

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

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

REPLY COMMENTS OF THE



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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The National Cable & Telecommunications Association (“NCTA”), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.

INTRODUCTION

As NCTA explained in its initial comments in this proceeding, the cable industry’s goal is to ensure its customers experience a smooth transition. To get there will require cable operators and broadcasters to cooperate to ensure that cable customers can view broadcasters’ programming on February 18, 2009. That coordination already is underway outside the regulatory arena.

Some broadcasters persist in trying to use their digital transition to leverage new requirements on cable operators in the form of expanded must-carry rights or additional government give-aways to retransmission consent stations. With less than a year to go to get to the digital transition goal-line, the FCC needs to reject this type of regulatory gamesmanship.

Certain broadcasters in their comments urge the Commission to impose new rules that micromanage cable system operations. As NCTA’s Comments showed, nothing in Section 614 provides authority for this type of regulatory intervention. Cable operators should have the

flexibility necessary to ensure that their customers have a positive experience in February 2009, free from the intrusive regulations that broadcasters demand.

Moreover, MSTV/NAB's resistance to any relief for small systems is wholly unjustified. Cable systems serving few customers or with limited capacity have committed to continue to carry analog versions of must-carry broadcasters' digital signals – at significant expense to those systems. Cable commenters and the Small Business Administration (“SBA”) made a strong showing why these systems should be relieved from the dual carriage burden, and the broadcasters' attempts to ignore or downplay those real, independently-verified burdens have no basis in fact.

ARGUMENT

I. CABLE OPERATORS SHOULD NOT BE SADDLED WITH DIGITAL CHANNEL PLACEMENT RULES

NCTA demonstrated that the must-carry law does not grant digital broadcasters additional channel positioning rights for their HD signals.¹ And NCTA showed that there are technical and operational problems associated with providing broadcasters with the new channel positioning rights that they desire.

Much of what broadcasters' seek in this regard is seemingly based on a fundamental misunderstanding of cable technology. For example, MSTV/NAB proclaims its unsupported “belief” that it would be “possible on most digital cable systems” to provide multiple digital versions of a station's broadcast signal (*e.g.*, high definition (“HD”) and standard definition (“SD”)) to appear on the same channel (from a subscriber's perspective).² Contrary to the broadcasters' mistaken belief, as NCTA explained in its initial comments, set-top boxes already

¹ NCTA Comments at 2-5.

² Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters at 2 (“MSTV/NAB”).

in the field typically do not operate this way.³ SD and HD versions of a station's broadcast signal generally cannot appear on the same virtual channel.

But even if they could, such a rule would be unwarranted. As Verizon explains, even if it were technically possible for both HD and SD versions of a channel to share the same channel placement – something far from certain without replacing all of a provider's set-top boxes to include this new functionality – it does not follow that such an approach would best serve consumers. For example, many consumers may well prefer to have the HD version of a channel assigned a number adjacent to other broadcast and non-broadcast HD channels, while the SD version of the same channel may be grouped together with other local channels.⁴

And it would require confusing channel changes to many cable customers' line-ups just at a time when operators are working hard to minimize such dislocations.

Broadcasters also urge the FCC to require operators to display broadcasters' "major-minor" two-part channel numbering scheme (*e.g.*, 4-1, 4-2).⁵ But their grasp of cable technology on this score is similarly mistaken. Cable operators' boxes display one-part channel numbers (*e.g.*, 401, 402). Broadcasters posit that this display feature can be changed through "an overnight software download to enable a correct display."⁶ But that is hardly the case. Rather, it would force operators to invest in significant software upgrades; possibly require operators to change out set-top boxes that contain LED displays incapable of supporting 2-part numbers; and modify program guide data, among other things. The industry would need to undertake this multimillion dollar project to fundamentally change the way it conveys programming information to customers.

³ NCTA Comments at 3-4.

⁴ Verizon Comments at 3.

⁵ MSTV/NAB Comments at 2-3.

⁶ *Id.* at 3 n. 7.

At bottom, the FCC never intended digital signals to have any channel positioning rights, other than for operators to “carry the information necessary to identify and tune to the broadcast television signal.”⁷ Now is certainly not the time to create the new rights broadcasters seek. As NCTA’s initial comments explained,⁸ cable operators will continue to carry analog versions of digital signals in the channel position in which they were carried pre-transition. That is the most that Section 614 requires.

II. FORMATTING MANDATES ARE UNWARRANTED

NCTA’s initial comments demonstrated why cable operators, rather than broadcasters or the FCC, are best-positioned to determine how to format must-carry broadcast stations where operators must derive an analog version of an HD signal at the cable headend.⁹ The broadcasters, however, take a different, broadcaster-centric, view, arguing that “broadcasters and their viewers, not cable operators, should be able to determine the format in which their downconverted programming is displayed on an analog television set.”¹⁰ But broadcasters show no inclination to themselves undertake *any* steps to help in that regard, such as by transmitting a standard definition version of their HD programming. Rather, they would like the Commission to impose all the costs and burdens of formatting on cable operators, yet themselves retain all the rights to decide how each program, or even interstitial material, should look.

