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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of Establishment of a Digital Transition Quiet Period for Retransmission Consent	Docket No. 98-120

PETITION FOR EXPEDITED RULEMAKING

Cequel Communications, LLC d/b/a/ Suddenlink Communications

Charter Communications, Inc.

GCI Cable, Inc.

Insight Communications Company, Inc.

Mediacom Communications Corporation

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April 24, 2008

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SUMMARY

The broadcast television industry's impending digital transition has the potential for dramatically disrupting the nation's television viewing. As part of the effort to minimize that disruption, the Commission should promptly adopt a retransmission consent "quiet period" to ensure that private negotiations in the months surrounding the February 17, 2009 analog to digital transition deadline do not unnecessarily trigger consumer confusion and disruption.

The Commission has already adopted new rules governing cable's carriage of must-carry stations during the post-transition period. Attention must now be given to cable's carriage of retransmission consent stations. If the Commission does not act, there is a very real possibility that private commercial disputes over retransmission consent terms will require cable operators to *drop* broadcast signals at the very time that the government and the public are most dependent on cable's delivery of those signals.

Congress has given the Commission broad powers to ensure that the DTV transition proceeds smoothly. In executing this authority, the Commission has ordered the broadcast and cable television industries to undertake extensive educational outreach efforts. Those efforts – as well as the Commission's and NTIA's own substantial outreach efforts – have consistently focused on the message that subscribers to cable systems will not be adversely affected by the DTV transition and will not lose access to broadcast television signals on February 17, 2009. It would be a terrible irony if this entire effort is undermined by a collapse (or even a threatened collapse) in upcoming retransmission consent negotiations.

The proposed retransmission consent "quiet period" is certainly within the Commission's jurisdictional authority, and it would be relatively simple to implement. The "quiet period"

would be minimally intrusive, as it would only last for a few short (but critical) months and would simply maintain the *status quo* during this period.

The Commission has recognized that protecting the digital transition is of paramount importance, and Chairman Martin has emphasized the need to ensure that "all Americans with cable … are able to watch the same broadcast stations the day after the digital transition that they were watching the day before the transition." There is clearly overwhelming governmental and public interest in ensuring that the DTV transition proceeds smoothly for all Americans. Given the rapidly approaching analog cut-off date, and the disruption and confusion that could result from failed retransmission consent negotiations in the period immediately before and after the digital transition, expedited consideration and grant of this Petition is essential.

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PETITION FOR EXPEDITED RULEMAKING

INTRODUCTION

The Cable Petitioners include five different cable operators, collectively serving more than 8.5 million customers across the country. The Cable Petitioners, consisting of Cequel Communications , LLC d/b/a/ Suddenlink Communications, Charter Communications, Inc., GCI Cable, Inc., Insight Communications Company, Inc., and Mediacom Communications Corporation, have no material ownership interests in programming networks. Each of the Cable Petitioners is gravely concerned about the broadcast television industry's impending digital transition and the potential disruption to the American public.

Pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. §1.401, the Cable Petitioners hereby request that the Commission quickly establish a special rule governing retransmission consent negotiations for the period immediately surrounding the February 17, 2009, digital transition deadline. Specifically, the Cable Operators seek a brief "quiet period" running from the date of Commission adoption through May 31, 2009, during which time broadcasters and cable operators, failing the successful execution of a new retransmission consent agreement, would be required to maintain the *status quo* regarding the carriage of

retransmission consent signals. Throughout this period, the parties would remain free to negotiate new retransmission consent carriage agreements, but neither party would be allowed to remove the broadcast signal from the cable system. This temporary *status quo* approach (comparable to the existing prohibition against the removal of broadcast channels during the ratings "sweeps" periods) would help ensure that the cable industry's delivery of broadcast signals to the viewing public is not unnecessarily interrupted at a particularly critical juncture in the digital transition.

As is explained in greater detail below, the imposition of the proposed rule would unquestionably serve the public interest. If adopted, the quiet period would prevent failed retransmission consent negotiations from undermining the many efforts now being undertaken by Congress, the Commission, the NTIA, and the participating industries to ensure a seamless digital transition for consumers. Given the fast-approaching transition deadline, and the need to reduce the risk that retransmission consent disputes will adversely affect consumers, the Cable Petitioners respectfully request that the Commission conduct the requested rulemaking on an expedited basis.

