

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Carriage of Digital Television Broadcast) CS Docket 98-120
Signals: Amendment to)
Part 76 of the Commission's Rules)

**JOINT MOTION OF AGAPE CHURCH, INC., LONDON
BROADCASTING COMPANY, THE NATIONAL ASSOCIATION
OF BROADCASTERS, AND UNA VEZ MAS, LP
FOR STAY OF VIEWABILITY ORDER**

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I. SUMMARY

Agape Church, Inc. (“Agape”), London Broadcasting Company (“London”), the National Association of Broadcasters (“NAB”), and Una Vez Mas, LP (“UVM”) (collectively, “Movants”), pursuant to Sections 1.41 and 1.43 of the FCC rules,¹ hereby jointly request a stay pending judicial review of the *Fifth Report and Order* released June 12, 2012 (“*Order*”), eliminating the viewability rule.²

II. BACKGROUND

1. Section 614(b)(7) of the Act provides that broadcast signals subject to mandatory cable carriage (so-called “must-carry” signals) “*shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.*” 47 U.S.C. § 534(b)(7) (emphasis added). The Act requires cable operators to meet these carriage obligations without discriminating among stations in terms of the “quality of signal processing and carriage.” *Id.* § 534(b)(4). Congress enacted these provisions to preserve over-the-air local broadcast stations, to promote media diversity, and to ensure fair competition.³ To achieve these goals, Congress meant

¹ 47 C.F.R. §§ 1.41, 1.43. Movants filed a Joint Petition for Review of the *Order* on July 31, 2012; the case was docketed the same day as *Agape Church, Inc. et al. v. FCC*, No. 12-1334 (D.C. Cir.).

² *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, FCC 12-59, CS Docket No. 98-120, ¶ 1 (rel. June 12, 2012).

³ *See, e.g.*, H.R. Rep. 102-628, at 51 (1992); S. Rep. No. 102-92, at 42 (1991).

for must-carry stations to be viewable “*without added equipment.*”⁴

2. In 1998, recognizing that broadcast stations completing the government-mandated transition to digital television (“DTV”) would no longer be viewable by cable subscribers with analog service, the FCC initiated a rulemaking to ensure that cable operators that had not completed their own digital conversion would continue to meet statutory must-carry obligations.⁵ Ultimately, the agency adopted a rule requiring cable operators that persist in offering analog *in addition to* digital (or “hybrid”) service to carry digital must-carry signals in analog format.⁶

For authority, the Commission relied on “a straightforward reading of the relevant statutory text” and “the structure of the provision” to hold that the statute unambiguously required that signals must be “*actually viewable*” on analog televisions. *2007 Order*, 22 FCC Rcd at 21073 ¶ 22. It rejected cable operators’ arguments that an “offer” of equipment could satisfy the viewability mandate as “at odds with . . . the plain meaning” of Section 614 because “the broadcast signals in question are not ‘viewable’” without equipment. *Id.* The rule was effective for three years from June 12, 2009 (the date of the DTV transition), subject to review

⁴ *E.g.*, S. Rep. No. 102-92, at 44, 45.

⁵ *Carriage of the Transmissions of Digital Television Broadcast Stations: Amendments to Part 76 of the Commission’s Rules*, 13 FCC Rcd 15092, 15093 ¶¶ 1-2 (1998).

⁶ *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules*, 22 FCC Rcd 21064, 21070 ¶ 15 (2007) (“2007 Order”).

“in light of the potential cost and service disruption to consumers, and the state of technology and the marketplace.” *Id.* at 21070 ¶ 16.

3. On February 10, 2012, the Commission released a Notice of Proposed Rulemaking (“*NPRM*”) that proposed to extend the rule to “June 12, 2015, unless the Commission extends the requirements prior to that date.”⁷ The FCC sought comment on whether to ensure that cable subscribers “with analog equipment[] continue to have access to must carry television signals.” *NPRM*, 27 FCC Rcd at 1714 ¶ 3. Echoing the *2007 Order*, the FCC stated that it was “*bound by statute* to ensure that must-carry signals are *actually viewable* by all subscribers.” *Id.* at 1715 ¶ 5 (emphasis added); *accord id.* ¶ 6.

Similarly, the *NPRM* recognized that the rule preserves viewership and related revenues for must-carry stations, as well as programming and media diversity for consumers, noting that “the viewability requirements remain important to consumers.” *Id.* at 1716-17 ¶¶ 7, 9. The FCC found that more than twelve million households remained wholly reliant on analog cable service, and still more rely in part on analog signals for second televisions. *Id.*

4. Given the *NPRM*’s clear proposal to extend the rule, only a handful of parties, including NAB, initially commented. Following press reports of potential repeal, NAB and numerous broadcasters urged extension of the rule for three

⁷ *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules*, 27 FCC Rcd 1713, 1727 App. A (2012) (“*NPRM*”).

years,⁸ as the FCC had initially proposed, and opposed cable operators' equipment-based proposals.⁹ They also argued that, absent extension, many analog cable households would lose the ability to view must-carry signals,¹⁰ causing must-carry broadcasters to suffer losses in viewership and revenues.¹¹

5. On June 11, 2012, the Commission adopted its *Order*. In a dramatic reversal from the *NPRM*, the agency announced the sunset of the rule effective June 12, 2012, allowing a mere six-month transition period until December 12, 2012. *Order* ¶ 1. The *Order* accepted an equipment-based approach, under which hybrid cable operators may cease carrying must-carry signals in analog format and require analog subscribers to install additional equipment to receive these signals provided that the equipment is "affordable." *Id.*

To reach this result, the agency abruptly "reinterpret[ed]" the statute whose meaning it previously found "plain." *Id.* ¶ 3. The FCC posited that "the statutory viewability requirement is ambiguous, and reasonably can be read . . . to permit cable operators to require the use of equipment to view must-carry signals" so long

⁸ See, e.g., Comments of NAB, CS Docket No. 98-120, at 3-6 (filed Mar. 12, 2012) ("NAB Comments"); Reply Comments of NAB, CS Docket No. 98-120, at 2-10 (filed Mar. 22, 2012) ("NAB Reply Comments"); *Ex Parte* Letter from Una Vez Mas, CS Docket No. 98-120, at 1 (filed Apr. 27, 2012).

⁹ See, e.g., NAB Reply Comments at 4-6; see *Ex Parte* Letter from NAB, CS Docket No. 98-120, at 2 (filed June 7, 2012) ("June 7 NAB *Ex Parte*").

¹⁰ NAB Comments at 6.

¹¹ June 7 NAB *Ex Parte* at 2-3.

as the equipment is “both available and affordable (or provided at no cost).” *Id.* ¶ 11; *see also id.* ¶ 8. The Commission concluded that repeal was consistent with the public interest given changes in the marketplace and technology. *Id.* ¶¶ 1, 12. In particular, it found that “low-functionality/low cost digital equipment” such as Digital Transport Adaptors (“DTAs”) are readily available. *Id.* ¶ 14.

The *Order* relies on certain cable operators’ voluntary “commit[ment]” to provide affected must-carry stations only 90 days notice, and requires only 30 days notice to affected viewers, before additional equipment becomes necessary to view a must-carry signal. *Id.*¹² It does not require any specific manner of notice.

III. THE ELIMINATION OF THE VIEWABILITY RULE SHOULD BE STAYED PENDING JUDICIAL REVIEW.

The Commission will stay an order when a party shows that: (1) it is likely to prevail on the merits of its challenge; (2) it will suffer irreparable harm in the absence of a stay; (3) a stay will not injure other parties; and (4) a stay is in the public interest.¹³ “No single factor is dispositive.”¹⁴ As set forth below, Movants have compelling legal objections to the *Order*. But “[t]o justify the granting of a stay, a movant need not always establish a high probability of success on the

¹² Not all cable operators made this commitment. *See Order* ¶ 17 & n.90, n.91.

¹³ *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service*, 26 FCC Rcd 685, 686-87 ¶ 5 n.16 (2011).

¹⁴ *Id.*; *accord AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd 14508, 14515 ¶ 14 (1998) (“*AT&T Stay Order*”).

merits. Probability of success is inversely proportional to the degree of irreparable injury evidenced.”¹⁵ Movants also have a strong showing of irreparable harm and injury to the public interest if the stay is not granted.

A. Movants Are Likely to Prevail on the Merits and, at Least, Raise Substantial Legal Issues.

1. The FCC’s “New Statutory Interpretation” Is Impermissible.

Section 614(b)(7) clearly requires that “must-carry” signals be *actually viewable*, not merely available in theory. It provides:

[Signals] carried in fulfillment of the requirements of this section *shall be provided to every subscriber* of a cable system. Such signals *shall be viewable via cable on all television receivers of a subscriber* which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install *additional receiver connections*, but *does not provide* the subscriber with such connections, or with the equipment and materials for such connections, the operator . . . shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 543(b)(3) of this title.

47 U.S.C. § 534(b)(7) (emphases added). “Congress use[s] ‘shall’ to impose discretionless obligations.”¹⁶ The legislative history confirms that the Act was intended to prevent local stations from being “located on a channel . . . that subscribers . . . cannot view *without added equipment*.”¹⁷ The *Order* falls short of

¹⁵ *Cuomo v. U.S. Nuclear Regulatory Comm’n*, 772 F.2d 972, 974 (D.C. Cir. 1985); *accord Charter Commc’ns Entm’t I, LLC*, 22 FCC Rcd 13890, 13892 ¶ 4 n.17 (Media Bureau 2007).

¹⁶ *Lopez v. Davis*, 531 U.S. 230, 241 (2001); *Coal. for Responsible Regulation, Inc. v. EPA*, -- F.3d --, 2012 WL 2381955, at *14 (D.C. Cir. June 26, 2012).

¹⁷ S. Rep. No. 102-92, at 44, 45 (emphasis added).

this legal standard, adopting a regime that, at best, ensures only that cable operators will *offer* consumers the ability to make signals viewable on analog receivers using additional purchased or leased equipment.

In addition, the agency's new interpretation is at odds with the statutory structure because it renders the distinction between the second and third sentences of Section 614(b)(7) meaningless. Although the second sentence mandates that must-carry signals "be viewable via cable on all television receivers of a subscriber which are connected to a cable system," the third sentence contemplates the use of added equipment to achieve viewability only for "additional" receivers that cable systems do not connect or for which they do not provide connections. 47 U.S.C. § 534(b)(7). The *Order* conflates the exception with the general rule of viewability by concluding that a mere "offer" of equipment can ensure viewability.