The Commission should reject this unreasonable approach. NCTA showed why cable operators cannot be placed in the untenable position of having to devote scarce resources to responding to the differing formatting demands of the numerous must-carry stations carried on

⁷ 47 C.F.R. § 76.57(c).

⁸ NCTA Comments at 5.

⁹ *Id.* at 6-8.

¹⁰ MSTV/NAB Comments at 3.

each system.¹¹ Verizon agrees: “a contrary rule that would allow broadcasters unilaterally to make decisions concerning a video provider’s approach to down-conversion issues could result in undue complexity and confusion – with a video provider forced to accommodate different elections by different broadcasters – that could harm the user experience.”¹² If cable operators must perform downconversion at their headends, they should be allowed to move toward obtaining a consistent look across all their analog channels – broadcast and non-broadcast. That interest would be stymied if each must-carry broadcaster were permitted to dictate a particular aspect-ratio conversion format for each program on their channel.

Broadcasters try to claim that the must-carry law entitles them to impose these burdens on cable operations. They try to shoehorn this purported right into the “no material degradation” provisions of Section 614.¹³ But that provides no source of authority for their position here. The FCC already has found that analog downconversion is an exception to this requirement.¹⁴

Some broadcasters – NBC in particular – argue that operators must include equipment at the headend that responds to Active Format Description (“AFD”) and should be required to pass through AFD information so that consumers can use it in their homes.¹⁵ But AFD is no cure-all for the February 2009 transition. Millions of cable set-top boxes in consumers’ homes cannot respond to AFD. So whatever merit AFD may or may not have in the future, it is no solution to the issue at hand.

¹¹ NCTA Comments at 7-8.

¹² Verizon Comments at 4.

¹³ MSTV/NAB Comments at 3-4.

¹⁴ *Third Report and Order*, 22 FCC Rcd. 21064 (2007) at ¶ 13.

¹⁵ Comments of NBC Universal, Inc. and NBC Telemundo License Co. at 6 (“the Commission should require every cable system to implement or pass through AFD to the extent AFD is provided as part of the delivered programming of any local station carried by the cable system”) (hereinafter “NBC Comments”).

In any event, the irony is that there is no obligation whatsoever that NBC or its affiliates – or any broadcaster – transmit AFD. Nor are NTIA boxes required to respond to AFD. Nor, for that matter, is there any assurance that HD cable-ready television sets respond to AFD.¹⁶ Moreover, AFD would impose unknown and untested burdens on cable customers. For example, features contained in HD sets may conflict with AFD instructions. Under these circumstances, it is entirely too early to require cable operators to install equipment that responds to it or to require operators to pass AFD through to customers.

Nor is there any legal basis for imposing such a requirement. Under Section 614, cable operators are only required to retransmit certain broadcast content: the primary video, accompanying audio, line 21 closed captioning material and, to the extent “technically feasible,” program-related material carried in the VBI or on subcarriers.¹⁷ There is no inherent obligation in Section 614 for operators to purchase new equipment or to redesign their system to accommodate the desires of must-carry broadcasters.¹⁸ Moreover, to the extent that NBC argues that this AFD proposal should extend to all local television stations, regardless of whether they are carried pursuant to must-carry, the law is to the contrary. Retransmission consent stations that are actually providing AFD can negotiate with cable operators over its carriage, but the FCC

¹⁶ HD sets that are already in viewers’ homes may not respond to AFD. And all NBC cites to is Commission language simply “encouraging” television set manufacturers to include certain features in their sets. NBC Comments at 8. That is a far cry from the mandate that NBC proposes here for cable.

¹⁷ 47 U.S.C. § 614(b)(3).

¹⁸ The FCC made that clear when first implementing this provision, finding that carriage of program-related material is “technically feasible” only “if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material.” *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965 at ¶ 82 (1993). “Signal carriage” of must carry stations is technically feasible if “only nominal costs, addition or changes of equipment are necessary.” *Id.*

cannot impose these obligations on cable operators under the guise of protection against “material degradation.”¹⁹

In a further effort to micromanage cable operations, NBC urges additional regulation of audio in cable downconversion.²⁰ Again, cable operators have every interest in ensuring that their customers obtain the same quality analog programming post-transition as they do pre-transition, and no rules are necessary or appropriate. As to data already required to be carried under the must-carry rules, cable operators are well aware of their existing obligations with respect to program-related material such as closed-captioning and V-chip data.²¹ There is no need to adopt new requirements here.

III. SMALL SYSTEMS MUST BE EXEMPT FROM DUAL CARRIAGE

NCTA, the American Cable Association (“ACA”), the Office of Advocacy, U.S. Small Business Administration (“SBA”) and Charter Communications, Inc. all filed comments supporting an exemption for low capacity (those with activated capacity of 552 MHz or less) and small systems (those serving 5,000 or fewer customers). Only MSTV/ NAB opposed the request for an exemption. But their opposition is based on faulty assumptions about the balance of harms that would result if small systems were forced to offer duplicate versions of must-carry stations, and willfully ignore the reality faced by these small systems.

