

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

In the Matter of	)	
	)	
Service Rules for the 746-764 and 776-794	)	WT Docket No. 99-168
MHz Bands, and Revisions to Part 27 of the	)	
Commission’s Rules	)	
	)	
Carriage of the Transmissions of Digital	)	CS Docket No. 98-120
Television Broadcast Stations	)	
	)	
Review of the Commission’s Rules and	)	MM Docket No. 00-83
Policies Affecting the Conversion to	)	
Digital Television	)	

**REPLY COMMENTS OF THE  
NATIONAL CABLE TELEVISION ASSOCIATION**

The National Cable Television Association (“NCTA”), by its attorneys, hereby submits its reply comments in the above-captioned Further Notice of Proposed Rulemaking (“Further Notice.”) The Further Notice explores mechanisms to encourage voluntary “band-clearing” arrangements in order to make spectrum in the 700 MHz band currently occupied by some UHF television broadcasters available to be auctioned to wireless services.

Broadcasters in the 700 MHz band, like other broadcasters, are not obligated to return their analog spectrum prior to the end of the transition to digital. But while other broadcasters are generally prohibited from ceasing analog transmission and returning their analog spectrum before the end of the transition, broadcasters in the 700 MHz band may enter into voluntary agreements to do so. The FCC expects, however, that “[i]ncumbents will enter into such

agreements only when they determine that the long term viability of their service will be improved thereby.”<sup>1</sup> And, in fact, certain incumbents – most notably, Paxson Communications Corporation – have expressed their belief that their long term viability *will* be greatly enhanced through entering into these agreements, because of the billions of dollars that they expect to receive in return.<sup>2</sup>

Nonetheless, in this proceeding, Paxson dangles its spectrum – and the prospect of billions of dollars for the U.S. Treasury – before the agency to try to extract *additional* favors from the government. It claims that unless the FCC mandates cable carriage of a station’s *multiple* digital signals, “[Paxson] has no plans to terminate analog service prior to the close of the transition, which may well go on into the second decade of this new century.”<sup>3</sup> Notwithstanding the multi-billion dollar windfall that it expects to recover, Paxson insists that “without full digital must carry [of all free, multicast video programming aired by a station], incumbent broadcasters have no incentive to clear the band.”<sup>4</sup> Even if this were true, and it is not, the Commission would have no authority to accede to this request by promising them multiple free berths on cable systems.

## DISCUSSION

---

<sup>1</sup> Memorandum Opinion & Order, WT Docket No. 99-168 (rel. June 30, 2000) at ¶50 (hereinafter “MO&O”).

<sup>2</sup> Paxson apparently believes that it is sitting on a gold mine. See Paxson Comments at 45 (“It is the essence of the American dream for someone to find oil on your property – or other profitable or worthwhile uses for spectrum.”) According to U.S. News & World Report, “Bud Paxson, the creator of the Home Shopping Network and head of 19-station Paxson Communications, has reportedly said that it would take at least \$12 billion to entice him to move his stations early.” “America’s Bad Call,” U.S. News & World Report, Sept. 4, 2000 at 47.

<sup>3</sup> Paxson Comments at 25.

In its Memorandum Opinion and Order in this proceeding, the FCC clarified its policy with respect to its consideration of voluntary band-clearing agreements. Among other things, the agency explained that incumbent analog broadcasters in the 700 MHz band that return their analog spectrum and convert to digital “are entitled to mandatory carriage for their digital signals consistent with applicable statutory and regulatory provisions.” A cable operator could agree to carry a broadcaster’s digital signal in place of its analog signal so long as the broadcaster “in this context and at its own expense, provide[s] its broadcast digital signal in an analog format for carriage on cable systems.”<sup>5</sup> Thus, the Commission already has eased the way for an incumbent 700 MHz UHF licensee to demonstrate why its choice to vacate its analog spectrum is consistent with the public interest.<sup>6</sup>

Certain commenters in this proceeding, though, claim that the FCC must do much more. They contend that the Commission must take steps not only to assure the continued availability to cable customers of a broadcaster’s existing programming but also to guarantee cable carriage of a broadcaster’s multiple digital signals. For example, Paxson proposes a complicated scheme for sweetening its incentive to vacate the 700 MHz band. Under its plan, a station that abandons its analog channel could not only require local cable systems to down-convert and carry an analog

---

<sup>4</sup> Id.

<sup>5</sup> MO&O at ¶65.

<sup>6</sup> NCTA has shown why cable operators are not required under the 1992 Cable Act to carry a *new* digital-only station in analog *or* digital form prior to the completion of the transition to digital broadcasting. See NCTA Comments and Reply Comments, Petition for Declaratory Ruling of Guenter Marksteiner, Permittee of Station WHDT-DT, Channel 59, Stuart, Florida, CSR 5562-Z. NCTA’s filings in that proceeding fully address the points raised in this proceeding by the Association of Maximum Service Television, which seek to reargue the merits of that petition here. MSTV Comments at 22 – 24.

feed of the station's primary digital signal, *but also* to carry its "HDTV or digital multicast signals carried on the digital portion of the cable system, equipped with digital set-top boxes."<sup>7</sup>

As a result, Paxson's proposal would go beyond the even exchange of an analog signal for an analog feed of a digital signal carrying the same programming that the MO&O contemplates and would significantly increase the burden on cable operators. It would force operators to incur costs to convert a digital broadcast signal to analog, and to set aside additional channel space for a station's HDTV programming or any other free over-the-air digital services. Nothing in the must carry law authorizes such a scheme.