Moreover, the *Order* is inconsistent with the fundamental purpose of must-carry. Congress's overriding goal in enacting that regime was to preserve the benefits of free, over-the-air local broadcast television,¹⁸ as the FCC has often recognized.¹⁹ In addition, Congress sought to promote the availability of a

¹⁸ See, e.g., Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(12), 106 Stat. 1460, 1461 (1992) ("Cable Act"); H.R. Rep. No. 102-628, at 51; S. Rep. No. 102-92, at 42.

¹⁹ 2007 *Order*, 22 FCC Rcd at 21091 ¶ 55; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 6723, 6745 ¶ 104 (1994) ("1994 Memorandum Opinion and Order").

diversity of views and information²⁰ and to promote fair competition in the market for television programming by, among other things, ensuring that must-carry broadcasters have equal access to the same audience as other program suppliers.²¹ The *Order* directly conflicts with these objectives by disadvantaging broadcasters that rely on must-carry for cable carriage.²²

The *Order* also sharply departs from the Commission’s prior, longstanding interpretation of Section 614(b)(7) as unambiguously *precluding* the use of equipment “offered” by cable operators to ensure viewability.²³ The agency reaffirmed this reading when it adopted the viewability rule, which it found compelled by the “plain meaning of the statutory text as well as the structure of the provision[.]” *2007 Order*, 22 FCC Rcd at 21074 ¶ 22. There, the Commission rejected arguments that an “offer to sell or lease . . . a converter box” to enable viewability satisfied the statute, reasoning that, for analog subscribers without added equipment, must-carry signals are not viewable. *Id.*²⁴ In the *NPRM*, the

²⁰ See, e.g., Cable Act § 2(a)(4); *id.* § 2(b)(1).

²¹ See Cable Act § 2(b)(5).

²² See *infra* pp. 13-16.

²³ See, e.g., *1994 Memorandum Opinion and Order*, 9 FCC Rcd at 6727 ¶ 15; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, 2974 ¶ 34 (1993) (“*1993 Report and Order*”).

²⁴ See also *id.* at 21073 ¶ 22 (“To the extent that such subscribers do not have the necessary equipment . . . the broadcast signals in question are not ‘viewable’[.]”); *id.* at 21079 ¶ 33 n.104 (“[O]ver-the-air converter boxes and antennas . . . cannot fulfill the statutory mandate that must-carry signals be ‘viewable via cable.’”).

FCC reiterated that it is “*bound by statute* to ensure that must-carry signals are *actually viewable* by all subscribers,” *NPRM*, 27 FCC Rcd at 1715 ¶ 5, and expressed concern that equipment-based proposals raise “the potential, if not a certainty, that must-carry signals would not be viewable by analog subscribers,” *id.* at 1720 ¶ 14 & n.48. The *Order* thus embraces the very formulation that the FCC previously found unlawful.

An agency cannot depart from its settled precedent absent reasoned explanation.²⁵ The agency must not only “display awareness that it is changing position,” but must show “that the new policy is permissible under the statute[.]”²⁶ Throughout the *Order*, the FCC acknowledged that it had “reinterpreted” or adopted a “new” reading of the statute. *See, e.g., Order* ¶¶ 6, 8, 11, 15. But nothing in the language of Section 614 has changed, and nowhere does the *Order* explain how a statutory provision once found to be “straightforward” and “unambiguous” now permits precisely the opposite reading, *see id.* ¶ 11.²⁷

2. The Order Violates the Prohibition on Discriminatory Carriage in Section 614(b)(4)(A).

Section 614(b)(4)(A) directs the Commission to ensure that “the quality of

²⁵ *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009); *Verizon Tel. Cos. v. FCC*, 570 F.3d 294, 300 (D.C. Cir. 2009).

²⁶ *Fox*, 556 U.S. at 515.

²⁷ Even if Section 614(b)(7) were deemed ambiguous, the agency’s interpretation is unreasonable. Given the hurdles to deploying an equipment-based solution and the short transition period, *see infra* pp. 12-14, the *Order* will not ensure actual viewability.

signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be *no less than that provided by the system for carriage of any other type of signal.*” 47 U.S.C. § 534(b)(4)(A) (emphasis added). The *Order* runs afoul of this provision by allowing covered cable operators to provide better carriage conditions—*i.e.*, a viewable format—for some signals than for others.

The *Order* ignored the statutory bar on discrimination in the “*quality of . . . carriage provided,*” addressing only “nondegradation” and “technical specifications” of signal quality. Compare *Order* ¶ 10 with 47 U.S.C. § 534(b)(4)(A) (emphases added). But a station that is viewable only after a subscriber installs additional equipment is not receiving “carriage” of equivalent “quality” as a station that is viewable either with no equipment at all or via a standard converter box.²⁸

3. The Order Is Inconsistent with the Basic Tier Requirements for Rate Regulated Systems.

Section 623(b)(7) directs that rate regulated cable operators “shall provide” a basic service tier that “shall, at a minimum, consist of” all must-carry signals. 47 U.S.C. § 543(b)(7)(A)(i).²⁹ Consistent with Congressional intent, the FCC has

²⁸ See *Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065, 6076 ¶ 23 (2002), *vacated in part by* 22 FCC Rcd 16074 (2007) (“*EchoStar Order*”).

²⁹ See also 47 C.F.R. § 76.920(a).

interpreted this provision to require cable operators to make *all* broadcast signals available at the lowest priced tier³⁰ and to prevent application of “a different definition of ‘basic service’ to one class of customers than . . . applies to others.”³¹ Yet “[w]ithout the viewability rule, many cable subscribers [will] be required to pay more for access to must-carry broadcast stations” due to added equipment fees. *NPRM*, 27 FCC Rcd at 1718 ¶ 10. The *Order* thus frees covered cable operators from the obligation to make must-carry signals available to all subscribers at the lowest priced tier and permits them to define basic service differently for analog customers, in violation of Section 623.

4. The Order Otherwise Violates the APA.

The *Order* violates the APA for several additional reasons. *First*, the FCC did not adequately explain why facts that it previously said would support a three-year extension, *i.e.*, the “potential cost and service disruption to consumers,” and the “importan[ce]” of the rule to “millions of subscribers” and broadcasters, *NPRM*, 27 FCC Rcd at 1717-18 ¶¶ 9-10, instead supported repeal. Record evidence confirmed the substantial costs of repeal for twelve million plus analog cable households and for must-carry broadcasters.³²

³⁰ See, e.g., *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules*, 16 FCC Rcd 2598, 2643 ¶ 102 (2001).

³¹ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5744 n.449 (1993).

³² See, e.g., NAB Reply Comments at 6; see also *NPRM*, 27 FCC Rcd at 1717 ¶ 9.

Second, the conclusion that DTAs are readily available in an “affordable” range of “no more than \$2[,]” *see Order* ¶ 14, is contrary to record evidence.³³ Greater evidence of availability was required, particularly because “the availability of affordable set-top boxes” was “[c]ritical to [the FCC’s] decision to allow the viewability rule to sunset,” *id.* ¶ 17 (emphasis added).

Third, the *NPRM* reminded parties that the FCC previously had rejected equipment-based alternatives as insufficient given “the potential, if not . . . certainty, that must-carry signals would not be viewable by analog subscribers,” *NPRM*, 27 FCC Rcd at 1720 ¶ 14 & n.48, but the *Order* violates the APA’s notice requirements by adopting that very approach, *Order* ¶ 1.³⁴

Fourth, the FCC’s conclusion that six months will allow a “smooth transition[,]” *see Order* ¶ 17, is arbitrary and capricious. Even that period would be too short, but worse the *Order* relies on a voluntary commitment by a limited number of cable operators to provide broadcasters just 90 days warning, and their obligation to give viewers 30 days notice, before making carriage changes, *see id.* In light of the Commission’s experience with the DTV transition, which involved a massive government effort over *many years* to educate consumers regarding

³³ *See Ex Parte* Letter from National Cable & Telecommunications Association, CS Docket No. 98-120, at 2 n.6 (Apr. 26, 2012) (“affordable boxes range in price from \$1 to \$6.99 per month”); *see also Ex Parte* Letter from American Cable Association, CS Docket No. 98-120, at 2 (May 31, 2012).

³⁴ *See* 5 U.S.C. § 553(b)(3).

necessary equipment but *still* resulted in significant consumer confusion,³⁵ the Commission's finding that the time periods provided here are adequate is irrational.

Finally, as explained above, the particular purpose of the rule was to ensure the viewability of must-carry stations on those cable systems that had not yet completed their digital transition. The *Order* undermines, rather than promotes, this fundamental goal by allowing hybrid cable operators simply to drop analog must-carry signals rather than completing the transition to all-digital systems.

B. Movants and the Viewing Public Will Suffer Irreparable Harm Absent a Stay.

Because the *Order* eliminates the rule and provides an unduly short transition period, it is impossible to plan for, much less ensure, an orderly transition. Absent a stay, Movants and the public will be irreparably injured.

First, must-carry broadcasters likely will lose viewership and audience share if the *Order* goes into effect. Many viewers will not be aware of the impending change or understand that they need added equipment.³⁶ Other affected viewers will not obtain and install the equipment because, for example, they find it too burdensome, cannot afford it, or are unwilling to spend additional money, on

³⁵ See Press Release, FCC, FCC Continues DTV Outreach Across the Nation: Call Center Receives Over 900,000 Calls in Days Surrounding Transition (June 15, 2009).

³⁶ See Crosby Decl. ¶ 6; Wilkinson Decl. ¶ 6; Ulloa Decl. ¶¶ 5-7.

top of subscriber fees, to continue viewing must-carry signals.³⁷ Unable to access affected programming, viewers may assume the channels are no longer available and migrate to other broadcast or cable networks. Loss of viewers and audience share is irreparable because it “is difficult, if not impossible, to quantify in terms of dollars.”³⁸ “[T]he threat of a permanent loss of [viewers]” also is irreparable.³⁹ Once viewers switch to other programming, it may be impossible for must-carry broadcasters *ever* to reach lost viewers again, even if normal analog access to their signals was later restored.⁴⁰

Second, as a result of decreases in viewership, Movants will lose advertising revenues that cannot be recouped.⁴¹ Even absent *actual* losses in viewership, advertisers might be less willing to purchase air-time from must-carry broadcasters

³⁷ See Angulo Decl. ¶ 8; Crosby Decl. ¶ 8; Grant Decl. ¶¶ 7-8; Manzi Decl. ¶ 8. Past experience teaches that viewers likely will not obtain or install additional equipment. See *supra* p. 13; S. Rep. No. 102-92, at 45 (citing considerable evidence of consumer rejection of use of the A/B switch to access must carry signals); *EchoStar Order*, 17 FCC Rcd at 6077-78 (¶¶ 22, 23) (finding that “many subscribers remain unaware of the free dish offer or . . . have been reluctant to request one, given . . . the difficulties associated with having another dish installed,” and that “the time, trouble, and inconvenience” expended to install a second dish “imposes real and significant additional costs”).

