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

REPLY TO OPPOSITIONS

The Association for Maximum Service Television, Inc. ("MSTV")[1] and the National Association of Broadcasters ("NAB")[2] hereby respond to the Oppositions[3] of various commenters to our Petition for Reconsideration and Clarification in the above-referenced docket. That Petition sought reconsideration of the Commission's decision to adopt a comparative material degradation standard, and, to the extent the Commission proceeds with a comparative standard, clarification of that standard. The Petition also sought reconsideration of the decision to provide special treatment for systems with a capacity of 552 MHz or less. The Commission should ensure that consumers receive the full benefits of the digital transition. A bright-line all content bits test would prohibit the material degradation of broadcast signals and protect

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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* Oppositions of AT&T Inc. ("AT&T Opposition"); Verizon ("Verizon Opposition"); National Cable & Telecommunications Association ("NCTA Opposition"); DIRECTV, Inc. ("DirecTV Opposition"), and American Cable Association ("ACA Opposition"); all filed April 22, 2008 in CS Docket No. 98-120.

consumer expectations. If the Commission retains a comparative material degradation standard, it should clarify that standard in order to provide due protection to cable subscribers. Further, subscribers to systems with 552 MHz or less of capacity are entitled to a viewable signal and protection from material degradation. Thus, reconsideration and clarification of the *Third Report and Order*[4] in order to protect consumers would be in the public interest.

I. RECONSIDERATION AND CLARIFICATION OF THE MATERIAL DEGRADATION STANDARD IS WARRANTED.

MSTV and NAB believe that an objective requirement that cable operators provide all content bits to their subscribers is the best means of ensuring compliance with the statutory requirement to carry all local television signals without material degradation.[5] This bright line rule would protect cable subscribers from receiving digital service that is inferior in quality to the service available over the air – *i.e.*, materially degraded service.

The cable industry commenters suggest that an objective standard is unnecessary because the industry will carry broadcast television programming in the best possible quality. These suggestions are unrealistic and ignore the plain fact that cable systems' channels compete with broadcast television channels. For example, the AT&T Opposition claims that cable systems "have every incentive to ensure that subscribers receive the best quality signals possible – irrespective of whether those signals are re-broadcast over-the-air signals or cable

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

[5] *See* Sections 614(b)(4)(A) and 615(g)(2) of the Communications Act, 47 U.S.C. §§ 534(b)(4)(A) and 535(g)(2).

programming."[6] Congress, however, has recognized the incentive that cable operators have to disadvantage broadcasters in cable carriage. It has found that "[c]able television systems and broadcast television stations increasingly compete for television advertising revenues."[7]

If the Commission retains a comparative standard, then it should clarify that removal of more bits from a broadcaster's signal than from a cable signal during signal processing and/or transmission establishes material degradation. The cable comments adopt a contradictory position, asserting that the Commission should adopt a comparative standard but objecting to a standard that would look to the comparative removal of bits. If cable operators remove more bits from broadcasters' signals than from others' signals, it should be treated as evidence that the cable operators are not providing the same level of signal processing to broadcasters' signals. Such bit-stripping would disadvantage broadcasters' programming and harm cable subscribers.

The cable commenters also raise specious procedural objections. For example, citing MSTV and NAB's 2001 Petition for Reconsideration and Clarification in this docket, NCTA characterizes our present Petition as a "second petition for reconsideration" subject to dismissal.[8] The Commission properly took a fresh look at the material degradation standard in this proceeding, reopening the matter for comment as broadcasters complete the transition to

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[6] *See* AT&T Opposition at n.9. *See also* Verizon Opposition at 3 (asserting that competition between MVPDs "removes any need for new regulation").

[7] *See* Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), P.L. 102-385 (1992) at § 2(a)(14); *see also id.* at § 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."). *See also Third Report and Order* at paras. 51-53 (describing incentives of cable systems to favor their own programming over that of broadcasters).

[8] *See* NCTA Opposition at 4; other Oppositions raise similar claims of repetitiveness.

digital television. Indeed, in the *Second FNPRM*, the Commission proposed to adopt an objective material degradation standard.[9] The Commission's decision in the *Third Report and Order* was contrary to its proposal in the *Second FNPRM*. Our Petition, which explained why reconsideration of that decision would be in the public interest, was warranted under Section 1.429 of the Commission's rules. It also was the first opportunity to respond to the Commission's inaccurate assertion that MPEG4 compression technology to process DTV signals would "allow for more efficient use of bandwidth without diminishing viewer experience."[10] The Commission did not even refer to MPEG4 compression technology in the *Second FNPRM*.[11]

Finally, we respectfully submit that the Commission should disregard the DirecTV Opposition. The *Third Report and Order* addresses the obligations of cable television operators, specifically, the viewability and the material degradation provisions of Sections 614 and 615 of the Communications Act. It does not consider or ask for comment on the interpretation of Section 338 of the Communications Act.

