

**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



Matthew M. Polka
President and CEO
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Nicole E. Paolini-Subramanya
Christopher C. Cinnamon
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

March 17, 2008

I. Introduction

The American Cable Association (“ACA”) responds to the National Association of Broadcaster’s (“NAB”) comments in this docket¹ regarding relief from the Commission’s DTV must-carry obligations for small cable systems.² Contrary to NAB’s assertions, the need for relief is demonstrable and acute. Further, the systems that would be subject to the exemptions requested by ACA would provide all subscribers with a viewable signal delivered without material degradation.

ACA also supports the National Cable & Telecommunications Association’s comments regarding the formatting of analog versions of HD signals.³ Formatting choices should be made by the cable operator.

About the American Cable Association. ACA represents nearly 1,100 small and medium-sized cable companies that serve more than seven million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More

¹ *In the Matter of: Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, *Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters*, CS Docket No. 98-120 (filed March 3, 2008) (“NAB’s Comments”).

² In its comments in this docket, ACA requested an exemption from the requirement to carry broadcast signals in digital format post-DTV transition for cable systems with (i) 5,000 or fewer subscribers, or (ii) less than 552 MHz capacity (“small cable systems”). See *In the Matter of: Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, *Comments of the American Cable Association*, CS Docket No. 98-120, at 1 (filed March 2, 2008) (“ACA’s Comments”).

³ *In the Matter of: Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, *Comments of the National Cable & Telecommunications Association*, CS Docket No. 98-120, at 6-8 (filed March 3, 2008) (“NCTA’s Comments”).

than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. The need for relief from the DTV must-carry obligations is demonstrable and acute – the cost of compliance is far from “modest.”

Cost of compliance. As shown in the comments filed in this docket by ACA, NCTA, Charter and the Office of Advocacy, U.S. Small Business Administration, the cost of upgrading a cable system to carry digital signals is far from modest.⁴

According to information provided to ACA by the National Cable Television Cooperative (“NCTC”), for systems already providing digital satellite programming services via HITS or another method, the minimum cost to upgrade the system to carry the primary stream of one must-carry channel would be \$28,600, not including a minimum of \$350 for each set-top box, maintenance costs, training costs, or the cost of redundant equipment to be used in the event of a malfunction. For analog-only systems, the minimum cost to upgrade to carry digital broadcast signals is almost twice as much: \$54,900 for the first channel, with incremental costs of approximately \$8,000 for each additional channel.⁵

⁴ See ACA's *Comments* at 2-3 and [Exhibit 1](#); *In the Matter of: Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, *Comments of the Office of Advocacy, U.S. Small Business Administration*, CS Docket No. 98-120 at 6 (filed March 3, 2008) (“*SBA Advocacy's Comments*”) (citing estimate by a group of U.S. Senators that the cost of compliance with the FCC's DTV must-carry obligations is approximately \$75,000 per small cable operator); *Comments of Charter Communications, Inc.* at 8-9 (“*Charter's Comments*”) (cost of compliance is \$100,000 per system); *NCTA's Comments* at 14-15.

⁵ See ACA's *Comments* at 2-3 and [Exhibit 1](#).

As noted in ACA's Comments, these costs far exceed the \$6,000 – \$10,000 per system cost of compliance that the Commission found would be a significant financial hardship for systems serving 5,000 or fewer subscribers in hundreds of EAS waiver orders, and therefore constitute a *per se* financial hardship for these systems.⁶

Exemptions are necessary. Commenters agree: The need for an exemption for systems serving 5,000 or fewer subscribers or with an activated capacity of 552 MHz or less is acute:

Office of Advocacy, U.S. Small Business Administration:

[T]he Commission...failed to properly examine the impacts that the proposed regulation may have on small cable businesses...

...

Advocacy suggests that the FCC adopt an exemption for those carriers with 5,000 or fewer subscribers or those cable systems with an activated channel capacity of 552 MHz or less....⁷

Charter Communications, Inc.:

The need for relief is now urgent and overdue. To “minimize the economic impact on such systems,” and to avoid unnecessary administrative proceedings, the Commission should immediately establish automatic regulatory exemptions....⁸

National Cable & Telecommunications Association:

The Commission has every reason to...[exempt] small systems from a requirement to carry a digital signal in addition to an analog version of a commercial must-carry broadcaster's digital signal. A waiver policy is no substitute for this categorical exemption. Only an exemption can provide

⁶ See *ACA's Comments* at 3-4. Further, in systems with capacity of 552 MHz or less, the DTV must-carry obligations will impede these systems' ability to compete with well-financed competitors, and to deploy broadband services. See *ACA's Comments* at 7.

⁷ *SBA Advocacy's Comments* at 7.