To the contrary, the statute *precludes* the multiple carriage rights that Paxson and other incumbent broadcasters seek. Section 614 expressly limits must carry rights to "*the primary video... of each of the local commercial television stations carried on the cable system.*"<sup>8</sup> Thus, whenever a digital station's must carry rights ultimately vest<sup>9</sup>, all that an operator would be required to carry under the statute would be a *single* digital primary video. Paxson's entire

---

<sup>7</sup> *Id.* at 33. Other broadcasters urge the Commission to require cable carriage of all material transmitted over the broadcaster's 6 MHz block of digital spectrum. *See, e.g.*, Comments of Sinclair Broadcasting Group, Inc. at 5 ("[I]f a DTV broadcaster chooses to multiplex its 6 MHz channel and transmit multiple programming streams, cable operators should be required to carry all of these programming streams."); Comments of Maranatha Broadcasting Company, Inc. at 5 ("Assured carriage of a single channel of DTV programming is a matter of survival for Channel 59-69 licensees asked to relinquish their existing channel assignments; assured carriage of the full DTV signal of all stations is necessary for the public and broadcasters to realize the benefits of the conversion to DTV."); Comments of Sonshine Family Television Inc. at 5; Comments of Shop At Home, Inc. at 7; Comments of USA Broadcasting at 12 ("[t]he Commission should clarify that the digital signals of, at least, stations vacating their analog channels for band-clearing purposes will be entitled to full must carry rights (i.e., mandatory carriage of all digital transmission) for the entire bitstream associated with their 6 MHz digital signal.").

<sup>8</sup> 47 U.S.C. Sec. 534(b)(3)(A).

<sup>9</sup> Under the proposal that Paxson has repeatedly put before the Commission, broadcasters would be permitted to insist on this carriage of their multiple digital signals in lieu of their analog channel *even before they have returned their analog channel*. NCTA has explained at length, in its comments in the Commission's mandatory carriage proceeding, why no mandatory carriage of digital signals can be authorized before broadcasters' analog signals "have been changed" to digital signals. *See* NCTA Comments and Reply Comments, CS Docket No. 98-120 (filed Oct. 13, 1998 and Dec. 22, 1998).

discussion of why multiple digital signal carriage is statutorily required simply ignores this critical limitation.<sup>10</sup>

Paxson also alleges that “digital operation by vacating incumbents does not change the Supreme Court’s analysis that must carry rules are constitutional.”<sup>11</sup> But the whole point of the statutory analog must carry requirement – and the only governmental interest that a narrow majority of the Supreme Court found sufficient to justify those requirements – was to *preserve* the availability of broadcast stations for households that depend upon over-the-air reception for television viewing. Here, even Paxson acknowledges that over-the-air viewers “would be unable to receive a vacating station’s signals.”<sup>12</sup> It is a far different thing – indeed, an insurmountable constitutional challenge – to try to justify must carry rules based on an interest in having broadcasters *cease* providing over-the-air analog service to the very intended beneficiaries of must carry.

Finally, Paxson tries to paint its proposal as helping the transition to digital television. But merely saying it does not make it so. After all, its proposal would require a cable operator to take its *primary* digital signal and convert it to *analog*. Paxson nowhere explains how that would advance the digital transition.

Carriage of Paxson’s *multiple* digital signals will not further the digital transition, either. The multiple signals would comprise standard definition digital programming similar to – or identical to – programming already carried on their analog service, programs that lack attributes for which a digital set might offer some benefit, or programming that viewers could receive simply

---

<sup>10</sup> See Paxson Comments at 37 (claiming that all free over-the-air digital programming is entitled to mandatory carriage.)

<sup>11</sup> Id. at 38.

<sup>12</sup> Id. at 39.

by purchasing the cable operator's digital tier. What inducement would cable customers have to purchase digital television sets in order to receive these services?

Providing Paxson several guaranteed spaces on cable systems to serve cable customers in lieu of an over-the-air audience might jump start Paxson's new cable networks. But it would not jump start the digital transition – it would simply give Paxson an unfair advantage over other cable networks in competing for cable customers.

### **CONCLUSION**

Providing sufficient incentives to incumbent broadcasters to vacate their analog spectrum (and abandon over-the-air viewers) prior to the end of the transition may be a difficult task – especially if the billions of dollars that Paxson reportedly expects to receive from prospective wireless users is not enough of an incentive. But as a matter of law and policy, mandatory cable carriage of multiple digital signals is simply not a further inducement that can or should be offered.

Respectfully submitted,

Daniel L. Brenner  
Michael S. Schooler  
Diane B. Burstein

Counsel for the National Cable  
Television Association  
1724 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
(202) 775-3664

September 15, 2000