

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

In the Matter of:

Carriage of Digital Television Broadcast
Signals: Amendment to Part 76 of the
Commission's Rules

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CS Docket No. 98-120

**CHARTER COMMUNICATIONS, INC.'S
OPPOSITION TO PETITION FOR RECONSIDERATION BY NAB AND MSTV**

The NAB and MSTV Petition for Reconsideration proposes new paperwork, mass mailing, and FCC compliance obligations on small cable systems before they qualify for relief from mandatory carriage of the high definition version of broadcast signals. The Petition proposes that small cable systems assemble and send notices to broadcasters, to the Commission, and to subscribers of their customer count, ownership, and channel capacity. Far from serving the needs of consumers, this proposal merely places new burdens on small cable systems which are unnecessary. Because NAB offers no new reasons for this proposal, no reconsideration is due.¹

¹ NAB already requested additional consumer notice in the event of a small system waiver prior to the FCC's Fourth Report and Order, but the Commission did not impose it. See Ex Parte Letter from Erin L. Dozier to Marlene H. Dortch, MB Docket No. 98-120, p. 2 (filed August 15, 2008) (“[W]e emphasized the need for the Commission to carefully consider the consumer confusion that could result from a blanket [small system] exemption *unless some additional notification to affected cable subscribers is provided.*”) (emphasis added). Accordingly, the Commission should reject the request now. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration of Second R&O, 14 FCC Rcd 17964, ¶ 19 (rel. October 21, 1999) (“Because petitioners have offered no new reason to require permanent number portability as a precondition for an area code overlay, we reject petitioners’ requests for reconsideration of that aspect of our decision”); *Numbering Resource Optimization*, Fourth R&O, 18 FCC Rcd 12472, ¶ 27 (rel. June 18, 2003) (“AT&T otherwise raises no new evidence or arguments not already considered by the Commission. Accordingly, we decline to reconsider our prior order.”).

I. Consumers Do Not Need More Notices From Their Cable System

NAB advances this proposal without any evidence of consumer need. DTV transition notices and notice of channels added or dropped are already covered by existing rules.² NAB suggests that there is a special need to prevent fraud and to coordinate local signal carriage formats. But these suggestions do not withstand scrutiny.

For decades cable system small system exemptions have operated without the fraud or consumer confusion that NAB is now hypothesizing. For decades all cable operators have been operating under detailed technical rules applicable to must carry stations, covering VBI, material degradation, subcarriers, signal processing, and ghost-cancelling without any indication of fraud or confusion.³ Suggesting fraud and confusion, without any foundation, is not a sound basis for imposing new paperwork, mailing, and FCC compliance obligations on small systems.

Nor is there any special need for formal coordination of signal carriage formats on small systems. Small systems may be carrying a standard definition version of a high definition (“HD”) digital broadcast signal, but NAB offers no reason that this particular format for small systems would cause such confusion as to merit a new paperwork and subscriber notice regime. Satellite carries standard definition (“SD”) versions of local broadcasters in many markets without special notice.⁴ Verizon, AT&T, and DirecTV all deliver broadcast signals with different technologies, with no obligation to send special notices of their transport or display format. NAB’s added request for special notice concerning widescreen format⁵ has nothing to

² 47 C.F.R. §§ 76.1630, 76.1603(b), 76.1601.

³ 47 C.F.R. §§ 76.62(b); 76.62(c); 76.62(e).

⁴ 47 C.F.R. § 76.66(d)(3)(iv) (notice required for new local market HD carriage but not additional SD carriage); *Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, FCC 08-86, 23 FCC Rcd 5351, ¶ 22 (rel. March 27, 2008) (No special notice required for SD carriage: “In such circumstances, satellite carriers may wish to provide separate SD broadcast feeds in addition to the mandated HD feeds.”).

⁵ Petition at pp. 5-6.

do with the small system exemption. That issue is being separately considered, and has been fully briefed, in response to the Third FNPRM. There is no need to saddle small cable operators—alone among MVPDs—with these unique paperwork, mass mailing, and FCC compliance burdens.

II. NAB’s Proposal Inappropriately Puts Unique Burdens on Smaller Cable Systems

Even if more information from small cable systems would benefit consumers, NAB’s proposal is uniquely and disproportionately burdensome to these entities. FCC small system exemptions are by design supposed to reduce paperwork on small systems, not to increase it. For example, the Commission provides relief from syndicated exclusivity and network nonduplication signal carriage rules for systems with fewer than 1,000 subscribers.⁶ Small systems are not required to assemble documentation, publish their customer count, or provide detailed notices to the broadcaster and subscribers in order to be compliant with FCC signal carriage rules. The Commission likewise provides significant relief from recordkeeping for political files, sponsorship identification, EEO records, children’s programming, proof of performance, signal leakage, and EAS test records for systems with fewer than 1,000 subscribers.⁷ These are all important regulatory areas, yet nothing comparable to NAB’s proposal applies to small systems, because the point of small system exemptions is to reduce burdens, not to create new ones.

⁶ 47 C.F.R. §§ 76.95(a); 76.106(b).

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

Conclusion

Small systems have been exempt from many broadcast carriage requirements for years without evidence of harm to consumers or broadcasters. NAB's mandatory notice proposal would needlessly encumber the same small cable systems for which the HD waiver was adopted to relieve. Most importantly, additional consumer notices from systems about the waiver will not benefit consumers. For these reasons, NAB and MSTV's Petition for Reconsideration should be denied.

Respectfully Submitted,

s/ Paul Glist

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December 17, 2008

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1.429(f), I hereby certify that on December 17, 2008 I caused a copy of the foregoing Opposition to Petition for Reconsideration to be served via U.S. mail, first-class postage prepaid, on the following:

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