II. THERE IS NO STATUTORY BASIS FOR SPECIAL TREATMENT OF SYSTEMS WITH CAPACITY OF 552 MHz OR LESS

As Chairman Martin has pointed out, "the statute's viewability requirements do not contain an exception for small cable operators."[12] MSTV and NAB agree with this statement. Congress did not articulate any caps or carve-outs to the viewability and material degradation requirements, and the Commission failed to explain the basis for departing from the

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[9] *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, FCC 07-71, at para. 12 (rel. May 4, 2007) ("*Second FNPRM*").

[10] *See Third Report and Order* at para. 11.

[11] With respect to procedural requirements set forth in Section 1.429, we also note that only the NCTA and DirecTV served copies of their Oppositions on MSTV and NAB.

[12] *See Third Report and Order*, Statement of Chairman Kevin J. Martin.

statutory mandate by providing for special treatment of systems with 552 MHz or less of capacity.

The cable industry incorrectly asserts that carriage of broadcaster's digital signals will be "duplicative."[13] As MSTV and NAB have explained:

> The option to carry a signal in both analog and digital formats is a part of the flexibility provided to cable operators in order to comply with the viewability requirement. Cable operators are not required to choose this option, however. They have the option of carrying only digital signals, provided they ensure that all of their subscribers can view those digital signals. If a cable system chooses to provide a downconverted analog signal to subscribers in order to the meet the viewability requirement, carriage of the digital signal would not be duplicative. By definition, those analog subscribers that will receive the downconverted broadcast signal are unable to receive the digital version of local broadcast programming. And for digital subscribers, broadcasters' programming in digital format is far superior to that in an analog format, both in terms of the video and audio quality as well as the additional consumer-friendly data (*e.g.*, PSIP) that the signal can carry.[14]

The industry also points to its vastly inflated cost estimates, which MSTV and NAB have already discredited.[15] The cable commenters further argue that their capacity can best be used for other services. For example, the ACA Opposition cites a desire to reserve capacity for "new broadband and other advanced services."[16] The possibility of using a cable system to provide broadband does not justify depriving cable television subscribers of the benefits of the digital

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[13] *See* NCTA Opposition at 7; *see also* ACA Opposition at 4-5.

[14] *See* Reply of MSTV and NAB, CS Docket No. 98-120, at 7-8 (filed March 17, 2008).

[15] *See id.* at 6. NCTA and ACA's estimates include equipment that is not technically necessary in order to comply with the FCC's rules, such as $20,000 for an optional groomer.

[16] *See* ACA Opposition at 2; *see also id.* at 4 (citing desire to provide "broadband and new programming services" rather than "duplicative" [digital] must-carry signals).

transition and superior digital broadcast programming, especially in light of the fact that Congress has clearly articulated the bases for relief for systems that may have limited capacity.[17]

Groping for a statutory basis for a waiver, the ACA points to other provisions such as 47 U.S.C. §§ 157 and 521. The ACA fails to recognize that there is a directly on-point provision – 47 U.S.C. § 534 – which, as recognized by Chairman Martin, simply does not contemplate an exception for small cable operators. Given that § 534 expressly addresses and provides the means of relieving capacity concerns, it would not be appropriate to rely on the statutory provisions cited by the ACA as a basis for relief from the statutory viewability and must-carry requirements.

* * *

The statutory requirement to ensure that broadcast signals are viewable to all cable subscribers and are not materially degraded is fundamental. To ensure that the viewing public receives the full benefit of the digital transition, MSTV and NAB respectfully reiterate their request for reconsideration and clarification of the *Third Report and Order*.

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[17] Specifically, it provided relief for systems with 12 or fewer usable activated channels, and for systems within that category with 300 or fewer subscribers. *See* 46 U.S.C. § 534(b)(1). Further, it has provided a one-third capacity cap to the must-carry requirement. In addition, the Commission has determined that carriage of an analog version of a signal (to meet the viewability requirement) counts towards the capacity cap. *See Third Report and Order* at para. 36.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 2nd day of May, 2008, I caused a copy of the foregoing "Reply to Oppositions" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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