As NCTA’s comments made clear, small systems will continue to provide a viewable must-carry signal. They will downconvert the must-carry broadcasters’ digital signal to analog,

¹⁹ See Verizon Comments at 4-6 (explaining that Section 614 protection against material degradation does not apply to stations choosing retransmission consent). The Commission in passing found that the certain provisions of Section 614, including the no material degradation provision, applied to all local commercial television stations, including analog stations opting for retransmission consent. But the broadcasters offer no reason for importing that erroneous interpretation here. As NCTA previously explained, retransmission consent stations and cable operators have negotiated over the terms of the voluntary carriage of their digital signals for years, including issues relating to technical matters.

²⁰ NBC Comments at 9-10.

²¹ 47 C.F.R. § 76.62(e).

at their own expense.²² This obligation already imposes significant new costs on small cable systems – costs that arise by virtue of the broadcasters’ switch to a digital service. Cable customers will receive nothing new for this investment. And operators will receive no compensation for their troubles from the must-carry broadcasters – even though an operator is being forced by the government to carry these signals. Thus, small cable system operators already are shouldering more than their fair share to ensure that their customers will be able to see must-carry broadcast signals after the broadcasters’ transition to digital. All NCTA is seeking is a reasonable approach to these signal carriage burdens for these small and in many cases financially precarious systems²³ – an approach that would relieve them from the obligation to invest in even more equipment at each individual headend to provide the digital signal, too.

MSTV/NAB are flatly wrong in asserting that the strains on small system capacity caused by dual carriage have been adequately addressed by counting both versions of the signals carried toward the one-third cap.²⁴ As NCTA, ACA and Charter showed in their comments, low capacity systems are severely bandwidth constrained. If forced to devote additional bandwidth to carriage of duplicative signals, these systems in eleven months will be forced to make the hard choices caused by this unnecessary bandwidth squeeze. These choices invariably will lead to dropping valuable programming or at the very least stopping in its tracks the offering of new, advanced services like broadband and video on demand.

²² NCTA Comments at 12-13, ACA Comments at 1, SBA Comments at 7.

²³ As NCTA showed, some small systems would be forced to terminate service altogether if forced to carry digital and analog signals. For some systems, the financial burdens simply of purchasing new equipment to provide an analog version may prove too great; some small systems may have to shut their doors even if an exemption is granted.

²⁴ MSTV/NAB Comments at 8.

Moreover, notwithstanding broadcasters' attempts to minimize the problem, the burdens imposed on these small systems by dual carriage are anything but "modest."²⁵ NCTA, Charter and ACA showed that the cost of carrying these duplicative signals is substantial.²⁶ Plant upgrades to increase bandwidth and new technology such as switched video are even more costly than the headend equipment described in the cable industry's initial comments.²⁷ As noted in NCTA and Charter's comments, such costs are often prohibitive in small and low capacity systems because a small customer base combined with low home density cannot generate a sufficient return on investment to cover costs in those areas.²⁸

Finally, MSTV/NAB purports to express concern about the lack of HD programming from must-carry stations for those customers of small cable systems who have invested in an HD television set.²⁹ But this argument fails to hold water. As NCTA's Comments described, many of these small systems do not have the technical capability or financial wherewithal to provide much in the way of HD service. It is not likely that customers to these systems have invested in HD sets based on the expectation that their cable system provides it. It is more likely to assume that those with HD sets will receive broadcasters' HD programming over-the-air. And whatever trivial benefit a must-carry broadcaster might gain from being able to reach a small system customer's HD set over the cable system is far outweighed by the burdensome and unsustainable costs that would be imposed on all of the other customers of that system who do not have HD sets at all.³⁰

²⁵ *Id.* at 9.

²⁶ *See* NCTA Comments at 14-15, ACA Comments at 2-5, Charter Comments at 3-4.

²⁷ Charter Comments at 4.

²⁸ *Id.* at 3-4.

²⁹ MSTV/NAB Comments at 8.

³⁰ *See* Charter Comments at 8.

CONCLUSION

The digital transition arrives in eleven months. If this transition is to occur with a minimum of disruption, cable operators must have the freedom to concentrate on making sure that their customers obtain a viewable must-carry broadcast signal on February 18, 2009.

Notions that operators will change out their operations to accommodate the seemingly never-ending wish-list of broadcasters should be put to rest. Regulatory intervention at this point would not only be unlawful but counterproductive to the goal of a smooth transition.

Finally, the equities clearly favor providing relief from dual carriage for systems with 5000 or fewer customers or 552 MHz or less capacity. Forcing each system that falls into either of these categories to file a waiver would be an enormous burden, both on those systems and on Commission staff. Instead, as the comments demonstrate, the FCC should act quickly to relieve small systems from the burdens of dual carriage through a categorical exemption, and should not pile on to those burdens by forcing each system to file waivers.

Respectfully submitted,

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