³⁸ *Med. Shoppe Int’l, Inc. v. S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 805 (8th Cir. 2003); accord *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 673-74 (D.C. Cir. 2005).

³⁹ *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994); accord *AT&T Stay Order*, 13 FCC Rcd at 14521 ¶ 27.

⁴⁰ See Crosby Decl. ¶ 13; Grant Decl. ¶ 10; Ulloa Decl. ¶ 11; Wilkinson Decl. ¶ 12.

⁴¹ See Angulo Decl. ¶ 10; Crosby Decl. ¶ 10, 12; Hurley Decl. ¶ 10; Manzi Decl. ¶ 10.

amidst uncertainty about their projected audience size.⁴² These unrecoverable economic losses also qualify as irreparable harm.⁴³ Because broadcasters depend heavily on advertising revenues, their overall corporate value will be diminished. Any effort to quantify this loss in overall corporate value for must-carry broadcasters would be “exceedingly speculative,” and the loss is thus irreparable.⁴⁴

Third, Movants will suffer irreparable competitive injury. Must-carry broadcasters compete for audience, programming and advertising revenues with other broadcasters and cable networks, among many others.⁴⁵ Within this highly competitive market, must-carry broadcasters *alone* stand to suffer lost analog television viewers and related revenues as a result of the sunset. The *Order* places these broadcasters at a competitive disadvantage.⁴⁶ Moreover, Movants will “los[e] the] opportunity to compete”⁴⁷ to regain lost viewers,⁴⁸ just as emerging must-carry networks suffer in their efforts to attract affiliates.⁴⁹ And once-loyal viewers will

⁴² See Crosby Decl. ¶ 7, 11, 12.

⁴³ *Robertson v. Cartinhour*, 429 F. App’x 1, 3 (D.C. Cir. 2011); *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996).

⁴⁴ *CSX Transp.*, 406 F.3d at 673-74.

⁴⁵ See Angulo Decl. ¶ 13; Hurley Decl. ¶ 14; Manzi Decl. ¶¶ 10, 13.

⁴⁶ *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1067 n.6 (D.C. Cir. 1998); see also *FTC v. PPG Indus., Inc.*, 798 F.2d 1500, 1508 (D.C. Cir. 1986).

⁴⁷ *PGBA, LLC v. United States*, 57 Fed. Cl. 655, 664 (2003).

⁴⁸ See *supra* p. 14.

⁴⁹ See Crosby Decl. ¶ 11.

be dissatisfied if they cannot find certain must-carry stations,⁵⁰ thus irreparably harming these stations' corporate goodwill.⁵¹

In addition, lost viewership and revenues will make it more difficult for Movants to develop and launch or acquire new programming, and many will be forced to eliminate existing programming.⁵² Because broadcasters “solicit[] viewers based on the total mix of programming carried on the” network or station, “a circumstance that affects [their] competitive position” in this manner is irreparable.⁵³ Program cuts likely would harm diversity and localism, and leave the needs of the viewing public unmet or at least underserved, with the greatest adverse effect on niche audiences.⁵⁴

C. The Balance of Harms Favors a Stay.

A stay pending further review will not harm third parties because it would simply maintain the *status quo*. The issue here is “whether injunctive relief would significantly harm other interested parties.”⁵⁵ Even if such harm were identified,

⁵⁰ See Crosby Decl. ¶ 7.

⁵¹ *Armour & Co. v. Freeman*, 304 F.2d 404, 406 (D.C. Cir. 1962); see also *Iowa Utils. Bd.*, 109 F.3d at 426.

⁵² See Angulo Decl. ¶ 12; Crosby Decl. ¶ 13; Grant Decl. ¶ 10; Hurley Decl. ¶ 12; Manzi Decl. ¶ 14.

⁵³ *Time Warner Cable v. Bloomberg L.P.*, 118 F.3d 917, 924-25 (2d Cir. 1997).

⁵⁴ See Crosby Decl. ¶ 13; Grant Decl. ¶ 10; Hurley Decl. ¶ 12; Ulloa Decl. ¶ 13; Wilkinson Decl. ¶ 13.

⁵⁵ *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 110 (D.C. Cir. 1986).

the agency must “balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the requested relief.”⁵⁶

To date, “the burden of compliance has been relatively minimal” and “actual costs of compliance have likely not been onerous.” *NPRM*, 27 FCC Rcd at 1720 ¶ 15. Indeed, the rule is voluntary in the sense that operators may convert to all-digital operation and carry all broadcast signals in only one format. The Act also caps the capacity that hybrid cable systems must dedicate to must-carry signals. 47 U.S.C. § 534(b). In light of the minimal impact on cable operators, the balance of harms tips in favor of a stay. Further, equity requires a stay where, as here, it would be “all but impossible to secure judicial review” before the transition period ends on December 12, 2012.⁵⁷

D. A Stay Is in the Public Interest.

The public interest also favors a stay. Millions of analog cable subscribers, including some of the most vulnerable groups, such as foreign language speakers and minorities, will lose access to must-carry signals as a result of repeal. *See supra* p. 11.⁵⁸ If the *Order* is reversed, a stay will protect viewers from needlessly

⁵⁶ *Nat’l Wildlife Fed’n v. Burford*, 835 F.2d 305, 326 (D.C. Cir. 1987) (citation omitted).

⁵⁷ *See, e.g., Wireless E911 Location Accuracy Requirements*, Order, DA 08-557, PS Docket No. 07-114, at 2 (rel. Mar. 12, 2008).

⁵⁸ *See also, e.g., Ex Parte* Letter from Entravision Holdings, LLC, CS Docket No. 98-120, at 1 (June 4, 2012).

incurring the additional costs of installing more equipment, as well as the time, effort and potential confusion related to a transition. Further, the viewability rule promotes the public interest in several respects by assuring the fulfillment of Congress's goals in enacting the must-carry requirements. *See supra* pp. 6-8.

IV. CONCLUSION

For these reasons, the Commission should grant Movants' request for a stay pending further review. If the FCC fails to act on this request within 14 days, Movants respectfully reserve their right to seek further relief.

August 1, 2012

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Respectfully submitted,

/s/ Helgi C. Walker

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Counsel for Movants

ATTACHMENT

DECLARATIONS IN SUPPORT OF JOINT MOTION
FOR STAY OF VIEWABILITY ORDER

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
)	
)	

DECLARATION OF CESAR ANGULO

I, Cesar Angulo, declare as follows:

1. My business address is 1700 Montgomery St, Suite 400, San Francisco, California 94111. I am a General Manager for TTBG San Francisco OpCo, LLC (“TTBG”), the parent company of TTBG/KTNC License Sub, LLC, which is the licensee of television station KTNC-TV, Concord, California (Fac. ID 21533). I have held this position for approximately three years and have been employed by TTBG for more than three years. KTNC-TV is network affiliate of the Estrella TV network. As a General Manager, I oversee all station operations for KTNC-TV and directly work with every department head and employee to make sure all internal and external matters are handled efficiently and promptly. This Declaration is based upon my personal knowledge and experience.

2. I submit this Declaration in support of the Motion for Administrative Stay of the Commission's *Fifth Report and Order* released on June 12, 2012 (the “*Order*”).¹

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

3. The *Order* announced the sunset of the Commission’s current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and digital cable service to subscribers—to carry digital must carry signals in analog format. In practical effect, the viewability rule enables analog-service customers of hybrid cable operators to view must carry channels the same way they see any other analog signal on the systems. In the *Order*, the FCC decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must carry signals in analog format and to require instead that analog-service customers use additional equipment to receive must carry channels, so long as the operator makes that equipment available at an affordable cost. The *Order* established a very short six-month period for transitioning to an equipment-based approach to viewability. This stands in stark contrast to the FCC’s recognition that available evidence demonstrated “that the viewability requirements remain important to consumers.”²

4. Given the extremely short time period provided for the transition and the abrupt nature of the FCC’s decision to sunset the viewability rule, it is impossible to plan for, much less ensure, an orderly transition. This heightens the risk that must carry broadcasters, including KTNC-TV will suffer significant harms that will be irreparable.

5. My station’s experience in the digital television transition is telling. Notwithstanding the years provided for the transition and a lengthy and intense viewer education effort, which was heavily funded by the government and in which multiple players across

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

industry and government participated, we faced extreme difficulties. The DTV transition was extremely confusing to the end user, and still to this day I deal with a great number of calls from viewers trying to figure out how to view channels over-the-air. As a never-ending list of antenna types are out in the market, viewers often purchase what is more affordable but instead end up with low-quality equipment. This only adds to the confusion. The help lines provided by the government were also insufficient to handle viewer concerns; I called them myself and found the process to be very frustrating and inefficient. Moreover, changes to our station from cable and satellite providers only adds to viewer confusion.

6. If the current viewability rule is permitted to sunset, cable operators who have not yet transitioned to all-digital systems will be permitted to require analog viewers to obtain additional equipment in order to view KTNC-TV. To avoid disruption in their ability to view KTNC-TV, these viewers would need to be informed that they will no longer be able to view KTNC-TV (and any other must carry stations that the cable operator chooses to treat in this fashion) without equipment, identify the equipment needed to view the stations, order and pay for the equipment, and install or arrange for installation. The *Order* relies on certain cable operators' "commit[ments]" to provide affected must-carry stations only 90 days notice, and requires that affected viewers receive a mere 30 days notice, before additional equipment becomes necessary in order to view a must-carry signal – time periods which pale in comparison to the advance notice given in the DTV transition – and imposes no specific mandate whatsoever regarding the manner of notice to be given. Therefore, cable operators will be free to provide such "notice" in the least obtrusive manner (*e.g.*, in small print at the bottom of monthly bills, or in separate "bill stuffers"), rendering it likely that a large number of viewers will not even be aware that change is coming.

7. To the extent that KTNC-TV deems it necessary to engage in on-air educational messaging to supplement cable operators' notice, KTNC-TV will need to allocate advertising time that they could otherwise sell to third parties, resulting in revenue losses. And because the changes will affect some, but not all of KTNC-TV viewers, any on-air educational messaging is likely to confuse and needlessly alarm the vast majority of our viewers.

8. Even if they are aware of the change, many viewers will not obtain the additional equipment needed to continue viewing KTNC-TV because, for example, they will find it too burdensome to obtain and install additional equipment, cannot afford to pay for the equipment, or are simply unwilling to spend any amount of money in order to be able to continue to view the signals affected by the change.

