling of resources.

Implementing the Announced Relief

As mentioned above, we each appreciate the relief announced by Chairman Martin to the American Cable Association's 15th Annual Summit, which takes into account some of the unique concerns of small systems. To implement that announcement, we suggest that the Commission promptly issue an order stating that for the smaller systems at issue, converting an over the air digital broadcast signal, even an HD signal, to analog is not material degradation and satisfies carriage and viewability requirements. We also suggest that to target the specific communities at issue, the relief described at the ACA Summit should apply to any cable "community unit" that is served with an activated channel capacity of 552 MHz or less. Using this familiar term¹—as do FCC signal carriage rules and reporting rules—will avoid any confusion in situations where operators have interconnected cable communities but where only some of the communities, due to plant, equipment, or other limitations, are operating at more than 552 MHz.

We also submit that the relief extend explicitly to systems that are "all analog," as referenced by Chairman Martin, regardless of the technical bandwidth. In one example previously noted in this docket, Charter operates an all analog Tangier Island, Virginia system with 750 MHz and only 33 subscribers. Mediacom operates an all analog system in Kansas with 750 MHz and 53 customers. The costs of providing digital service in these very small systems is prohibitive. Indeed, the problem applies even in systems larger than those serving Tangier Island. These systems have neither the digital headends nor the digital customer premises equipment with which to carry digital signals. It would cost \$2-\$4M to rebuild a small analog system of 3,000-5,000 subscribers to expand channel capacity. That cost amounts to an *increase* of \$20 per customer per month in such a system, which is clearly cost prohibitive.² In aggregate, the subscriber base served by systems of this sort is very limited: Charter and Mediacom serve only 9,600 customers with all analog systems that have more than 552 MHz.³ Such systems cannot bear additional cost burdens, or the operators already would have introduced digital service. Small systems throughout the country are already reporting significant duress, to the point of contemplating the termination of video and any plans for voice, only lessening consumer

¹ FCC regulations define "community unit" as a "cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas)." 47 C.F.R. § 76.5(dd).

² Headend and plant costs of \$2-4M apportioned across 3,000-4,000 subscribers for the three years of digital simulcasting is \$20 per subscriber per month.

³ All of Suddenlink's systems with more than 552 MHz have digital capacity but do not carry digital broadcast signals.

choice in these small markets.⁴ The Commission should extend relief explicitly to systems that are “all analog,” regardless of bandwidth.

Relief for Small Subscriber Populations

One issue that was not specifically addressed in Chairman Martin’s speech, but that has been a concern to many, is what requirements should apply to systems that serve very small populations but have system capacities in excess of 552 MHz. To make the DTV transition successful, we should be putting capital resources and engineering energy into solutions which impose the least financial burden on our customers – particularly in small, fragile markets. When installing digital simulcasting equipment in headends which serve larger populations, the customer impact is significantly mitigated because there are more customers to bear the fixed headend costs. But cost constraints are unforgiving in systems that have already been upgraded to offer digital service but have few subscribers to bear such costs. For example, Charter has a Wisconsin system with 750 MHz and 145 subs, of whom there are 82 subscribers. Suddenlink has a cable system in Brady, Texas, with 750 MHz and 1,410 basic subs, of whom there are 148 digital subscribers. Mediacom has a Missouri system with 750 MHz and 850 subs, of whom 229 are digital subscribers. Simulcasting the broadcasters in analog and digital requires an 8 VSB receiver, demodulator, muxing and QAM modulation equipment, D-to-A converter, RF modulator, and (in many cases) a new antenna. Across our companies, the equipment cost averages \$54,000 per headend (assuming distribution plant capacity exists). When installing digital simulcasting equipment in headends which serve small populations, the customer impact increases significantly because there are few customers to bear the fixed costs. In the Wisconsin example, this amounts to an increased cost for digital simulcasting of more than \$10/mo/basic sub or \$20/mo/digital sub.⁵

The cost impact is formidable even as subscriber populations grow. Even with more customers, there is a very high cost impact on a small population.