I. A Retransmission Consent Quiet Period Is Necessary to Ensure the Digital Transition Proceeds Smoothly

In just ten short months, the most significant change in the history of the nation's broadcast television industry will occur on a single day.[1] On February 17, 2009, thousands of analog broadcast signals across the country will go dark. This change will potentially impact several hundred million television viewers. It is, therefore, imperative that the Commission do everything in its power to ensure that the transition advances in an orderly fashion and as transparently as possible. In simplest terms, this requires the Commission to minimize potential viewer disruption.

The United States Government has a substantial stake in minimizing the viewer disruption that might be associated with the digital conversion. Indeed, Congress has committed $1.5 billion to subsidize the distribution of digital-to-analog converters, and the Commission itself has adopted a variety of educational and signal carriage requirements to reduce the risk of viewer disruption. All of these efforts are intended to maintain consumer access to broadcast programming, and to educate consumers about what they need to do to maintain that access.

These governmental efforts invariably assume that the nation's cable systems will continue to deliver broadcast programming after the transition deadline in a manner that will avoid the need for any immediate action on the part of cable customers. In other words, after February 17, 2009, almost all cable systems are expected to receive digital broadcast signals and down-convert those signals for analog delivery to customers.[2] By continuing today's analog

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[1] *As TV Goes Digital, Some Viewers May Be in the Dark,* WASHINGTON POST, Page A01, March 31, 2008 ("[T]he transition to digital-only television -- the biggest change for the industry since color TV -- could leave some people in the dark.").

[2] An exception exists for cable operators, like GCI, that commit to providing all-digital delivery.

delivery, the cable industry will effectively supplant the need for the majority of the nation's television viewers to quickly obtain new digital equipment simply to maintain access to broadcast programming.

In fact, the cable industry generally intends to maintain analog delivery of broadcast signals on the vast majority of cable systems for the foreseeable future. As the majority of the nation's television households today are cable customers, this approach should, *at least in theory*, minimize the consumer impact of the broadcast industry's impending transition.[3]

The cable industry does *not*, however, have complete control over its retransmission of broadcast signals. Broadcasters can lawfully prohibit such retransmission. Given the increasingly contentious retransmission consent climate, and the fact that the next scheduled retransmission consent cycle begins January 1, 2009 (just seven weeks before the digital transition deadline), there is a very real possibility that private commercial disputes over retransmission consent terms will require cable operators to *drop* broadcast signals at the very time that the government and the public are most dependent on cable's delivery of those signals in a down-converted analog format.

The Commission should recognize now the tremendous consumer confusion and frustration that will erupt next winter if cable customers – who have been repeatedly assured by the government and participating industries that they need not worry about the transition deadline – suddenly find that popular broadcast channels might be, or actually have been, removed from their channel line-up as a result of a retransmission consent dispute. A collection

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That commitment ensures that no special equipment purchase will be required solely to maintain access to broadcast programming.

[3] Although this Petition focuses on cable-related retransmission consent negotiations, the Cable Petitioners have no objection to extending the same rule to DBS retransmission consent negotiations, and it would make sense to do so.

of retransmission consent disputes could quickly undermine carefully nurtured public confidence in, and support for, the digital transition. The Cable Petitioners respectfully submit that granting this Petition would efficiently and effectively ensure that a smooth digital transition is not hampered by breakdowns in the retransmission consent marketplace.