9. Confusion and disruption caused by any such change will almost certainly harm KTNC-TV. Viewers accustomed to watching KTNC-TV programming will migrate to other broadcast or cable networks, decreasing KTNC-TV's viewership and audience share. And viewers who might otherwise find KTNC-TV while "channel surfing" will not be likely to view our programming.

10. Loss of viewership will irreparably harm KTNC-TV's advertising revenues and its business more broadly. Broadcast stations, and particularly must carry stations like KTNC-TV, depend on revenues from the sale of advertising time in order to exist. This revenue is especially critical to KTNC-TV's operations, including the maintenance of existing programming schedules and the development of new programming. Although the actual losses that will be caused by the sunset of the current viewability rule are unquantifiable, even a loss of 5% of our viewers is likely to cause a reduction 5-10% in advertising revenues which, in turn,

would translate into an annual loss of \$235,000-\$470,000. Such lost advertising revenues cannot be recovered.

11. The likely loss of viewers also would be irreparable. Once changed, viewing habits are very difficult to reestablish. Indeed, once viewers switch to alternate programming that is available without added equipment, it may well be impossible for KTNC-TV *ever* to reach lost viewers again even if their signals are subsequently rendered universally accessible. Even if normal analog access to KTNC-TV's signal was restored, viewers watching other stations would be less likely to return. Estrella TV's corporate goodwill also would be harmed, as previously loyal viewers would become alienated and dissatisfied when they were unable to find a station they were used to seeing.

12. Moreover, if KTNC-TV experiences a loss in advertising revenues, it will have less money to invest in equipment and programming. There is a substantial risk that KTNC-TV would be forced to eliminate programming. Because KTNC-TV serves niche audiences with unique offerings, including Spanish-language programming on Estrella, program cuts would harm diversity and localism, and may well leave the needs of the niche market unmet or at least underserved. A decline in advertising revenues resulting from lost viewers would severely constrain KTNC-TV in its ability to develop and launch new programming.

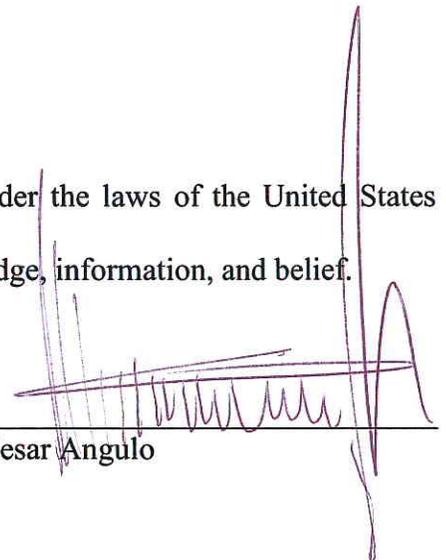
13. KTNC-TV competes for audience, programming and advertising revenues with other broadcast networks, independent television stations, cable and satellite programming networks, Internet-based and other digital media, and DVDs. In today's highly competitive market, any artificial constraint on the competitiveness of free over-the-air broadcasting threatens irreparable harm to must carry stations, including KTNC-TV.

14. The sunset has the potential to be extremely disruptive to KTNC-TV's business operations, and to damage customer goodwill and cause further competitive harms. While these disruptions and potential harms are less certain because it remains unclear how cable operators would transition to equipment-based viewability, that uncertainty in itself is cause for concern because there is no way for KTNC-TV to anticipate and avoid damage to customer goodwill or competitive harm.

15. In sum, I expect KTNC-TV to suffer substantial and unquantifiable harm if the current viewability rule is permitted to sunset. This harm includes economic and non-economic losses which cannot be easily quantified and are unrecoverable and/or irreparable. The sunset will cause major disruption to KTNC-TV's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage KTNC-TV's place in the market and overall competitiveness.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.



Cesar Angulo

Dated: July 30, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
)	
)	

DECLARATION OF TERENCE CROSBY

I, Terence Crosby, declare as follows:

1. My business address is 703 McKinney Avenue, Suite 240, Dallas, Texas 75202. I am the Chairman and Chief Executive Officer for the Una Vez Mas Television Group (“UVM”) and have held this position for approximately ten years. This is my thirty-fourth year in the broadcasting business. UVM is the largest affiliate of the Azteca America Network in the United States, and operates full-power television stations KAZD(TV), Dallas, Texas, KYAZ(TV), Houston, Texas, and KEMO(TV), Santa Rosa, California (the “Stations”), as well as a number of Class A and low power television stations in high density Hispanic markets. Azteca America is a fledgling Spanish-language network looking to provide an alternative programming choice for an historically underserved audience. Currently, our Stations rely on must-carry for distribution. As the Chairman and CEO, I am responsible for the day-to-day management of all departments of the company, including administration, sales, engineering, human resources, and information technology. This Declaration is based upon my personal knowledge and experience.

2. I submit this Declaration in support of the Motion for Administrative Stay of the Commission's *Fifth Report and Order* released on June 12, 2012 (the "*Order*").¹

3. The *Order* announced the sunset of the Commission's current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and digital cable service to subscribers—to carry digital must-carry signals in analog format. In practical effect, the viewability rule enables analog-service customers of hybrid cable operators to view must-carry channels the same way they see any other analog signal on the systems. In the *Order*, the Federal Communications Commission ("FCC") decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must-carry signals in analog format and to require instead that analog-service customers use additional equipment to receive must-carry channels, so long as the operator makes that equipment available at an affordable cost. The *Order* established an unrealistically short six-month period for transitioning to an equipment-based approach to viewability. This stands in stark contrast to the FCC's recognition that available evidence demonstrated "that the viewability requirements remain important to consumers."²

4. Given the abbreviated time period provided for the transition and the abrupt nature of the FCC's decision to sunset the viewability rule (despite its strong signal that the rule would be extended given the lagging digital conversion of certain cable operators), it is

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

impossible to plan for, much less ensure, an orderly transition. This heightens the risk that must-carry broadcasters, including UVM, will suffer significant harms that will be irreparable.

5. UVM's experience in the digital television transition is telling. Notwithstanding the four years provided for the transition and a lengthy and intense viewer education effort, which was heavily funded by the government and in which multiple players across industry and government participated, consumer education was difficult, to say the least. A campaign that included every television station in each market, including the top-rated stations, was waged for many months. Among the tactics used to educate viewers were numerous daily on-air station announcements. Many stations went off the air for three-minute periods to demonstrate to viewers how the transition would affect them, and what steps consumers needed to take to ensure uninterrupted broadcast television service. Still, confusion reigned.

6. If the current viewability rule is permitted to sunset, cable operators that have not yet transitioned to all-digital systems will be permitted to force analog viewers to obtain additional equipment in order to view must-carry stations. To avoid disruption in their ability to view our programming, our viewers must be informed that they will no longer be able to view the Stations (and any other must-carry stations that the cable operator chooses to treat in this fashion) without equipment, identify the equipment needed to view the Stations, order and pay for the equipment, and install or arrange for installation. The *Order* relies on certain cable operators' "commit[ments]" to provide affected must-carry stations only 90 days notice, and requires that affected viewers receive a mere 30 days notice, before additional equipment becomes necessary in order to view a must-carry signal – time periods which pale in comparison to the advance notice given in the DTV transition – and imposes no specific mandate whatsoever regarding the manner of notice to be given. Therefore, cable operators will be free to provide

such “notice” in the least obtrusive manner (*e.g.*, in small print at the bottom of monthly bills, or in separate “bill stuffers”), rendering it likely that a large number of viewers, particularly non-English language speakers, will not even be aware that change is coming and that certain channels (viewers have no reason to be able to distinguish between must-carry and retransmission consent broadcast stations) will go dark.

7. To the extent that UVM deems it necessary to engage in on-air educational messaging to supplement cable operators’ notice, we will need to allocate advertising time that we could otherwise sell to third parties, resulting in obvious revenue losses. Moreover, because the changes will affect some, but not all of the Stations’ viewers, any on-air educational messaging is likely to confuse and needlessly alarm many of them. Unlike was the case with the digital transition, the FCC has mandated an abrupt change that targets must-carry stations only; the top-rated stations in each market have no incentive to alleviate our plight by broadly educating television consumers. Analog carriage of our big media competitors, including Univision and Telemundo, is protected by retransmission consent agreements, therefore they have no reason to educate their Spanish-language viewers. Indeed, it is not inconceivable that our competition could use our education campaign against us with potential advertisers, especially if we are running on-air spots that intonate that we will lose viewership.

8. Even if we somehow succeed in making our analog viewers aware that they will no longer be able to enjoy our programming once cable operators cease analog carriage, there is no guarantee that they will obtain the additional equipment necessary, even if such equipment is in fact available. Some may find it too burdensome to procure and install additional equipment, others may not be able to afford to pay for the equipment (even a small incremental cost may be too much), and others may simply be unwilling to pay anything in addition to the substantial

monthly fees they already pay for cable service in order to be able to continue to view the signals affected by the change.

9. Confusion and disruption caused by any such change will almost certainly harm UVM. Viewers and advertisers accustomed to watching our Azteca America and local news programming will migrate to other broadcast or cable networks, decreasing UVM's viewership and audience share. And viewers who might otherwise find our Stations while "channel surfing" will not be likely to sample Azteca America's alternative Spanish-language programming offerings and promote its growth.

10. Loss of viewership will irreparably harm UVM's advertising revenues and its business more broadly, just at a time when television broadcasters are noticing an uptick following years of struggle with a challenging economy. Must-carry stations like ours yet have no revenue stream from retransmission consent, and depend on revenues from the sale of advertising time in order to exist. This revenue is critical to UVM's operations, including the maintenance of our facilities and the development of locally-produced programming. We currently produce local news in six markets — Las Vegas, Phoenix, Atlanta, Dallas, Houston, and San Antonio — and intend to expand local news to all of our markets. Lost viewership and associated revenue will curtail this local news effort and any attempt to raise investment and grow as a company. Although the actual losses that will be caused by the sunset of the current viewability rule are unquantifiable, even a loss of 15% percent of our viewers is likely to cause a reduction of 25% percent in advertising revenues which, in turn, would translate into an annual loss of \$3.5 million. Such lost advertising revenues cannot be recovered.

11. Of course, sunset of the rule would also harm the Azteca America Network, which is positioning itself to become a competitive Spanish-language network in a market

dominated by few players. Sunset of the rule, given 12.6 remaining analog cable households and approximately 30 million viewers, will deprive the network of the opportunity to take root guaranteed by must-carry that Univision, Telemundo, and other minority-oriented networks had in their early years of growth. Azteca America already faces an uphill battle as a Nielsen-rated network. The national Nielsen sample size for measuring Spanish-language television network viewing, 1000 households, is minute when compared to the overall national sample of nearly 25,000 households. This means that a loss of *just one or two viewers* with Nielsen boxes would translate to a catastrophic ratings drop and result in enormous advertising revenue losses. In addition, Azteca America will be handicapped in its efforts to gain additional affiliates if its existing affiliates suffer losses of viewership and advertising revenues.

