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July 8, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

via email: KJMWEB@fcc.gov and Federal Express

Re: Establishment of a Digital Transition Quiet Period for Retransmission Consent

Dear Chairman Martin:

On behalf of the American Cable Association (“ACA”), I write to you and the Commission with ACA’s strong support of the Petition for Expedited Rulemaking (the “Petition”) filed on April 24, 2008, by ACA Members Mediacom Communications and GCI Cable, and others.¹ The Petition proposes a modest quiet period for retransmission consent to avert the harm to consumers if broadcasters withdraw signals during the critical months before and after the transition. The public interest benefits of the quiet period are manifest, and we ask the Commission to adopt it expeditiously.

American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve about 7.5 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA’s members serve fewer than 1,000 subscribers.

The Petition accurately describes the problem and proposes a narrowly-tailored solution. The Petition proposes a modest quiet period for retransmission consent during the vitally important months both before and after the digital transition. The quiet period would serve to maintain the *status quo* and minimize the disruption and confusion that would result if broadcasters withdrew signals during this critical point.

¹ *In the Matter of Establishment of a Digital Transition Quiet Period for Retransmission Consent*, Petition for Expedited Rulemaking (filed Apr. 24, 2008).

In support of the quiet period, ACA corroborates a key factual statement in the Petition – thousands of retransmission consent agreements expire on December 31, 2008. While the largest cable operators may be able to obtain long-term retransmission consent agreements, for ACA members, three-year agreements are the rule. Across ACA's nearly 1,100 member companies, we estimate that between 4,000 and 5,000 retransmission consent agreements will expire at the end of this year. Given the increasingly contentious nature of retransmission consent negotiations, and broadcasters' increasing willingness to pull signals from smaller cable systems, the intersection of the retransmission consent cycle and the end of analog broadcast signals creates a substantial risk of consumer confusion, frustration, and harm. All of this would occur at a critical point when the Commission, the cable industry, and many other industry and government participants are working to minimize the disruption for consumers.

As set forth in the Petition, a retransmission consent quiet period would, absent a new retransmission consent agreement between the parties, require broadcasters and cable operators to maintain the *status quo* regarding the carriage of retransmission consent signals for a short period of time. Cable operators would be obligated to continue to distribute retransmission consent stations under the same terms as before, and broadcasters would be constrained from withdrawing signals. This temporary *status quo* would satisfy a very important government and public interest by helping to ensure that consumers are not confused or frustrated at the sudden loss of broadcast signals both before and after the digital transition. There is no reason why disputes over retransmission consent agreements should impede the vitally important goal of a smooth digital transition. The Commission and Congress have gone to great lengths to educate the American public about the transition, and retransmission consent disputes should not interfere with their goal of a smooth transition.

The Commission has ample authority to adopt the quiet period. The Commission has ample statutory authority to adopt the proposed quiet period. Section 336 of the Communications Act grants the Commission wide-ranging authority to ensure that the digital transition goes smoothly, and mandates that the Commission use that authority as necessary to support the transition. Specifically, Section 336 obligates the Commission to “prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.”² The Commission recently recognized this authority in its *DTV Education Order*, stating that “[t]he Commission is statutorily required to promote the orderly transition of full-power stations from analog to digital television...” and “Congress had no need to give the Commission specific authority over any one element of the transition, because...we have general authority to promulgate rules to advance the transition.”³ Moreover, the Commission has long required a retransmission consent *status quo* that is very similar to the quiet period proposed by the Petitioners. Commission regulations mandate that broadcast signals cannot be deleted or repositioned during sweeps periods.⁴ If the Commission can justify a recurring retransmission consent *status quo* during sweep periods, the Commission can surely apply a short, one time only, quiet period to ensure a smooth digital transition.

The duration of the proposed quiet period is reasonable and appropriate. ACA supports the sensible timeframe proposed in the Petition. The May 31, 2009, end-date for the quiet period would provide consumers with an adequate adjustment period, without unduly burdening

² 47 U.S.C. § 336(b)(5).

³ *In the Matter of DTV Consumer Education Initiative*, Report and Order, 23 FCC Rcd. 4134, ¶¶ 5, 45 (2008).

⁴ See Note to 47 C.F.R. § 76.1601 (“No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.”).

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cable operators or broadcasters that are not otherwise able to come to carriage agreements. This brief quiet period would avoid the confusion and disruption that would surely result if a broadcaster or cable operator were to delete a broadcast signal shortly before or after February 17th because of a retransmission consent dispute.

At ACA, we firmly support the proposed quiet period and echo the Petition's request for the most expeditious action possible on this critical item.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew M. Polka".

Matthew M. Polka
President and CEO
American Cable Association

cc: Commissioner Michael J. Copps (*via email: Michael.Copps@fcc.gov*)
Commissioner Deborah Taylor Tate (*via email: dtaylortateweb@fcc.gov*)
Commissioner Jonathan S. Adelstein (*via email: Jonathan.Adelstein@fcc.gov*)
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