Significantly, Senator Rockefeller has acknowledged the interplay between retransmission consent negotiations and the digital transition. He recently asked NAB, NCTA, and Commissioner Adelstein their opinions on "the creation of a 'quiet period,' to wit: If a broadcaster and cable operator failed to reach an RTC agreement by December 31, 2008, neither party would be allowed to remove or threaten to remove a broadcast signal from a cable system for a reasonable period of time before and after December 31, 2008."[4]

Commissioner Adelstein responded to Senator Rockefeller's inquiry by expressly supporting the creation of a "quiet period." Commissioner Adelstein explained:

> [I]t would be in the public interest to further separate the end of the retransmission cycle from the DTV transition cut-off date... Since such a further separation of the dates would help ensure that consumers will not experience any possible disruption in service during a time of other changes and possible disruption, it would appear to serve the public interest.[5]

The Cable Petitioners agree with Commissioner Adelstein's analysis. The digital transition potentially poses dramatic and far-reaching consequences for the American public. The Commission cannot risk waiting to examine the actual impact of retransmission consent negotiations before acting. Even the threat that a cable system may be compelled next winter to drop a long-carried broadcast signal will greatly complicate the transition by muddling the

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[4] *Hearing on the Digital Television Transition: Government and Industry Perspectives, Senate Committee on Commerce, Science, and Transportation, October 17, 2007 ("DTV Transition Senate Hearing,")* Questions for the Record from Senator Rockefeller.

[5] *DTV Transition Senate Hearing*, Questions for the Record from Senator Rockefeller.

Commission's education initiatives. In the event of a retransmission consent dispute, cable customers suddenly may be told that they *might* lose access to popular broadcast programming at the very same time they are being instructed not to worry about losing access to broadcast programming during the digital transition.

The Cable Petitioners recognize that not every retransmission contract is scheduled for renegotiation on December 31, 2008, and the Cable Petitioners also recognize that *many* retransmission consent negotiations are likely to reach a satisfactory resolution. But this does not mean that the Commission should be complacent.

In his response to Senator Rockefeller's inquiry, NAB President David Rehr suggested that no regulatory action is necessary because so few retransmission contracts will expire at year end. He stated:

> It should be noted that for most TV stations the 3-year election cycles are irrelevant because broadcasters and MSOs enter into carriage contracts longer than 3-years and are not linked to the election cycle. Therefore, I see the retransmission consent issue as quite separate from the digital cutover date. The duration of these contracts varies according to the negotiations. While some retransmission consent delays may expire towards the end of 2008 it is purely coincidental and in no way because of a three-year election cycle.[6]

The facts clearly contradict Mr. Rehr's statements.

The Cable Petitioners collectively have scores of existing retransmission consent agreements with broadcasters that are set to expire by the end of 2008. This includes hundreds of broadcast stations across the country. An estimated 8.4 million households, representing approximately 98% of the aggregate households served by the Cable Petitioners, will be affected by retransmission consent renegotiations by the end of 2008. In fact, an estimated 7.8 million

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[6] *DTV Transition Senate Hearing*, Questions for the Record from Senator Rockefeller, Mr. David Rehr, Response to Question 1.

households, representing approximately 91% of the aggregate households served by the Cable Petitioners, currently receive *two or more* local broadcast signals pursuant to a retransmission consent agreement scheduled to terminate by year end. These numbers reveal that a great amount of retransmission consent negotiations affecting millions of cable subscribers must occur prior to the digital transition.

Contrary to Mr. Rehr's suggestion, retransmission consent negotiations are not "quite separate" from the digital transition. On the contrary, they are quite intertwined and, during the coming digital transition, could cause widespread disruption.[7]

II. Protecting the Digital Transition is of Paramount Importance

The Commission has repeatedly recognized the paramount importance of ensuring a smooth digital transition. Late last winter, in adopting the *Third DTV Periodic Review Order* (which sets rules for the technical relocation of broadcast allotments from analog to digital channels), Chairman Martin emphasized the overwhelming public interest justification for taking "whatever actions are necessary to ensure that the digital transition remains on track."[8] In adopting the *DTV Education Order* this spring, Chairman Martin reiterated, "One of the Commission's top priorities is to do everything in its power to facilitate a successful DTV transition."[9] Each Commissioner has expressed a similar commitment. They have stated that the

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[7] Even if Mr. Rehr's factual assessment were correct, it still would not justify Commission inaction. To the contrary, if there are relatively few broadcast stations at issue, the Commission has all the more reason to ensure that a few disputes do not undermine its overall transition message. If there really are so few broadcast stations affected, Mr. Rehr and NAB would have little basis to object to the instant Petition, as the proposed "quiet period" would have minimal impact on NAB members.