Subscribers	Cost per month (3 years)	
	Per basic sub	Per digital sub
145	\$ 10.34	\$ 23.04
1000	\$ 1.50	\$ 3.34
2000	\$ 0.75	\$ 1.67
3000	\$ 0.50	\$ 1.11
4000	\$ 0.38	\$ 0.84
5000	\$ 0.30	\$ 0.67

⁴ *No Country for Old Systems*, Multichannel News, Feb. 25, 2008, <http://www.multichannel.com/article/CA6534802.html>.

⁵ Headend costs of \$54,000 apportioned across 145 subscribers for the three years of digital simulcasting is \$10.30 per basic subscriber per month or \$23.04 per basic subscriber per month. The same analysis is followed in the table on this page for systems with 1000, 2000, 3000, and 4000 basic subscribers, and the average number of digital subscribers in each group (ranging from 39-47% of basic subscribers).

The high capital investment cost per customer of digital simulcasting to small subscriber groups disproportionately harms rural customers. It also detracts from the investments and engineering needed for rural broadband deployment, another national priority. Those resources would be far better spent, we submit, in increasing broadband deployment and speeds, rather than in carrying digital simulcasts of broadcast signals that we will continue to make available to all subscribers in (converted) analog format. The cost of digital simulcasting cannot be justified or sustained in such small markets.

In aggregate, these systems do not serve large populations. Out of our collective 7.9 million video customers, approximately 5% (400,000) are served by digital cable systems of more than 552 MHz, but with fewer than 5,000 subscribers.

> 552 MHz systems	No. Systems	Basic Subs
4,000-5,000	30	133,553
3,000-3,999	19	66,397
2,000-2,999	38	86,394
1,000-1,999	63	96,691
<1,000	38	19,815
		402,850

We submit that systems with fewer than 5,000 subscribers—or some other threshold deemed suitable by the Commission—should be extended relief – regardless of bandwidth. As detailed below, it is not unusual for the Commission to draw distinctions among systems based on the size of the cable system. It has done so to lessen regulatory burdens for emergency alert, syndicated exclusivity and network nonduplication, telephone entry into cable, rate regulation, political files, sponsorship identification, EEO records, children’s programming, proof of performance, and signal leakage.

Cable Relief Comparable to Relief Granted Satellite

This relief we suggest would be consistent with the relief recently afforded to DirecTV and DISH Network, MVPDs which dwarf each of us and which compete vigorously in each of our markets. Satellite is not required to carry any local broadcast signals to 3.2 million television households in 37 markets. The Commission further exempted satellite carriers from carrying digital broadcasters in high definition in 199 out of 210 Nielsen markets. Relief was granted for practical and realistic reasons that apply equally, or even more so to our small cable systems.

- o Extensive ground facility work needed. DirecTV and DISH Network obtained relief from dual carriage obligations due to “the time required to design, construct, and place in service new [] capacity, as well as the required ground facilities” necessary to comply fully with new requirements.⁶ Equally daunting “ground facilities” (headend) work is needed for small systems.

⁶ *Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, Second Report and Order (“*Second SHVIA R&O*”), CS Docket No. 00-96, FCC 08-86, ¶ 10 (Mar. 27, 2008).

- Engineering resources devoted to digital transition. Just as with DirecTV and DISH Network, our cable engineers are “working on a wide array of technical issues”⁷ to facilitate post-digital transition must-carry.
- Few subscribers affected. The Commission concluded that relatively few TV households would be affected by satellite relief. Small cable systems represent a very small part of any DMA—and unlike satellite the systems will make the broadcast signals available in analog to every customer.
- Reasonably meet consumer demand. The Commission said that consumer demand for DirecTV and DISH Network broadcast offerings is low⁸ and therefore allowed satellite to forgo carriage of local broadcasters. This leaves satellite customers in the same situation as an over the air TV household—needing an off-air digital antenna and set-top box to keep viewing local broadcasts. In contrast, we will carry broadcast signals for reception without a set-top box. Each cable subscriber will “wake up” the morning after the transition and continue to receive broadcast stations, as part of the basic cable line up, accessible without a set-top box.
- Efficiency. The Commission did not require satellite providers to take the “particularly inefficient” step of devoting scarce CONUS resources to smaller markets.⁹ Likewise, it should relieve us from “particularly inefficient” modifications of small systems to carry identical digital broadcast programming streams when our subscribers already are receiving that broadcast programming in analog format.

