

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

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

**OPPOSITION TO PETITION FOR RECONSIDERATION OF THE NATIONAL
ASSOCIATION OF BROADCASTERS AND THE ASSOCIATION OF MAXIMUM
SERVICE TELEVISION, INC.**



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I. Introduction

In their Petition for Reconsideration (“Petition”),¹ the National Association of Broadcasters and the Association for Maximum Service Television, Inc. (collectively, “Petitioners”), ask the Commission to reconsider aspects of the Commission’s Fourth Report and Order that provides a digital must carry exemption for small cable systems.² Specifically, Petitioners propose that the exempted small cable systems must notify customers, affected must carry stations, and the Commission of its intent to utilize the exemption and the factual basis supporting its qualification for the exemption.³ ACA opposes the Petition for the following reasons:

- The Petition places small cable operators at a competitive disadvantage, requiring them to provide notice, particularly to their customers, without a similar notice requirement on the DBS providers they compete against.
- The Petition would obligate exempt cable systems to notify customers of the absence of an HD broadcast signal, without a corresponding notice requirement on broadcasters to notify their viewers when they do not offer HD content.
- Petitioners’ claim that broadcasters need system information from small cable operators does not withstand even superficial scrutiny.
- The Petition would impose substantial administrative burdens and costs on small cable operators.

For these reasons, the Commission must deny the Petition.

¹ See *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Petition for Reconsideration of the National Association of Broadcasters and Maximum Service Television, Inc., CS Docket No. 98-120 (filed Nov. 17, 2008) (“*Petition for Reconsideration*”).

² See *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fourth Report and Order, 2008 WL 4092895, ¶ 37 (2008).

³ *Petition for Reconsideration* at 2.

About the American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve more than 7 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. THE COMMISSION SHOULD DENY THE PETITION BECAUSE THE NOTICE REQUIREMENTS WILL PUT EXEMPT SYSTEMS AT A COMPETITIVE DISADVANTAGE.

The Petition seeks to impose a notice requirement on exempt small cable systems without placing a similar obligation on DBS operators. If granted, this poses a substantial competitive risk for these cable systems.

Similar to the exemption granted to small cable systems, the Commission provided DBS their own digital must carry exemption.⁴ Yet, Petitioners seek to impose the notice requirement solely on the small cable systems with limited bandwidth and small subscriber bases that will utilize the exemption. ACA has consistently documented at the Commission the competitive threat that DBS poses to small and medium-sized cable operators.⁵

⁴ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd. 5351, ¶ 8 (2008) ("Therefore, because of the serious technical difficulties that we find satellite carriers face, we will permit them to "phase-in" their carriage of all HD signals on a market-by-market basis.").

⁵ See, e.g., *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Reply Comments of American Cable Association, at 3 (filed Oct. 27, 2008); *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, Notice of Proposed Rulemaking, MB

Therefore, in this highly competitive video marketplace, imposing new obligations solely on small cable systems will disrupt the marketplace and specifically harm small cable systems and their customers. In the past, during retransmission consent disputes, when a broadcaster pulls its signal, runs screen crawls, or offers incentives to switch to DBS, the cable operator has suffered substantial subscriber losses.⁶ Petitioners' proposal to require exempt small cable systems to notify their subscribers – one that Petitioners have not sought to place upon DBS – poses the same risk.

The Commission should reject the Petition.

III. THE COMMISSION SHOULD DENY THE PETITION BECAUSE BROADCASTERS DO NOT HAVE TO INFORM CUSTOMERS OF THE QUALITY OF THEIR BROADCAST FEED.

The Petition targets only very small cable systems. Arguments for requiring small cable systems to notify customers of the lack of HD signals, without any corresponding obligation for broadcasters not offering HD content, are hypocritical.

Petitioners claim that the Commission must require cable systems to notify their customers because “consumers should have access to the information they need to make educated decisions about their selection of equipment, programming, and services throughout the transition.”⁷ Moreover, Petitioners argue that “the availability of particular channels in HD is undoubtedly relevant to that consumer’s decision about whether to invest in an HD set.”⁸ This new obligation does not serve the public interest

Docket No. 07-29, Comments of American Cable Association at 11-13 (filed Apr. 2, 2007); *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06-68, Reply Comments of American Cable Association, at 3 (filed Apr. 21, 2006).

⁶ See, e.g., *In the Matter of Mediacom v. Sinclair*, 22 FCC Rcd. 47, Mediacom Emergency Retransmission Consent Complaint (filed Oct. 31, 2006).

⁷ *Petition for Reconsideration* at 2.

⁸ *Id.* At 4.

so long as broadcasters, especially must carry stations affected by the exemption, are not similarly required to provide notice of their HD content.