[8] *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 07-228 (rel. December 31, 2007) ("*Third DTV Periodic Review Order*"), Statement of Chairman Martin.

[9] *In the Matter of DTV Consumer Education Initiative*, Report and Order, FCC 08-65, Statement of Chairman Martin (rel. March 3, 2003) ("*DTV Education Order*").

DTV transition is the top priority of the Commission,[10] and that more should be done to ensure the transition goes smoothly.[11]

Significantly, the Commission has already concluded that it has a vital interest in ensuring that cable customers can continue viewing broadcast signals after the transition. That objective underlies the Commission's recent *DTV Must Carry Order*. In adopting that Order, Chairman Martin explained:

> This item, at its core, is about the consumer. It is about ensuring that all Americans with cable – regardless of whether they are analog or digital subscribers – *are able to watch the same broadcast stations the day after the digital transition that they were watching the day before the transition.*[12]

Chairman Martin further elaborated on the need to preserve post-transition broadcast signals over cable in the recent *DBS Digital Must Carry Order*.[13] Commenting on the impact of the cable digital must-carry rules, he observed:

> [T]he Commission made sure the 34 million households that subscribe to analog cable will be able to continue to watch broadcast television after the transition as they did the day before. This allowed the Commission to focus its energies on assisting over 14 million households that rely exclusively on over-the-air signals.[14]

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[10] *DTV Education Order*, Statement of Commissioner Tate ("I believe this Commission should be focused on two major policy goals: broadband deployment to every corner of America, and a successful DTV transition. These goals underscore our commitment to keep America safe, informed, and connected"); *DTV Education Order*, Statement of Commissioner McDowell ("The Commission's top priority this year is the success of the DTV transition.").

[11] *DTV Education Order*, Statement of Commissioner Adelstein ("The Commission should begin to take a more proactive leadership role in the DTV education effort."). *DTV Education Order*, Statement of Commissioner Copps ("I continue to believe that a coordinated, private sector-public sector partnership is absolutely essential—it may just be our last best hope for something resembling a smooth DTV transition.").

[12] *Carriage of Digital Television Broadcast Signals,* Third Report and Order, 22 FCC Rcd. 21064, ¶ 2 (rel. November 30, 2007) ("*DTV Must Carry Order*"), Statement of Chairman Martin (emphasis added).

[13] *Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, FCC 08-86 (rel. March 27, 2008) ("*DBS Digital Must Carry Order*").

[14] *DBS Digital Must Carry Order*, Statement of Chairman Martin.

This policy goal will be undermined if retransmission consent disputes around the transition date temporarily deny delivery of broadcast signals over cable. The requested rulemaking is therefore a critical component to achieving the Chairman's stated digital transition objectives. Given the Commission's belief that cable customers should have continued access to must-carry stations after the transition, surely it is even more an imperative that these same customers have continued access to popular broadcast programming carried pursuant retransmission consent, at least in the period immediately surrounding the transition deadline. In addition, grant of the Petition will ensure that the Commission does not have to divert attention from over-the-air transition issues to address retransmission consent disputes arising during the digital transition. Unless the Commission quickly establishes the requested quiet period, it is likely that, in at least some instances, private negotiations next winter will lead to a disruption in the cable industry's delivery of broadcast programming.

III. The Commission Has The Statutory Authority To Grant This Petition.

There is little doubt that the Commission has the necessary authority to adopt the requested rule change. Specifically, Section 336 of the Communications Act, entitled "Broadcast Spectrum Flexibility," provides the Commission with expansive authority over ensuring a smooth digital transition. It broadly provides that the Commission shall "prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity."[15] The Commission acknowledged its broad authority over the digital transition in the recently-adopted *DTV Education Order*. It noted that "Congress has endowed the Commission with general authority to prescribe regulations that will 'promote the orderly

[15] 47 U.S.C. § 336(b)(5).

transition to digital television.'"[16] The Commission reiterated that conclusion through the *DTV Education Order*. It explained, for example:

> Congress both mandated the digital transition and vested the Commission with the power to 'prescribe such regulations as may be necessary for the protection of the public interest, convenience, and necessity' in connection with the digital transition.[17]

Chairman John Dingell of the House Committee on Energy and Commerce and Chairman Edward Markey of the Subcommittee on Telecommunications and the Internet have also emphasized that they consider the Commission to be the "lead agency for digital transition" and that the Commission should use its existing authority to address consumer issues associated with the transition.[18] When asked by Senator Rockefeller, Commissioner Adelstein indicated that he believed the Commission already had the necessary authority to adopt a quiet period.[19]

The Commission has undertaken a multi-year, multi-prong approach to the digital transition. For the past several years, the Commission has labored to bring about the technical relocation of broadcast allotments from analog to digital channels through a series of orders, most recently by issuing its *Third DTV Periodic Review Order*. But the importance of Commission action on the digital transition has not been limited to broadcaster relocation. Earlier this year, for example, the Commission found that preserving viewability of broadcast

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[16] *DTV Education Order* at ¶ 45.

[17] *Id.* at ¶ 19. *See also id,* at ¶ 5 ("The Commission is statutorily required to promote the orderly transition of full power stations from analog to digital television.") and ¶ 14 ("The . . . rules we adopt today makes clear that we are focusing on Congress's command to promote an orderly full-power transition."

[18] Letter to FCC Commissioners from Congressman Dingell and Congressman Markey, pp. 2-3, May 24, 2007.

[19] *DTV Transition Senate Hearing*, Questions for the Record from Senator Rockefeller to the Honorable Jonathan Adelstein ("Question 3. If we agree that a further separation of these deadlines is in the public interest, can the FCC create said separation by rulemaking or is legislation required? A: ...I believe it is within the Commission's authority to launch a rulemaking to examine this issue.").

signals over cable systems was an equally important transition goal. The Commission explained that it was adopting post-transition broadcast must-carry rules "to ensure that cable subscribers will continue to be able to view broadcast stations after the transition and that they will be able to view those broadcast signals at the same level of quality in which they are delivered to the cable system."[20] In doing so, the Commission clarified that its responsibility for ensuring a smooth digital transition extends not only to viewers of over-the-air television, but to cable subscribers as well. The Commission observed that "Congress intended that the benefits of the digital transition should accrue to all consumers."[21] Adoption and implementation of a brief retransmission consent "quiet period" is consistent with that policy approach and it is well within the Commission's purview.

IV. The Commission's and Industries' DTV Education Efforts are Predicated on Cable's Uninterrupted Delivery of Broadcast Programming.

A significant part of the Commission's digital transition initiative has been directed to educating consumers. This educational rule was manifest in the Commission's recent adoption of the *DTV Education Order*. A key part of that educational initiative is emphasizing the beneficial transition role of cable providers. The FCC's own website informs cable subscribers that they need not worry about the digital transition:

> Cable and satellite TV subscribers with analog TVs hooked up to their cable or satellite service should not be affected by the February 17, 2009 cut-off date for full-power analog broadcasting.[22]

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[20] *DTV Must Carry Order* at ¶2.

[21] *DTV Must Carry Order* at ¶ 2. The Commission also recognized that Section 614 requires it to modify its must-carry rules as necessary for the transition to digital broadcasting. *DTV Must Carry Order* at ¶ 5.

[22] *FAQs – Consumer Corner*, DTV.gov, available at http://www.dtv.gov/consumercorner.html#faq3 (visited March 18, 2008).

Similarly, the NTIA's converter box program website tells cable subscribers they should expect to continue to receive their television signals and should not be affected by the transition:

> You will need to take action before February 17, 2009 if you currently watch TV on an analog TV set that is not connected to cable, satellite or other pay TV service. If you own a television with a digital tuner or subscribe to a pay TV service, you will likely continue to receive TV programming as usual after the transition.[23]

The NAB's "DTV Answers" website also states that the transition will only affect over-the-air viewers, *not* cable subscribers:

> Consumers who receive over-the-air television signals through antennas on television sets that are equipped with analog tuners – and who do not subscribe to cable, satellite or a telephone company television service provider – will be affected by the transition.[24]