Chairman Martin has said that the Commission “continue[s] to strive for regulatory parity in our policymaking.”¹⁰ Commissioner Adelstein has called for a “much-needed exemption” from the new must-carry obligations for “small, often rural, cable operators” who “face serious financial and technological resource constraints.”¹¹ In granting relief to satellite, Commissioner Adelstein renewed his call for a “sensible and measured” must-carry framework rather than “the more draconian requirements . . . imposed on small cable systems and operators” in the *First R&O*.¹² Only by granting the requested waiver to these bandwidth-challenged and small

⁷ *Second SHVIA R&O* ¶ 13.

⁸ *Second SHVIA R&O* ¶ 12.

⁹ *Second SHVIA R&O* ¶ 11 n.46

¹⁰ *Second SHVIA R&O* (Statement of Chairman Martin).

¹¹ *Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rule Making (“*Third R&O*”), 22 FCC Rcd 21064, 21129 (2007) (Statement of Comm’r Adelstein, dissenting in part). See also *Second SHVIA R&O* that “sensible and measured” obligations should apply to small cable operators rather than “the more draconian requirements” in the First Report and Order in this proceeding (FCC 01-22, 16 FCC Rcd 2598 (2001)), and Commissioner Copps’ request that the Commission address “carriage issues raised by small cable operators” quickly, and with a “sense of realism.”

¹² *Second SHVIA R&O* (Statement of Comm’r Adelstein) (citing Letter from Senators John D. Rockefeller, *et al.*, to Hon. Kevin J. Martin, Chairman, FCC (Nov. 15, 2007) (stating that authors “cannot find a compelling reason to

systems can the FCC avoid an “enormous waste of capacity that can be better deployed for broadband and programming diversity.”¹³ Commissioner Copps called on the Commission to “turn quickly to the carriage issues raised by small cable operators,” admonishing it to “approach those issues with the same sense of realism” that marked the relief accorded the DBS providers.¹⁴

The Commission should not hold small cable systems to a higher standard than the standard it applies to the largest competitors of these small systems.

Authority for Relief

The relief we propose is fully consistent with the Act and Commission rules. Section 614(b)(4)(A) of the Act requires that cable operators carry local broadcast signals “without material degradation” and directs the Commission to adopt rules so that “to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.” Section 614(b)(4)(B) of the Act provides that with respect to digital signals, the Commission is “to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed” as a result of the DTV transition. Section 614(b)(7) states that commercial broadcast signals that are subject to mandatory carriage must be “viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.”

The Commission has already construed and applied these requirements in a manner that supports the relief we request. The Commission is not limited to crafting relief only for systems that face “technical infeasibility” due to bandwidth limitations, rather than cost limitations. When first implementing must carry under the 1992 Act, the Commission found that carriage of program-related material was “technically feasible” only “if it does *not require the cable operator to incur additional expenses* and to change or add equipment in order to carry such material.”¹⁵ The Commission also held that “signal carriage” of must carry stations is “technically feasible” if “*only nominal costs*, addition or changes of equipment are necessary.”¹⁶ The FCC streamlined and extended Emergency Alert System compliance requirements for systems with fewer than 5,000, and systems with fewer than 10,000 subscribers, “based on its determination that requiring cable systems serving fewer than 10,000 subscribers to comply with

force small cable operators to incur unnecessary financial hardship” and “this dual-carriage obligation is extremely burdensome to small cable operators”).

¹³ *Third R&O*, 22 FCC Rcd at 21129 (Statement of Comm’r Adelstein, dissenting in part).