Tellingly, Petitioners ignore the fact that the Commission does not obligate broadcasters to notify their viewers when their content is not offered in HD. While broadcasters that air network programming may voluntarily make some program scheduling information available to the public, including the availability of HD programming, for stations that elect must carry, the information made available is often incomplete and does not indicate which content is not offered in HD.

If Petitioners truly cared about educating consumers, they would seek a process where all broadcasters, especially must carry stations, would publish locally the amount of HD content they provide. Instead, Petitioners seek to impose a costly, burdensome notice requirement only on very small cable operators.

For these reasons, the Commission should reject the Petition.

IV. THE COMMISSION SHOULD DENY THE PETITION BECAUSE BROADCASTERS DO NOT NEED SYSTEM INFORMATION FROM SMALL CABLE OPERATORS.

Petitioners argue that the Commission must impose a notice requirement to “provide information to broadcast stations relevant to their operation and competitive position in the marketplace.”⁹ This claim does not withstand even superficial scrutiny.

Petitioners have no legitimate argument for needing “[u]p-to-date information on the subscribership, technical capacity, and ownership structure of individual cable systems.”¹⁰ Broadcasters already have a means to obtain relevant information from

⁹ *Id.* at 7.

¹⁰ *Id.* at 5.

cable systems – through the system’s public file. Petitioners tout localism when it is convenient, but then act as if their membership has no means of knowing about the communities they serve. In most circumstances, a simple phone call from the interested station to the local cable operator will permit the local station to determine whether the operator is subject to the exemption. Local television stations also have access to the cable operator’s channel line-up. Through this helpful tool, subscribers, would-be subscribers, and local television stations can determine whether the operator carries individual channels in HD.

Additionally, Petitioners’ concerns about exempted operators’ complying with the material degradation rules are misplaced.¹¹ Cable operators have no incentive to degrade a broadcast signal any further than the rules permit. Otherwise, the cable operator would risk losing customers and exposing themselves to hefty FCC fines and penalties. To the extent that Petitioners are concerned that non-qualifying cable operators may avail themselves of the exemption, obligating properly exempted operators to provide notices burdens the wrong group of operators. Instead, Petitioners should seek to impose an obligation on non-qualifying operators.

Petitioners attempt to justify the imposition of these administrative burdens by claiming that the Commission already requires cable operators to provide notices to affected broadcasters or subscribers in several similar circumstances.¹² These examples all describe a cable operator undergoing a change that will have a significant impact on a broadcaster’s carriage status (such as the 1,000 subscriber non-duplication

¹¹ *Id.*

¹² *Petition for Reconsideration* at 6.

exemption or deletion of a signal) or level of carriage (such as repositioning a signal). An important distinction is necessary here – even if a cable operator receives a digital must carry exemption, the cable operator will continue to carry the broadcaster's signal.

Therefore, the Commission should deny the Petition.

V. THE COMMISSION SHOULD DENY THE PETITION BECAUSE IT WOULD IMPOSE SUBSTANTIAL ADMINISTRATIVE BURDENS AND COSTS ON SMALL CABLE OPERATORS.

ACA members face inherent difficulties bringing affordable advanced services to rural America. The Commission should not add to this burden by increasing notice requirements.

For small cable operators, Petitioners' notice proposal merely adds to the cost of doing business. As ACA has repeatedly noted, regulatory barriers already artificially impede competition and slow infrastructure development and the deployment of advanced services in ACA members' service areas.¹³ Sharply rising operational costs further raise the expense of doing business in smaller markets. This is one of the main reasons that the Commission granted the HD exemption to these small systems.

Moreover, during normal business times, for many small cable operators with limited administrative resources, keeping pace with the deadlines for the many filings and fees imposed under the Commission's regulations results in substantial administrative burdens and costs. And the current marketplace is far from normal. Companies are currently planning and implementing strategies to provide for a

¹³ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, Notice of Inquiry, GN Docket No. 07-45, Comments of the American Cable Association (filed May 31, 2007); *In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket No. 06-189, Comments of the American Cable Association (filed Nov. 29, 2006).

successful DTV transition. ACA members who qualify for the exemption should not have to use precious resources to send out and track unnecessary notices to customers, broadcasters, and the Commission. Mandatory reporting requirements and notifications are an unnecessary burden. The Petition should be denied.

VI. Conclusion

ACA opposes the Petition. It disingenuously targets very small cable operators, many of which need the HD exemption to continue to provide service. Moreover, it would place these cable operators at a competitive disadvantage. Finally, the Petition would impose unnecessary burdens on small cable operators with limited administrative resources. For the reasons set forth above, the Commission should deny the Petition.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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