The "DTV Transition Coalition" website[25] similarly assures customers that they need not worry about the digital transition if they subscribe to cable. It states:

> Analog television sets receiving free, over-the-air programming will still work after that date, but owners of these TVs will need to acquire converter boxes to change digital broadcasts back into the old analog format... If you're a cable or satellite subscriber, you aren't likely to be affected by the DTV transition...[26]

The cable industry is also spending millions of dollars to ease customer concerns regarding the digital transition. The Cable industry's own recently launched website "The Digital Transition is coming...Are You Ready?" informs cable subscribers how the digital

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[23] *NTIA TV Converter Box Coupon Program website*, available at https://www.dtv2009.gov/Options.aspx (visited March 31, 2008).

[24] *DTV Answers, an initiative of the National Association of Broadcasters*, available at http://www.dtvanswers.com/dtv_affected.html (visited March 31, 2008).

[25] The DTV Transition Coalition includes CEA and NCTA in addition to NAB and is linked to from the NAB website at http://www.nab.org/AM/Template.cfm?Section=Digital_Broadcasting (visited March 18, 2008).

[26] *See DTV Transition dot org* website, available at http://www.dtvtransition.org/index.php?option=com_content&task=view&id=13&Itemid=29 (visited March 18, 2008).

transition will impact them. Like the FCC, NTIA, and NAB websites, NCTA's website assures cable's continued delivery of broadcast programming:

> If you are a cable customer, you may have to do little or nothing to enjoy your favorite programming after the switch to digital TV (DTV). Your cable provider will take care of the transition for you! That's because your cable company already has technology in place to handle DTV. It does this by capturing these digital signals and sending them to your home through the same cable connection that delivers popular national channels like ESPN, CNN, HBO and hundreds of others.[27]

Each message clearly assumes that cable operators will continue to deliver broadcast programming after the digital transition deadline, even though failed retransmission consent negotiations could disrupt such carriage. Without a rule specifically protecting retransmission of broadcast signals during the very sensitive transition period, the Commission, the broadcast industry, and the cable industry all face the risk that their educational efforts being for naught.

V. A Brief Retransmission Consent Quiet Period Would Be Of Great Public Benefit and Would Represent a Minimal Level of Regulatory Intrusion

As the Commission is well aware, the next retransmission consent cycle is fast approaching. As noted above, over 98% of the households served by the Cable Petitioners could be affected by retransmission consent agreements terminating at year-end. This could trigger any variety of notices regarding possible broadcast station deletions and actual deletions beginning in late 2008.[28] If retransmission consent negotiations are extended into 2009, notices regarding possible broadcast station deletions and actual deletions could occur immediately before and immediately after the transition deadline. As retransmission consent negotiations

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[27] *The Digital Transition is coming... Are You Ready?*, available at http://red.ncta.com/home.htm (visited March 18, 2008).

[28] Although some retransmission consent agreements are "off cycle" from election periods and will continue past the proposed quiet period, many other agreements are not and will expire in December of 2008 or at other points during the proposed period.

have grown increasingly contentious in recent years,[29] it is imperative that threats to the digital transition not be used as a negotiating lever for either party to extract concessions at the expense of the viewing public. Most importantly, retransmission consent disputes should not be allowed to interfere with ongoing DTV educational outreach, as they would surely increase customer confusion.

Without a quiet period, both broadcasters and cable operators will head into re-negotiations of retransmission consent agreements facing the prospect of not reaching terms for signal carriage during the critical transition period. This could lead to cable customers losing the ability to view broadcast programming over cable. This result clearly would be counterproductive to the Commission's transition efforts. The Commission should not allow private negotiations to endanger a smooth transition, particularly when this potential for disruption can be easily averted. The Cable Petitioners believe that the quiet period is the most effective, least intrusive means of accomplishing this objective,[30] and the Commission clearly has the authority to adopt it.[31]

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[29] *Disney Duels with Time Warner*, PBS NEWSHOUR ONLINE FOCUS, May 2, 2000, available at http://www.pbs.org/newshour/bb/media/jan-june00/abc_5-2.html (visited March 16, 2008); *Mediacom vs. Sinclair battle heats up*, GULF BREEZE NEWS, November 16, 2006, available at http://www.gulfbreezenews.com/news/2006/1116/island_news/009.html (visited March 16, 2008). *Happy Hostilities! The Holiday Season Brings With it the Fight Over Cable Carriage of Local TV*, BROADCASTING AND CABLE, November 13, 2006, available at http://www.broadcastingcable.com/article/CA6390354.html (visited March 16, 2008).

