

April 17, 2012

EX PARTE

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Carriage of Digital Television Broadcast Signals:  
Amendment to Part 76 of The Commission's Rules, CS Docket No. 98-120**

Dear Ms. Dortch:

On April 13, 2012, Jeff Chen (Senior Vice President/Advanced Technology, Bright House Networks, LLC), Tom Wilson (Counsel, Sabin Bermant & Gould) and I met with Michelle Carey, Mary Beth Murphy, Steve Broeckaert, Evan Baranoff and John Gabrysch of the Media Bureau, along with Susan Aaron from the Office of the General Counsel, to discuss the above-referenced proceeding. On behalf of Bright House Networks ("BHN"), we reiterated the factual and legal issues advanced in BHN's recent Reply Comments.

The first portion of our meeting focused on the operational issues surrounding the Dual Carriage rule. In particular, Jeff Chen described the challenges he confronts managing bandwidth in an efficient manner to satisfy the rapidly escalating demand for internet and video services. Using one of BHN's systems as an example, Mr. Chen explained BHN's current broadband use and emphasized the potential benefits of reallocating several additional 6 Mhz slots (currently used to deliver must carry signals in analog) for broadband services.

Mr. Chen noted that BHN has already converted a substantial number of analog video channels to digital-only channels to better utilize bandwidth. He explained that BHN maintains a robust analog offering for those customers resistant to digital, that must carry channels are among the least popular programming services still offered in analog, and that the Dual Carriage rule impedes BHN's ability to manage its spectrum in a way that best meets the demands of consumers.

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Mr. Chen stated that more than 80% of BHN customers receive digital service, although he acknowledged that BHN would still be required to obtain a substantial number of converter boxes to go “all digital,” which would represent a dramatic increase in BHN’s normal capital expenditures. He explained that BHN’s Cisco-supplied systems do not currently have a low-cost DTA option available that some operators can rely upon to ease the transition to all digital operations.

The second portion of our meeting focused on the legal issues surrounding the Dual Carriage rule. We discussed the precarious constitutionality of must carry when it was adopted in 1992, and explained why the current competitive MVPD marketplace further undermines the original “gatekeeper” justification for must carry and why the absence of must carry generally (and Dual Carriage specifically) would not jeopardize the entire broadcast industry. We emphasized that Dual Carriage goes well beyond the original must carry mandate – because it requires duplicate and inefficient carriage.

We noted that the three year Dual Carriage arrangement the cable industry agreed to on the eve of the broadcast DTV Transition should not be extended further. We explained that the must carry statute certainly does not compel a Dual Carriage interpretation, and the Commission has very strong First Amendment and policy grounds to construe the statute otherwise. Specifically, the “viewability” provision should be sensibly interpreted to simply require that cable operators providing must carry signals exclusively in digital ensure that the reception equipment they provide to customers accommodates these digital must carry channels. We suggested that, if the Commission were not otherwise prepared to allow Dual Carriage to sunset, it should at least consider the option of restricting its application where an operator is willing to make digital-capable equipment available to affected customers on favorable terms.

Pursuant to Section 1.1206 of the Commission’s rules, this letter is being filed electronically with the Commission.

Very truly yours,

Steven J. Horvitz

cc: Michelle Carey  
Mary Beth Murphy  
Steve Broecker  
Evan Baranoff  
John Gabrysch  
Susan Aaron