¹⁴ *Second SHVIA R&O* (Statement of Comm’r Copps, concurring).

¹⁵ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2986 ¶ 82 (1993) (emphasis supplied).

¹⁶ *Id.* (emphasis supplied).

the EAS rules immediately may have an adverse economic effect on their operations.”¹⁷ When interpreting feasibility rules for cable competitors, the Commission has embraced cost considerations. For example, it construes a cable operator’s MDU wiring to be “physically inaccessible,” and therefore entitles competitors to use the wire, because engineering around it “[w]ould add significantly to the physical difficulty *and/or cost* of accessing the subscriber’s home wiring.”¹⁸ Likewise, the Commission’s regulations construe the “material degradation” must carry provisions in the Act as applicable only “to the extent technically feasible and consistent with good engineering practice.”¹⁹ The Commission should likewise take cost into consideration when judging feasibility, as it has for wireless and wired EAS systems and for cable’s competitors in MDU wiring. Such treatment is particularly appropriate with respect to rules specific to the digital transition. In this context, the Commission has found its authority to be flexible enough to accommodate different requirements for systems that carry analog channels from those that do not, and has announced a similar flexibility in accommodating systems of less than 552 MHz. With respect to viewability, the Commission has held that “it is not material degradation to downconvert that signal to comply with the ‘viewability’ requirement.” All of this pre-existing authority supports the relief we request

Under the relief requested, each system would convert the 8VSB signal into one which is carried with no less than the same quality of signal processing and carriage provided for carriage of any other type of standard television signal viewable on basic without a converter. Even with respect to other channels carried on the system, each broadcast signals would be carried in comparable fashion “to the extent technically feasible and consistent with good engineering practice.” Like non-broadcast signals on the system, it would be carried in one stream. That stream would in many ways be superior to non-broadcast channels. The must-carry signal would be uncompressed, ubiquitous, recordable without restriction, and accessible on all home receivers without a set-top box or digital-to-analog equipment at the premises. By contrast, non-broadcast channels are often compressed, not available without special equipment, usually copy-restricted, and accessible only with a set-top box or digital-to-analog equipment at the premises. Given the practical reality that simulcasting to small communities is not sufficiently “consistent with good engineering practice” to be mandatory, the relief requested is in full accordance with the carriage, material degradation, and viewability requirements of the Act and Commission rules. It is consistent with the premise of the Third Report to require “carriage only of a single broadcast signal, and gives operators the freedom to choose how to ensure that signal is viewable by all subscribers.”²⁰ It is consistent with the Commission’s explanation to Senator Gordon Smith that cable operators under the Order “will have the same ability as before to (1)

¹⁷ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order (“EAS R&O”), FCC 02-64, 17 FCC Rcd 4055, 4107 n. 225 (2002).

¹⁸ 47 C.F.R. § 76.5(mm) (4) (emphasis added). The Commission has recently reconfirmed this point in brief to the Court of Appeals. Brief for Respondents, *NCTA v. FCC*, No. 07-1356 (D.C. Cir. filed Apr. 14, 2008), at 21.

¹⁹ 47 C.F.R. § 76.62 (c) provides: “Each local commercial television station whose signal is carried shall, to the extent technically feasible and consistent with good engineering practice, be provided no less than the same quality of signal processing and carriage provided for carriage of any other type of standard television signal.”

²⁰ *Third R&O*, 22 FCC Rcd at 21077 ¶ 27.

downconvert the digital signal to analog and carry only analog signals to all their customers and providing digital customers with set-top boxes capable of viewing analog signals (with dual tuners).” It is well within the flexibility given the Commission to craft rules to “ensure cable carriage” under Section 614(b)(4)(B) for a post transition world. As the Commission said in 2001, “allowing digital-to-analog conversion for a limited time during a critical stage of the transition period will further the digital transition...”²¹

This proposal does not require special OMB or SBA classification of cable systems. It is not unusual for Commission regulations to draw distinctions among systems based on size.