[30] *DTV Transition Senate Hearing*, Questions for the Record from Senator Rockefeller to the Honorable Jonathan Adelstein ("Question 2. If so, how do you believe this separation might be best achieved? Is there a better way to achieve the stated goal than the 'quiet period' described above? A: It is not clear there is a better manner to achieve this than the 'quiet period' you suggested.").

[31] *DTV Transition Senate Hearing*, Questions for the Record from Senator Rockefeller to the Honorable Jonathan Adelstein ("Question 3. If we agree that a further separation of these deadlines is in the public interest, can the FCC create said separation by rulemaking or is legislation required? A: ...I believe it is within the Commission's authority to launch a rulemaking to examine this issue.").

A retransmission consent quiet period during the digital transition would protect cable customers from suffering interruptions (or threatened interruptions) to established viewing caused by a temporary failure of negotiations between cable operators and broadcasters. The Cable Petitioners' proposal for a brief, quiet period is narrowly tailored to achieve an important government and public interest, and it would be easy to implement. Simply put, if a cable system is already carrying a broadcast signal pursuant to retransmission consent on the date the Commission adopts the requested relief, that carriage would be maintained on the same terms until after the quiet period ends on May 31, 2009. The objective would be to preserve the *status quo* from the viewer's perspective.

Thus, under the Cable Petitioners' proposal, if a cable system is already offering a retransmission consent signal in digital and analog, it would continue to do so throughout the quiet period. If the cable system is offering a retransmission consent signal only in analog at the beginning of the quiet period, it would down-convert the signal after February 17, 2009, and continue delivering it in analog to its customers.[32]

The requested rule would *not* provide any broadcaster with carriage it had not previously secured, nor would it require any cable operator to devote carriage capacity it had not previously provided. At most, there would be a *brief* extension of the *status quo*.[33] Cable carriage of retransmission consent stations would simply continue under the terms previously established through private negotiations. Moreover, the parties would be free to reach alternative

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[32] In the alternative, Cable Petitioners, like GCI, that are converting their systems to all-digital will satisfy this requirement by issuing digital set top boxes to all customers instead of down-converting the signal. *See In the Matter of GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 8576 (rel. May 04, 2007) In either case, having to drop retransmission channels in dispute during this period would be disruptive and confusing to consumers.

[33] This would be not unlike the short-term extensions regularly granted in retransmission consent

arrangements. Many parties are, in fact, likely to enter into long-term agreements during this period that would supplant the Commission's *status quo* mandate. The Commission would simply be acting to ensure that there is no unnecessary viewer disruption during this critical period.

In legal terms, the Cable Petitioners are merely asking that, failing the successful execution of new retransmission consent agreements, the *status quo* be maintained during the digital transition so as to preserve uninterrupted viewability of broadcast signals. While neither broadcasters nor cable operators would suffer any detrimental effects from a temporary quiet period, the clear winners in this proposal are American consumers.

The limited time frame proposed for the requested relief is the minimum needed to accomplish its objective. The transition deadline is already fast approaching, and associated educational efforts are now underway in earnest. The sooner the Commission adopts the requested relief and initiates the quiet period, the better. A start date *prior* to year-end is imperative. The proposed May 31, 2009 end-date would provide an essential consumer adjustment period *after* the digital transition deadline on February 17, 2009, before any deletions associated with expiring retransmission consent contracts could commence. This end-date to the quiet period would also allow broadcasters and cable operators to focus on resolving critical digital transition issues *before* resuming ordinary business negotiations over retransmission. Furthermore, if the quiet period ended nearer to the February 17, 2009 deadline, the consumer education objective would be undermined, as notices of possible signal deletion would be occurring at the very time that customers are still working their way through the transition.