12. Similar catastrophic ratings consequences are likely to happen at the local station level. First, the number of Hispanic households with cable viewers being measured by Nielsen in certain of UVM's markets could be as few as thirty, therefore the impact of losing viewing from just one metered analog household is weighted significantly in overall ratings success or failure. Further, Nielsen does not distinguish between digital and analog cable subscribers when selecting its sample households. It is entirely possible and even probable that, in our markets—Houston, Dallas, and San Francisco—where there remain a significant number of Hispanic analog cable subscribers, more analog cable homes than digital would be included in the sampling. An overrepresentation of Nielsen meters in analog homes that have not procured the equipment necessary to view Spanish-language must-carry stations would mean ratings disaster for those stations. In essence, these stations would have no fair shot at ratings success. Dollars invested in promoting stations and programming during so-called “sweeps” periods, when Nielsen conducts its audience measurements, would be wasted. Advertisers base decisions on

ratings. Without appropriate numbers, our ability to sell commercial time would be all but eviscerated.

13. For our Stations, the likely loss of viewers would be irreparable. Once altered, viewing habits are very difficult to reestablish. Indeed, when viewers switch to alternate programming that is available without added equipment, it may be impossible for our Stations *ever* to regain lost viewers, even if our signals are subsequently rendered universally accessible. UVM's corporate goodwill also would be harmed, as previously loyal viewers would become alienated and dissatisfied when they were unable to find a station they were used to seeing.

14. Moreover, if UVM and its network experience a loss in advertising revenues, the companies will have less money to invest in equipment and programming. There is a substantial risk that investment in certain programming would be curtailed. Because our Stations serve a niche audience with unique Spanish-language offerings, program cuts would harm diversity and localism, and may well leave the needs of this market unmet or at least underserved. Further, as mentioned above, a decline in advertising revenues resulting from lost viewers would severely constrain our ability to develop and launch new locally-produced programming.

15. UVM competes for audience, programming and advertising revenues with other broadcast networks, independent television stations, cable and satellite programming networks, Internet-based and other digital media, and DVDs. In today's highly competitive market, any artificial constraint on the competitiveness of free over-the-air broadcasting threatens irreparable harm to must-carry stations, including ours.

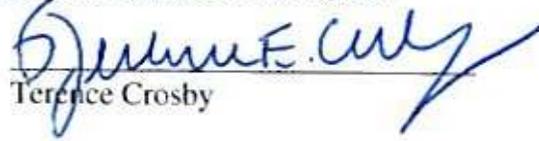
16. The sunset has the potential to be extremely disruptive to UVM's business operations, and to damage customer goodwill and cause further competitive harms. While these disruptions and potential harms are less certain because it remains unclear how cable operators

would transition to equipment-based viewability, that uncertainty in itself is cause for concern because there is no way for UVM to anticipate and avoid damage to customer goodwill or competitive harm. For instance, the 90-day notice period that can come at any time from cable operators puts UVM at a serious disadvantage in terms of planning for business risk and investments.

17. In sum, I expect UVM to suffer substantial and unquantifiable harm if the current viewability rule is permitted to sunset. This harm includes economic and non-economic losses which cannot be easily quantified and are unrecoverable and/or irreparable. The sunset will cause major disruption to UVM's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage UVM's place in the market and overall competitiveness.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.


Terence Crosby

Dated: July 31, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
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DECLARATION OF JIM GRANT

I, Jim Grant, declare as follows:

1. My business address is P.O. Box 22007, Little Rock, Arkansas 72221. I am General Manager and Associate Minister for Agape Church, Inc. (“Agape”) and VTN and have held this position for approximately 16 years. I have been a broadcaster in Arkansas since 1976 and am a past president of the Arkansas Broadcasters’ Association. This Declaration is based upon my personal knowledge and experience.

2. Agape is the licensee of three broadcast television stations in rural Arkansas that comprise the VTN network: KVTN-DT, Pine Bluff, Arkansas (Fac. ID 607); KVTH-DT, Hot Springs, Arkansas (Fac. ID 608); and KVTJ-DT, Jonesboro, Arkansas (Fac. ID 2784). Covering a largely rural area, VTN broadcasts Christian programming aimed to help our viewers grow spiritually and face challenges in life such as family members dealing with substance abuse, and criminal behavior as well as problems with their health, finances, and relationships. Recent original, local programming included a profile of the Second Chance Ranch in Central Arkansas that was created to help at-risk teens and children and a feature about Shepherd’s Fold Ministry, which helps Arkansas men recover from substance abuse. Our stations devote significant airtime

to local community needs and issues. We also consider our overall efforts as a “411-911” approach; our “411” programming teaches Biblical solutions to everyday problems, and our “911” Arkansas Prayer Team provides near immediate, heartfelt, specific responses to viewer prayer needs that we receive via phone, walk-ins, email, or letters. In addition, Agape was a pioneer in Christian educational and informational programming having produced the syndicated show “Kids Like You.” Moreover, Agape stations have made significant financial contributions to charitable organizations such as the Red Cross, the Salvation Army, and the Food Bank.

3. I submit this Declaration in support of the Motion for Administrative Stay of the Commission’s *Fifth Report and Order* released on June 12, 2012 (the “*Order*”).¹

4. The *Order* announced the sunset of the Commission’s current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and digital cable service to subscribers—to carry digital must carry signals in analog format. In practical effect, the viewability rule enables analog-service customers of hybrid cable operators to view must carry channels the same way they see any other analog signal on the systems. In the *Order*, the FCC decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must carry signals in analog format and to require instead that analog-service customers use additional equipment to receive must carry channels, so long as the operator makes that equipment available at an affordable cost. The *Order* established a very short six-month period for transitioning to an equipment-based approach to viewability. This

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

stands in stark contrast to the FCC’s recognition that available evidence demonstrated “that the viewability requirements remain important to consumers.”²

5. As compared to other states, Arkansas’ population has lower income and lives in more rural areas. As a result, initiatives like the digital television (“DTV”) transition have a more negative impact for Arkansas viewers than elsewhere. As Agape’s GM, I experienced firsthand -- and continue to experience -- the confusion that the DTV transition brought to our viewers.

6. If the current viewability rule is permitted to sunset, cable operators who have not yet transitioned to all-digital systems will be permitted to require analog viewers to obtain additional equipment in order to view VTN. VTN’s three stations air on more than 200 cable systems in Arkansas, some of which are hybrid systems. To avoid disruption in their ability to view VTN, these viewers would need to be informed that they will no longer be able to view VTN (and any other must carry stations that the cable operator chooses to treat in this fashion) without equipment, identify the equipment needed to view the stations, order and pay for the equipment, and install or arrange for installation. The *Order* relies on certain cable operators’ “commit[ments]” to provide affected must-carry stations only 90 days notice, and requires that affected viewers receive a mere 30 days notice, before additional equipment becomes necessary in order to view a must-carry signal – time periods which pale in comparison to the advance notice given in the DTV transition – and imposes no specific mandate whatsoever regarding the manner of notice to be given. Therefore, cable operators will be free to provide such “notice” in the least obtrusive manner (*e.g.*, in small print at the bottom of monthly bills, or in separate “bill

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

stuffers”), rendering it likely that a large number of viewers will not even be aware that change is coming.

7. This is especially so considering the elderly viewers who engage with VTN’s programming. These viewers will not read the fine print of their cable bill, and these viewers will not get in a car, wait in line at the cable company office, get a new piece of equipment, and have the technical know-how to properly hook up the equipment in order to view VTN. These viewers cannot afford to pay for the equipment and may simply be unwilling to spend any amount of money in order to be able to continue to view the signals affected by the change. Nor will these viewers understand a flash-cut erasure of VTN from their programming lineup. Viewers who depend on the Arkansas Prayer Team for answering crises of life and faith will instead find our resources drained from answering questions about optional equipment and cable hook-ups. It is certain that the Viewability transition will have a deleterious effect on Agape and VTN’s mission to assist the people of Arkansas.

8. Even if they are aware of the change, many viewers will not obtain the additional equipment needed to continue viewing VTN because, for example, they will find it too burdensome to obtain and install additional equipment, cannot afford to pay for the equipment, or are simply unwilling to spend any amount of money in order to be able to continue to view the signals affected by the change. Confusion and disruption caused by any such change will almost certainly harm VTN. Viewers accustomed to watching VTN programming will migrate to other broadcast or cable networks, decreasing VTN’s viewership. And viewers who might otherwise find VTN while “channel surfing” will not be likely to view our programming.

9. Given the extremely short time period provided for the transition and the abrupt nature of the FCC’s decision to sunset the viewability rule, it is impossible to plan for, much less

ensure, an orderly transition. This heightens the risk that must carry broadcasters, including Agape, will suffer significant harms that will be irreparable. In this slow economy, losing even incremental support means the difference between making ends meet and being in the red.

10. The likely loss of viewers also would be irreparable. Once changed, viewing habits are very difficult to reestablish. Indeed, once viewers switch to alternate programming that is available without added equipment, it may well be impossible for VTN *ever* to reach lost viewers again even if their signals are subsequently rendered universally accessible. Even if normal analog access to VTN's signal was restored, viewers watching other stations would be less likely to return. VTN's corporate goodwill also would be harmed, as previously loyal viewers would become alienated and dissatisfied when they were unable to find a station they were used to seeing.

11. Moreover, if Agape experiences a loss in viewer support, it will have less money to invest in equipment and programming. There is a substantial risk that VTN would be forced to eliminate programming. And because VTN serves niche audiences with unique religious program offerings, cuts would harm diversity and localism, and may well leave the needs of the niche market unmet or at least underserved.

12. In sum, I expect sunset of the viewability rule to cause irreparable damage to VTN and the most vulnerable and needy of Arkansas' population. The sunset will cause major disruption to VTN's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage VTN's place in the market and overall competitiveness.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.



Jim Grant

Dated: July 30, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
)	
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DECLARATION OF PHILIP HURLEY

I, Philip Hurley, declare as follows:

1. My business address is 15455 Dallas Parkway, Suite 100, Addison, Texas 75001.

I have worked in the television broadcasting industry for almost thirty years, and currently am the Executive Vice President and Chief Operating Office for London Broadcasting Company, a position I have held for approximately four years. I am responsible for all operations of London's five-market television group. Among the television stations owned by London is KTXD(TV), which relies on must-carry for distribution throughout the Dallas, Texas market. This Declaration is based upon my personal knowledge and experience.