- Emergency alert regulations for headend equipment differ for systems serving fewer than 10,000 subscribers than for those with more. In granting relief for wired and wireless systems serving fewer than 10,000 subscribers, the FCC specifically noted that it was not limited by SBA definitions. “The SBA has developed a definition of small entities for ‘Cable and Other Program Distribution Services,’ which includes all such companies generating \$11 million or less in revenue annually. ... The Commission has developed its own definition of a ‘small cable system’ for purposes of the EAS rules. Cable systems serving fewer than 10,000 subscribers per headend are considered small cable systems and are afforded varying degrees of relief from the EAS rules. ... The Commission developed this definition based on its determination that requiring cable systems serving fewer than 10,000 subscribers to comply with the EAS rules immediately may have an adverse economic effect on their operations.”²²
- In submissions to this Docket of March 3, 2008 and April 25, 2008, the SBA itself has specifically requested that the Commission grant such relief to systems serving 5,000 or fewer subscribers.
- When adopting extensive rate regulation requirements in 1993, the FCC granted an indefinite stay of all rate regulation for small systems, and later extended streamlined rules for certain systems with less than 1,000 subscribers (Form 1225). Other parts of rate regulation granted certain protection for operators with 15,000 or fewer subscribers, and allowed operators with between 15,000 and 16,000 subscribers to petition to be treated as small operators.
- The FCC provides significant relief from recordkeeping for political file, sponsorship identification, EEO records, children’s programming, proof of performance, signal leakage, and EAS test records for systems with fewer than 1,000 subscribers.²³
- The FCC provides relief from syndicated exclusivity and network nonduplication signal carriage rules for systems with fewer than 1,000 subscribers.²⁴

²¹ *Carriage of Digital Television Broadcast Signals*, First Report and Order and Further Notice of Proposed Rule Making, FCC 01-22, 16 FCC Rcd 2598, 2630 ¶ 74 (2001).

²² *EAS R&O*, 17 FCC Rcd 4107 and n.225.

²³ 47 C.F.R. §§ 76.1700, 76.1711, 76.1714.

Ms. Marlene H. Dortch
April 30, 2008
Page 9

- Under the earlier cable/telephone cross ownership rules, the FCC permitted telcos to provide cable service to populations less than 2,500 where there was no existing operator, nor any system under construction.²⁵

The Commission has a long history of drawing reasonable limits to regulatory burdens based on the size of the population served, and it should do so to relieve the burdens of simulcasting to small audiences.

Conclusion

We respectfully request that the Commission promptly publish an order permitting small cable systems and bandwidth constrained systems to satisfy carriage, material degradation and viewability requirements by converting an over the air digital broadcast signal, even an HD signal, to analog in any cable community unit that is served with activated channel capacity of 552 MHz or less; or served by a cable system with an all analog lineup; or in any community unit that is served by a system with 5,000 or fewer basic video customers.

Respectfully submitted,

Thomas J. Larsen
Vice President,
Legal Affairs
Mediacom Communications Corporation
100 Crystal Run Road
Middletown, NY 10941
Phone: (845) 695-2754

Megan M. Delany
Vice President and Senior Counsel,
Federal Government Relations
Charter Communications, Inc.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, DC 20006
Phone: (202) 973-4312

Michael Zarrilli
Vice President
Government Relations & Senior Counsel
Cequel Communications, LLC d/b/a
Suddenlink Communications
12444 Powerscourt Drive, Suite 450
St. Louis, MO 63131
Phone: (314) 315-9337

By
Davis Wright Tremaine LLP



Paul Glist

²⁴ 47 C.F.R. §§ 76.95(a); 76.106(b).

²⁵ 47 C.F.R. § 63.58 (deleted). In the telephone context, the Commission has also noted that “rural carriers generally have higher operating and equipment costs, due to lower subscriber densities, small exchanges, and lack of economies of scale.” *Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanism*, 22 FCC Rcd. 15801, 15809 (2007).