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negotiations where the parties continue to address the provisions of long-term contracts.

The Cable Petitioners note that one retransmission consent *status quo* regime already exists. Broadcast stations cannot be deleted during the ratings sweeps period.[34] If ratings sweeps periods justify the imposition of special regulatory restrictions on signal carriage transactions for four whole months out of every year, surely the largest single event in the history of television warrants similar protections.

Although the Cable Petitioners believe the requested relief could be accomplished through various regulatory means, one possibility would be for the Commission to adopt a new note to existing Section 76.1601 of the Commission's rules. That section, entitled "Deletion or Repositioning of Broadcast Signals," already includes a simple note that broadcast signals may not be deleted or repositioned during the sweeps periods.[35] A second note could be added expressly prohibiting the deletion or repositioning of broadcast signals during the brief quiet period surrounding the digital transition. Alternatively, the Commission could add a new subsection to existing Section 76.65. That section, entitled "Good Faith and Exclusive Retransmission Consent Complaints," establishes minimum expectations for "good faith" retransmission consent negotiations.[36] A new provision or note could be added establishing that

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[34] *See* Note to 47 C.F.R. § 76.1601 ("No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods--generally including February, May, July and November--commonly known as audience sweeps."). *Time Warner Cable; Emergency Petition of ABC*, 15 FCC Rcd 7882, ¶ 7 (rel. May 3, 2000) ("Upon expiration of an existing retransmission consent during a sweeps period a cable operator is required to carry the signal of a local television station that is eligible for must-carry under authorization provided by, and pursuant to, the requirements of Section 614 until the conclusion of the current sweeps period. For this reason, we reject Time Warner's arguments that carriage in this situation would be unworkable because neither party will know the terms of carriage and that such carriage exposes Time Warner to copyright liability.")

[35] 47 C.F.R. § 76.1601, Note 1.

[36] 47 C.F.R. § 76.65.

"good faith" negotiations require the creation of a *status quo* carriage period surrounding the digital transition period.

VI. Expedited Treatment of this Petition is Appropriate

Given the important benefits of the digital transition and the potential for harm to the Cable Operators' and broadcasters' viewers, the Commission should consider this Petition on an expedited basis.[37] Specifically, the Cable Operators request that the Petition promptly be placed on public notice, with sufficient time for parties to file comments and reply comments and for the Commission to adopt an implementing rule prior to October 1, 2008 – the deadline for delivery of the next must-carry / retransmission consent elections. A ruling by October 1, 2008, would give cable operators and broadcasters an opportunity to respond rationally, negotiate accordingly, and focus their attention on ensuring a successful and smooth transition for television viewers. Grant of expedited treatment in this case would be in accordance with the Commission's policy of taking all reasonable measures to ensure the digital transition occurs with limited disruptions for the *entire* television viewing public.[38] Without resolving this matter on this expedited basis, the Commission risks confusion increasing, rather than decreasing, as the deadlines for retransmission consent and the digital transition approach.

CONCLUSION

Given the scope and nature of the impending digital transition, it is clear that the "quiet period" advocated by the Cable Petitioners is a modest and justified step to protect the viewing

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[37] *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, 15 FCC Rcd 10456, ¶ 28 (rel. May 18, 2000) (granting expedited treatment of waiver requests to accelerate the provision of innovative services and prevent harm to the public interest).

[38] *DTV Must Carry Order*, Statement of Commissioner McDowell ("We at the Commission have worked hard to establish rules and policies to ensure a smooth digital transition for broadcast television. We now turn towards a separate but related issue: addressing carriage of broadcasters'

public from unnecessary disruption and confusion at a critical juncture in the digital transition. The Commission has clear authority and responsibility to take those steps necessary to ensure an orderly digital transition.

Accordingly, the instant Petition should be granted, and the Commission should initiate a rulemaking to adopt the requested rule on an expedited basis.

Respectfully submitted,

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Their Attorneys

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Charter Communications, Inc.

GCI Cable, Inc.

Insight Communications Company, Inc.

Mediacom Communications Corporation

April 24, 2008

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digital signals by cable operators.").

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