2. I submit this Declaration in support of the Motion for Administrative Stay of the Commission's *Fifth Report and Order* released on June 12, 2012 (the "Order").¹

3. The *Order* announced the sunset of the Commission's current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and digital cable service to subscribers—to carry digital must-carry signals in analog format. In

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

practical effect, the viewability rule enables analog-service customers of hybrid cable operators to view must-carry channels the same way they see any other analog signal on the systems. In the *Order*, the FCC decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must-carry signals in analog format and to require instead that analog-service customers use additional equipment to receive must-carry channels, so long as the operator makes that equipment available at an affordable cost. The *Order* established a very short six-month period for transitioning to an equipment-based approach to viewability. This stands in stark contrast to the FCC's recognition that available evidence demonstrated "that the viewability requirements remain important to consumers."²

4. Given the extremely short time period provided for the transition and the abrupt nature of the FCC's decision to sunset the viewability rule, it is impossible to plan for, much less ensure, an orderly transition. This heightens the risk that operators of must-carry stations like KTXD will suffer significant harms that will be irreparable.

5. London's experience with the digital television transition is telling. Notwithstanding the years of notice provided for the transition and the widespread, lengthy and intense viewer education effort—which was heavily funded by the government and in which multiple players across industry and government participated—like other television broadcasters, we found it extremely difficult to educate viewers effectively about the change. Having spent over \$4.8 million dollars to convert our television stations to digital transmission, it was

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

imperative that we make every effort not to lose viewers and stabilize revenue; despite government and industry efforts, however, it became clear to us from the phone calls we received and the resources we devoted to speaking with viewers that not all understood the need to secure set-top boxes, for example, to use analog receivers or even the need to re-scan their television receivers and how to do it. The six-month transition period for phase-out of the viewability rule contemplated by the Commission's *Order* pales in comparison. The FCC has neither prescribed any particular educational campaign, nor imposed specific requirements on cable operators about informing subscribers or rolling out DTAs. Analog cable subscribers, who typically are low or fixed-income, older, or non-English language speakers, have no reason to be able to discern among must-carry stations, retransmission consent stations, or cable networks on the basic tier. Given the confusion that reigned during the DTV transition, it is impossible to imagine a smooth "viewability" conversion for analog cable subscribers, who undoubtedly will be left to assume that certain stations simply have ceased to exist.

6. If the current viewability rule is permitted to sunset, cable operators who have not yet transitioned to all-digital systems will be permitted to require analog viewers to obtain additional equipment in order to view KTXD. To avoid disruption in their ability to view our station's programming, these viewers would need to be informed that they will no longer be able to view KTXD (and any other must-carry stations that the cable operator chooses to treat in this fashion) without equipment, identify the equipment needed to view the stations, order and pay for the equipment, and install or arrange for installation. The *Order* relies on certain cable operators' "commit[ments]" to provide affected must-carry stations only 90 days notice, and requires that affected viewers receive a mere 30 days notice, before additional equipment becomes necessary in order to view a must-carry signal – time periods which pale in comparison

to the advance notice given in the DTV transition – and imposes no specific mandate whatsoever regarding the manner of notice to be given. Therefore, cable operators will be free to provide such “notice” in the least obtrusive manner (*e.g.*, in small print at the bottom of monthly bills, or in separate “bill stuffers”), rendering it likely that a large number of viewers will not even be aware that change is coming.

7. To the extent that London deems it necessary to engage in on-air educational messaging to supplement cable operators’ notice, KTXD will need to allocate advertising time that they could otherwise sell to third parties, resulting in revenue losses. And because the changes will affect some, but not all of KTXD viewers, any on-air educational messaging is likely to confuse and needlessly alarm the vast majority of our viewers.

8. Even if they are aware of the change, many viewers will not obtain the additional equipment needed to continue viewing KTXD because, for example, they will find it too burdensome to obtain and install additional equipment, cannot afford to pay for the equipment, or are simply unwilling to spend any amount of money in order to be able to continue to view the signals affected by the change.

9. Confusion and disruption caused by any such change will almost certainly harm KTXD. Viewers accustomed to watching our TV programming will migrate to other broadcast or cable networks, decreasing the Station’s viewership and audience share. And viewers who might otherwise find KTXD while “channel surfing” will not be likely to view our programming.

10. Loss of viewership will irreparably harm KTXD’s advertising revenues and its business more broadly. Broadcast stations, and particularly must-carry stations like KTXD, depend on revenues from the sale of advertising time in order to exist. Since we focus on the 50+ viewer this revenue is especially critical to KTXD’s operations, as the older viewer with a

fixed income will more likely be affected. Although the actual losses that will be caused by the sunset of the current viewability rule are unquantifiable, even a loss of 10 percent of our viewers is likely to cause a reduction of 20 percent in advertising revenues which, in turn, would translate into an annual loss of over a million dollars. Such lost advertising revenues cannot be recovered.

11. The likely loss of viewers also would be irreparable. Once changed, viewing habits are very difficult to reestablish. Indeed, once viewers switch to alternate programming that is available without added equipment, it may well be impossible for KTXD *ever* to reach lost viewers again even if their signals are subsequently rendered universally accessible. Even if normal analog access to KTXD's signal was restored, viewers watching other stations would be less likely to return. Our corporate goodwill also would be harmed, as previously loyal viewers would become alienated and dissatisfied when they were unable to find a station they were used to seeing.

12. Moreover, if KTXD experiences a loss in advertising revenues, it will have less money to invest in equipment and programming. There is a substantial risk that KTXD would be forced to eliminate programming. Because KTXD serves niche audiences with unique offerings, including classic family programming and religious programming, program cuts would harm diversity and localism, and may well leave the needs of the niche market unmet or at least underserved. A decline in advertising revenues resulting from lost viewers would severely constrain KTXD in its ability to develop and launch new programming.

13. In September 2012, KTXD is launching a unique newscast designed for the 50+ viewing audience. The morning newscast will be broadcast five days a week, Monday – Friday, and its content has been designed to provide the older, retired audience with news that seniors can use to navigate these difficult economic times. London already has invested more than

\$500,000 in developing this new, locally-produced news programming designed for an underserved niche audience. It would be tragedy if the very viewer for which it was created could not sample it because they subscribe to basic analog cable, do not understand the need for additional equipment, or cannot afford any incremental fee.

14. KTXD competes for audience, programming and advertising revenues with other broadcast networks, independent television stations, cable and satellite programming networks, Internet-based and other digital media, and DVDs. In today's highly competitive market, any artificial constraint on the competitiveness of free over-the-air broadcasting threatens irreparable harm to must-carry stations, including KTXD.

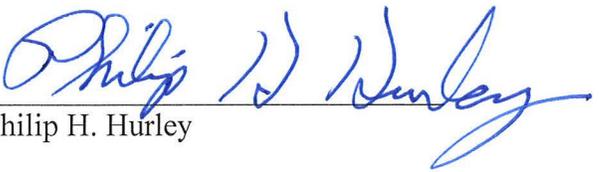
15. The sunset has the potential to be extremely disruptive to KTXD's business operations, and to damage customer goodwill and cause further competitive harms. While these disruptions and potential harms are less certain because it remains unclear how cable operators would transition to equipment-based viewability, that uncertainty in itself is cause for concern because there is no way for London to anticipate and avoid damage to customer goodwill or competitive harm.

16. In sum, I expect KTXD to suffer substantial and unquantifiable harm if the current viewability rule is permitted to sunset. This harm includes economic and non-economic losses which cannot be easily quantified and are unrecoverable and/or irreparable. The sunset will cause major disruption to KTXD's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage KTXD's place in the market and overall competitiveness.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the

foregoing is true and correct to the best of my knowledge, information, and belief.


Philip H. Hurley

Dated: July 30, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
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DECLARATION OF JOHN MANZI

I, John Manzi, declare as follows:

1. My business address is 625 N. Grand Ave Santa Ana, California 92677. I am the President/General Manager for Ellis Communications KDOC Licensee, LLC, the licensee of broadcast television station KDOC-TV, Anaheim, California (Fac. ID 24518), and I have held this position for more than three years. As President/General Manager, I oversee all station operations by directly working with all department heads and each employee to ensure that station matters are handled efficiently and in a high-quality manner. This Declaration is based upon my personal knowledge and experience.

2. I submit this Declaration in support of the Motion for Administrative Stay of the Commission's *Fifth Report and Order* released on June 12, 2012 (the "*Order*").¹

3. The *Order* announced the sunset of the Commission's current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and digital cable service to subscribers—to carry digital must-carry signals in analog format. In practical effect, the viewability rule enables analog-service customers of hybrid cable

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

operators to view must-carry channels the same way they see any other analog signal on the systems. In the *Order*, the FCC decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must-carry signals in analog format and to require instead that analog-service customers use additional equipment to receive must-carry channels, so long as the operator makes that equipment available at an affordable cost. The *Order* established a very short six-month period for transitioning to an equipment-based approach to viewability. This stands in stark contrast to the FCC's recognition that available evidence demonstrated "that the viewability requirements remain important to consumers."²

4. Given the extremely short time period provided for the transition and the abrupt nature of the FCC's decision to sunset the viewability rule, it is impossible to plan for, much less ensure, an orderly transition. This heightens the risk that must-carry broadcasters, including KDOC-TV, will suffer significant harms that will be irreparable.

5. My station's experience in the digital television transition is telling. Notwithstanding the substantial lead time provided for the transition and a lengthy and intense viewer education effort, which was heavily funded by the government and in which multiple players across industry and government participated, viewers for the most part ignored the educational campaign or simply did not understand it. Immediately following the transition, the station was barraged with viewer calls. Today, the station still deals with a great number of calls from our viewers (potential viewers) trying to figure out how to see KDOC-TV. It is evident that viewers are still trying to understand the new digital broadcasting environment.

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

Daily, my engineers are required to call viewers in response to current questions, and the only solution is to provide extremely inefficient “one on one” troubleshooting to clear technical problems. Many times the source of the problem is with the cable provider and there is nothing we can do, yet the viewer still blames the station for not educating them effectively or assumes the station is simply not accepting responsibility for the problem.

6. If the current viewability rule is permitted to sunset, cable operators who have not yet transitioned to all-digital systems will be permitted to require analog viewers to obtain additional equipment in order to view KDOC-TV. To avoid disruption in their ability to view KDOC-TV, these viewers would need to be informed that they will no longer be able to view KDOC-TV (and any other must-carry stations that the cable operator chooses to treat in this fashion) without equipment, identify the equipment needed to view the stations, order and pay for the equipment, and install or arrange for installation. The *Order* relies on certain cable operators’ “commitments” to provide affected must-carry stations only 90 days notice, and requires that affected viewers receive a mere 30 days notice, before additional equipment becomes necessary in order to view a must-carry signal – time periods which pale in comparison to the advance notice given in the DTV transition – and imposes no specific mandate whatsoever regarding the manner of notice to be given. Therefore, cable operators will be free to provide such “notice” in the least obtrusive manner (*e.g.*, in small print at the bottom of monthly bills, or in separate “bill stuffers”), rendering it likely that a large number of viewers will not even be aware that change is coming.

7. To the extent that KDOC-TV deems it necessary to engage in on-air educational messaging to supplement cable operators’ notice, KDOC-TV will need to allocate advertising time that they could otherwise sell to third parties, resulting in revenue losses. And because the changes will affect some, but not all of KDOC-TV viewers, any on-air

educational messaging is likely to confuse and needlessly alarm the vast majority of our viewers.

8. Even if they are aware of the change, many viewers will simply ignore the message until the impact is realized after the change (similar to the digital transition). At that point, and only if the station is lucky, the viewer will call the station looking for answers. At that point we can only provide instruction the viewer to contact their cable provider. My experience as an industry professional – and more importantly as a viewer – is that this process is avoided at any cost by the viewer. Given the complexities of dealing with cable providers and the current cost of cable service, a viewer almost certainly will not obtain the additional equipment needed to continue viewing KDOC-TV. They will find it too burdensome to obtain and install additional equipment, cannot afford to pay for the equipment, or are simply unwilling to spend any amount of money in order to be able to continue to view the signals affected by the change. This is especially true considering that other larger, non-must-carry stations will be unaffected by the change.

9. Confusion and disruption caused by any such change will harm KDOC-TV. Viewers accustomed to watching KDOC-TV programming will migrate to other broadcast or cable networks, decreasing KDOC-TV's viewership and audience share. And viewers who might otherwise find KDOC-TV while "channel surfing" will not be likely to view our programming.

10. Loss of viewership will irreparably harm KDOC-TV's advertising revenues and its business more broadly. Broadcast stations, and particularly must-carry stations like KDOC-TV, depend on revenues from the sale of advertising time in order to exist. This revenue is especially critical to KDOC-TV's operations, including the maintenance of existing programming schedules and the development of new programming. Although the

actual losses that will be caused by the sunset of the current viewability rule are unquantifiable, they will be significant. Even a small loss of viewership will result in a reduction in advertising revenues, and such lost advertising revenues cannot be recovered. Undoubtedly, our competitors that will remain available in analog after the “viewability” change will inform aggressively the advertising community of their newfound advantage.

11. The likely loss of viewers also would be irreparable. Once changed, viewing habits are very difficult to reestablish. Indeed, once viewers switch to alternate programming that is available without added equipment, it may well be impossible for KDOC-TV *ever* to reach lost viewers again even if their signals are subsequently rendered universally accessible. Even if normal analog access KDOC-TV’s signal was restored, viewers watching other stations would be less likely to return. KDOC-TV’s corporate goodwill also would be harmed, as previously loyal viewers would become alienated and dissatisfied when they were unable to find a station they were used to seeing.

12. Moreover, if KDOC-TV experiences a loss in advertising revenues, it will have less money to invest in equipment and programming. There is a substantial risk that KDOC-TV would be forced to eliminate programming because KDOC-TV serves broadcast audiences with unique offerings, including local professional sports such as the Anaheim Ducks (NHL), LA Galaxy (MLS), Chivas USA (MLS) and the LA Sparks (WNBA). A decline in advertising revenues resulting from lost viewers would severely constrain KDOC-TV in its ability to develop and launch new programming.

13. KDOC-TV competes for audience, programming and advertising revenues with other broadcast networks, independent television stations, cable and satellite programming networks, Internet-based and other digital media, and DVDs. In today’s highly

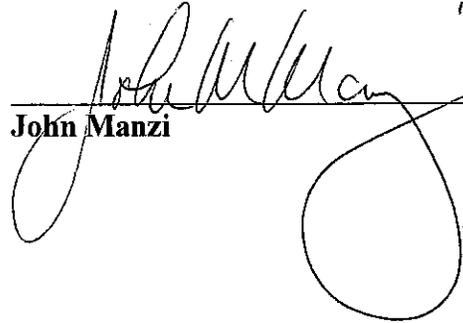
competitive market, any artificial constraint on the competitiveness of free over-the-air broadcasting threatens irreparable harm to must-carry stations, including KDOC-TV.

14. The sunset ruling has the potential to be extremely disruptive to KDOC-TV's business operations and to damage customer goodwill and cause further competitive harms. While these disruptions and potential harms are less certain because it remains unclear how cable operators would transition to equipment-based viewability, that uncertainty in itself is cause for concern because there is no way for KDOC-TV to anticipate and avoid damage to customer goodwill or competitive harm.

15. In sum, the rule gives the larger-owned and operated network stations an unearned and unfair advantage at a time when small, local stations are struggling to provide competitive local programming options. I expect KDOC-TV to suffer substantial and unquantifiable harm if the current viewability rule is permitted to sunset. This harm includes economic and non-economic losses which cannot be easily quantified and are unrecoverable and/or irreparable. The sunset will cause major disruption to KDOC-TV's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage KDOC-TV's place in the market and overall competitiveness.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.



John Manzi

Dated: July 30, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
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DECLARATION OF RONALD L. ULLOA

I, Ronald L. Ulloa, declare as follows:

1. My business address is 2323 Corinth Avenue, Los Angeles, California 90064. I am the President of KVMD Licensee Co., L.L.C., which is the licensee of Station KVMD(TV), Twentynine Palms, California. I have worked in the television industry for more than thirty years, in program production and in station ownership in two major television markets. At the present time, I direct the operations of an independent television station in the Los Angeles DMA that provides a multicultural service that offers programming that meets the informational and entertainment needs and interests of a number of ethnic, cultural and religious groups that reside in what is one of the most diverse communities in this nation. This Declaration is based upon my personal knowledge and experience.

2. I submit this Declaration in support of the Motion for Administrative Stay of the Commission's *Fifth Report and Order* released on June 12, 2012 (the "Order").¹

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

3. The *Order* announced the sunset of the Commission’s current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and digital cable service to subscribers—to carry digital must-carry signals in analog format. In practical effect, the viewability rule enables analog-service customers of hybrid cable operators to view must-carry channels in the same manner as they would view any other analog signal on the cable systems. In the *Order*, the FCC decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must carry signals in analog format and to require, instead, that analog-service customers use additional equipment in order to view all must carry channels, so long as the operator makes that equipment available at an “affordable” cost, whatever that might be. The *Order* established a very short, six-month, period for transitioning to an equipment-based approach to viewability. This stands in stark contrast to the FCC’s recognition that available evidence demonstrated “that the viewability requirements remain important to consumers.”²

4. Given the extremely short time period provided for this transition and the abrupt nature of the FCC’s decision to sunset the viewability rule, it is impossible to plan for, much less ensure, an orderly transition. This heightens the risk that must-carry broadcasters, including KVMD, might suffer harm that will be irreparable.

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

5. My Station's experience in the digital television transition is telling. Notwithstanding the advance notice provided for the digital transition and a lengthy and intense viewer education effort, which was heavily funded by the government and in which multiple players across industry and government participated, we faced extreme difficulties. We were required to inform our viewers of our change, from analog to digital, and to alert them to the need to secure set-top boxes where they continued to make use of analog television receivers. In that many of KVMD's viewers are not native English speakers, we have never been certain that they understood all the requirements and that we simply lost these viewers as a result thereof.

6. If the current viewability rule is permitted to sunset, cable operators who have not yet transitioned to all-digital systems, and we know of no such cable operator in the Los Angeles DMA, will be permitted to require analog viewers to obtain additional equipment in order to view KVMD. To avoid disruption in their ability to view KVMD, should any or all of the cable operators that carry KVMD on a must-carry basis decide to take advantage of the rule change, KVMD's affected viewers will need to be informed that they will no longer be able to view KVMD (and any other must-carry stations that the cable operator chooses to treat in this fashion) without special equipment, identify the equipment needed to view the Station, order and pay for the equipment, and, finally, install or arrange for installation, presumably at the viewer's expense. The *Order* relies on certain cable operators' "commit[ments]" to provide affected must-carry stations 90 days' notice, and requires that affected viewers receive a mere 30 days' notice, before additional equipment becomes necessary in order to view a removed must-carry signal – time periods which pale in comparison to the lengthy advance notice given in the digital transition – and imposes no specific mandate whatsoever regarding the manner of notice to be

given. Therefore, cable operators will be free to provide such “notice” in the least obtrusive manner (*e.g.*, in small print at the bottom of monthly bills, in separate “bill stuffers” or so other means meant to minimize equipment requests), rendering it likely that a large number of viewers will not even be aware that change is coming. Further, nothing is required of the cable operators to make their information available in the numerous other languages spoken in the Los Angeles DMA.

7. To the extent that KVMD deems it necessary to engage in on-air educational messaging to supplement cable operators’ notice, KVMD will need to allocate its broadcast time that it could otherwise use for programming or sell to third parties, resulting in revenue losses. And because the changes will affect some, but not all of KVMD’s viewers, any on-air educational messaging is likely to confuse and needlessly alarm the vast majority of our viewers. While broadcast station owners are sophisticated in how cable television operates, how many of our fellow citizens truly know the difference between analog and digital cable systems? This is especially so for the elderly and those with limited English-language skills. Might many of our viewers simply believe that KVMD or other stations are no longer available and not realize that they are analog cable customers? This is one of many concerns KVMD has as to the public’s ability to comprehend the viewability change. If anything, the digital transition was far simpler: old television receivers had to be replaced with the new digital receivers or converter boxes.

8. Interestingly, during the digital transition, the FCC made special effort to provide Spanish-language notices, including the hiring of firms to prepare Spanish-language messaging. No such requirement has been imposed upon the cable television operators as part of the viewability transition.

9. Even if they are aware of the change, many viewers will not obtain the additional equipment needed to continue viewing KVMD because, for example, they will find it too burdensome to obtain and install additional equipment or cannot afford, or desire, to pay for the equipment which they would otherwise expect the cable operator to provide.

10. Confusion and disruption caused by any such change will almost certainly harm KVMD. Viewers accustomed to watching KVMD programming will migrate to other broadcast or cable networks that the cable operator chooses not to remove from its analog lineup, decreasing KVMD's viewership and audience share. And analog cable viewers who might otherwise find KVMD while "channel surfing" will not view our programming.

11. Loss of viewership will irreparably harm KVMD revenues and its business more broadly, since KVMD is dependent on reaching the viewers its producer-partners program to. Broadcast stations, and particularly must-carry stations like KVMD, depend on revenues from the sale of advertising time and the brokerage of programming in order to exist. These revenue streams are especially critical to KVMD's operations. While the actual losses that will be caused by the sunset of the current viewability rule are unquantifiable at this time, a reduction in viewing could have a detrimental impact.

12. The likely loss of viewers also would be irreparable. Once changed, viewing habits are very difficult to reestablish. Indeed, once viewers switch to alternate programming that is available without added equipment, it may well be impossible for KVMD to reach lost viewers again. Even if normal analog access to KVMD's signal was restored, viewers watching other stations would be less likely to return.

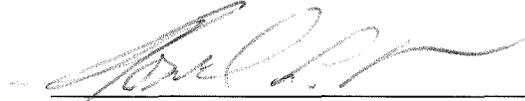
13. Because KVMD serves niche audiences with unique offerings, including foreign language and religious programming, program cuts would harm diversity and localism, and may well leave the needs of the niche market unmet or at least underserved.

14. The sunset has the potential to be disruptive to KVMD's business operations, and to damage customer goodwill and cause further competitive harms. While these disruptions and potential harms are less certain because it remains unclear how cable operators will treat KVMD and how the transition to equipment-based viewability will work, that uncertainty in itself is cause for concern because there is no way for KVMD to anticipate and avoid damage to customer goodwill or competitive harm. Already, KVMD has had to explain the FCC's action to concerned program-partners and viewers.

15. In sum, I am concerned that KVMD might suffer harm if the current viewability rule is permitted to sunset. This harm could include economic and non-economic losses which cannot be easily quantified until incurred and are unrecoverable and/or irreparable. The sunset could cause disruption to KVMD's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage KVMD's place in the market and overall competitiveness.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "Ronald L. Ulloa", written over a horizontal line.

Ronald L. Ulloa

Dated: July 13, 2012

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
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Carriage of Digital Television Broadcast)	CS Docket 98-120
Signals: Amendment to Part 76 of the)	
Commission's Rules)	
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DECLARATION OF FRANCIS X. WILKINSON

I, Francis X. Wilkinson, declare as follows:

1. My business address is 2323 Corinth Avenue, Los Angeles, California 90064. I am the Vice President of KJLA, LLC, which is the licensee of Station KJLA(TV), Ventura, California. I have worked in the broadcast television industry for more than thirty years. At the present time, I am the General Manager of KJLA, which is an independent television station located in the Los Angeles DMA that operates a primarily Spanish-language programming service offering informational, entertainment, and religious programming directed to the large Latino community of South California, including approximately one-half of the population of Los Angeles County. This Declaration is based upon my personal knowledge and experience.

2. I submit this Declaration in support of the Motion for Administrative Stay of the Commission's *Fifth Report and Order* released on June 12, 2012 (the "*Order*").¹

3. The *Order* announced the sunset of the Commission's current viewability rule. The rule required cable operators with hybrid systems—*i.e.*, operators that offer both analog and

¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, Fifth Report and Order, FCC 12-59 (rel. June 12, 2012).

digital cable service to subscribers—to carry digital must-carry signals in analog format. In practical effect, the viewability rule enables analog-service customers of hybrid cable operators to view must-carry channels in the same manner as they would view any other analog signal on the cable systems. In the *Order*, the FCC decided that the current rule should be permitted to sunset and that, after December 12, 2012, cable operators should be able to satisfy the statutory viewability requirement using an equipment-based approach. Specifically, the *Order* permits hybrid cable operators to abandon carriage of must-carry signals in analog format and to require, instead, that analog-service customers use additional equipment in order to view all must carry channels, so long as the operator makes that equipment available at an “affordable” cost, whatever that might be. The *Order* established a very short, six-month, period for transitioning to an equipment-based approach to viewability. This stands in stark contrast to the FCC’s recognition that available evidence demonstrated “that the viewability requirements remain important to consumers.”²

4. Given the extremely short time period provided for this transition and the abrupt nature of the FCC’s decision to sunset the viewability rule, it is impossible to plan for, much less ensure, an orderly transition. This heightens the risk that all must-carry broadcasters, including KJLA, might suffer harm that will be irreparable.

5. KJLA’s experience in the digital television transition is telling. Notwithstanding the advance notice provided for the digital transition and a lengthy and intense viewer education effort, which was heavily funded by the government and in which multiple players across industry and government participated, we faced extreme difficulties. We, along with all other

² *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order, FCC 12-18 (¶ 9) (rel. Feb. 10, 2012).

full-service television broadcasters, were required to inform our viewers of the change, from analog to digital, and to alert them to the need to secure widely available set-top boxes enabling them to continue to make use of analog television receivers. A massive publicity campaign was undertaken and announcements in English and Spanish were made, including many at government expense.

6. If the current viewability rule is permitted to sunset, cable operators who have not yet transitioned to all-digital systems, and we know of no such cable operator in the Los Angeles DMA, will be permitted to require analog viewers to obtain additional equipment in order to view KJLA. To avoid disruption in their ability to view KJLA, should any or all of the cable operators that carry KJLA on a must-carry basis decide to take advantage of the rule change, KJLA's affected viewers will need to be informed that they will no longer be able to view KJLA (and any other must-carry stations that the cable operator chooses to treat in this fashion) without special equipment, identify the equipment needed to view the Station, order and pay for the equipment, and, finally, install or arrange for installation, presumably at the viewer's expense. The *Order* relies on certain cable operators' "commit[ments]" to provide affected must-carry stations 90 days' notice, and requires that affected viewers receive a mere 30 days' notice, before additional equipment becomes necessary in order to view a removed must-carry signal – time periods which pale in comparison to the lengthy advance notice given in the digital transition – and imposes no specific mandate whatsoever regarding the manner of notice to be given. Therefore, cable operators will be free to provide such "notice" in the least obtrusive manner (e.g., in small print at the bottom of monthly bills, in separate "bill stuffers" or so other means meant to minimize equipment requests), rendering it likely that a large number of viewers will not even be aware that change is coming. Further, nothing is required of the cable operators to

make their information available in other languages. Given the 50% Latino population of Los Angeles County, the potential absence of Spanish-language announcements will inevitably lead to a significant portion of the population not being aware of the changes being implemented and the efforts they will have to undertake to maintain their current television station viewing habits.

7. To the extent that KJLA deems it necessary to engage in on-air educational messaging to supplement cable operators' notice, KJLA will need to allocate its broadcast time that it could otherwise use for programming or sell to third parties, resulting in revenue losses. And because the changes will affect some, but not all of KJLA's viewers, any on-air educational messaging is likely to confuse and needlessly alarm the vast majority of our viewers. While broadcast station owners are sophisticated in how cable television operates, how many of our fellow citizens truly know the difference between analog and digital cable systems? This is especially so for the elderly and those with limited English-language skills. Might many of our viewers simply believe that KJLA or other stations are no longer available and not realize that they are analog cable customers who have lost the signals because of cable operator actions? This is one of many concerns KJLA has as to the public's ability to comprehend the viewability change and take action to respond thereto. If anything, the digital transition was far simpler: all old television receivers had to be replaced with the new digital receivers or converter boxes.

8. Interestingly, during the digital transition, the FCC made special effort to provide Spanish-language notices, including the hiring of firms to prepare Spanish-language messaging. No such requirement has been imposed upon the cable television operators as part of the viewability transition.

9. Even if they are aware of the change, many viewers will not obtain the additional equipment needed to continue viewing KJLA because, for example, they will find it too

burdensome to obtain and install additional equipment or cannot afford, or desire, to pay for the equipment which they would otherwise expect the cable operator to provide. Moreover, while some of the cable operators' subscribers are digital customers, they often have second or third drops in their homes where the service remains in analog and will require the special equipment. Will such customers understand that their additional drops are analog and what has to be done, including any additional wiring or other changes?

10. Confusion and disruption caused by any such change will almost certainly harm KJLA. Viewers accustomed to watching KJLA programming will migrate to other broadcast or cable networks that the cable operator chooses not to remove from its analog lineup, decreasing KJLA's viewership and audience share. And analog cable viewers who might otherwise find KJLA while "channel surfing" will not view our programming. In the end, it will be the channels that serve the most vulnerable viewers (those are unable to go through the effort to acquire and install equipment) that will suffer the most.

11. Loss of viewership will irreparably harm KJLA revenues and its business. Broadcast stations, and particularly stations that rely on must-carry treatment, such as KJLA, depend on viewing that then drives revenue from the sale of advertising time and the brokerage of programming time. These revenue streams are especially critical to KJLA's operations, since KJLA is not part of a major network group with holdings outside of broadcasting. While the actual losses that will be caused by the sunset of the current viewability rule are unquantifiable at this time, a reduction in viewing can only have a detrimental impact.

12. The likely loss of viewers also would be irreparable. Once changed, viewing habits are very difficult to reestablish. Indeed, once viewers switch to alternate programming that is available without added equipment, it may well be impossible for KJLA to reach lost

viewers again. Even if normal analog access to KJLA's signal was restored, viewers watching other stations would be less likely to return. This is not just a theoretical argument, but one based on cause and effect that we broadcasters in the Los Angeles market are familiar with. When a station in the Los Angeles market has lost or forfeited its analog carriage rights, the result has been an immediate and significant drop in the viewership ratings that the station achieves.

13. Because KJLA serves a niche audience with its unique programming service, the ultimate result of our loss of viewing will be to the programming we offer which will, in turn, reduce the program diversity and local service we provide, and will leave the needs of KJLA's viewers unmet or underserved.

14. The sunset has the potential to be disruptive to KJLA's business operations and to damage customer goodwill and cause further competitive harms. While these disruptions and potential harms are less certain because it remains unclear how cable operators will treat KJLA and how the transition to equipment-based viewability will work, that uncertainty in itself is cause for concern because there is no way for KJLA to anticipate and avoid damage to customer goodwill or competitive harm.

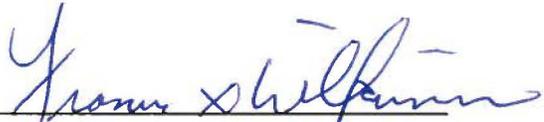
15. In sum, I am concerned that KJLA will suffer harm if the current viewability rule is permitted to sunset. This harm could include economic and non-economic losses which cannot be easily quantified until incurred and are unrecoverable and/or irreparable. The sunset will cause disruption to KJLA's business practices, result in a loss of revenue and goodwill, and create viewer frustration and confusion that will damage KJLA's standing in the local television market and its overall competitiveness. Ultimately, however, it is the loyal viewing public that

we have served throughout our Station's more than 20-year history that will suffer the most.

There is simply no reason for this to have to occur.

* * * *

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.


Francis X. Wilkinson

Dated: July 19, 2012