⁸ *Charter's Comments* at 6.

the certainty that small systems need in order to move ahead with equipment purchases and consumer education.⁹

NAB's arguments against relief are unconvincing. NAB's lead argument against relief is that "[t]he statutory requirement to ensure that signals are viewable to all subscribers and are not materially degraded is fundamental."¹⁰ Under ACA's proposed exemptions,¹¹ exempt systems would provide an analog signal viewable to all the systems' subscribers.¹² Further, conversion of the digital signal to analog format would not constitute material degradation.¹³

NAB also argues that counting the analog version of a signal toward the one-third capacity cap addresses capacity concerns and renders relief unnecessary.¹⁴ This argument ignores reality: As the record in this docket shows, significant numbers of systems of 552 MHz or less are channel-locked.¹⁵ Without the requested exemption, these systems will either have to drop existing programming from their systems or forgo launching new broadband, voice and programming services.¹⁶ Moreover, the Commission itself recognizes that the one-third capacity cap does not cure capacity

⁹ *NCTA's Comments* at 20.

¹⁰ *NAB's Comments* at 7.

¹¹ See note 2, *supra*.

¹² See *ACA's Comments* at note 6.

¹³ *Id.* See also *NCTA's Comments* at 18–19; *Charter's Comments* at 9.

¹⁴ 47 U.S.C. § 534(b)(1).

¹⁵ See *ACA's Comments* at 6-7; *NCTA's Comments* at 15-17; *Charter's Comments* at 3.

¹⁶ See Patti A. Campbell, *Small Cable Concerns go Beyond Capacity*, *Multichannel News* (February 11, 2008) available at <http://www.multichannel.com/article/CA6530798.html>.

concerns – it has provided for capacity-based waivers from its DTV must-carry obligations.¹⁷

NAB also argues that “cable systems have ever-increasing capacities with which to serve their viewers.” That may be the case for urban and larger systems, but not for the systems for which ACA seeks exemptions. By definition, 552 MHz systems do not have “ever-increasing capacity.”

NAB’s final salvo? “[J]ust because a cable system is small it does not necessarily have limited capacity or financial resources.” Hundreds of EAS waiver orders attest to the contrary,¹⁸ as does the record in this docket.¹⁹

III. HD-to-analog formatting decisions should be made by the cable operator.

To date, broadcasters have been unable to agree on a standard for conversion of their signals from HD to analog. Further, the vast majority of broadcasters have not made the investment in the active format description equipment touted by NAB.²⁰ In this vacuum, many of ACA’s members have already acquired the necessary equipment

¹⁷ See *In the Matter of: Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, CS Docket No. 98-120 at ¶ 37 (rel. November 30, 2007).

¹⁸ See, e.g., *In the Matter of Clearvision Cable Systems, Inc.*, Order, 19 FCC Rcd. 14,592 (2004) (granting relief on the basis of financial hardship where compliance with EAS requirements would cost \$6,000 per system); *In the Matter of Charter Communications, Inc.*, Order, 19 FCC Rcd. 13,178 (2004) (granting relief on the basis of financial hardship where compliance with EAS requirements would cost \$6,000 – \$10,000 per system); *In the Matter of Cable & Communications Corporation*, Order, 19 FCC Rcd. 11,843 (2004) (granting relief on the basis of financial hardship where compliance with EAS requirements would cost \$9,000 per system); *In the Matter of SM Cable Holdings, LLC*, Order, 19 FCC Rcd. 2213 (2004) (granting relief on the basis of financial hardship where compliance with EAS requirements would cost \$7,300 per system).

¹⁹ See NCTA’s Comments at 14-17; SBA Advocacy’s Comments at 5-7; Charter’s Comments at 1-7.

²⁰ See NAB’s Comments at 4 - 5.

for format conversion and are already employing that equipment today.²¹ This experience, coupled with ACA's members' often one-on-one familiarity with their smaller-market subscribers, has given ACA's members important insight on their subscribers' preferences on format. Accordingly, cable operators are best-positioned to make format choices for programming that they convert from HD to analog, including selecting a single format for all HD-to-analog broadcast signals to provide subscribers with a desirably consistent display as they move from analog channel to analog channel.

If individual broadcasters were given the power to dictate format choices, it would likely result in an inconsistent and potentially displeasing experience for cable subscribers moving from one analog channel to another. Moreover, allowing broadcasters to dictate format choices on a program-to-program basis would be operationally unworkable, requiring cable operator personnel to monitor and manually reset converter equipment for each and every program from each and every must-carry broadcaster, twenty-four hours a day, three hundred sixty-five days a year.²² ACA's members, more than half of which serve fewer than 1,000 subscribers, do not have the financial or operational resources for such a labor-intensive undertaking, especially where (as is often the case in smaller markets) headends are remotely located, or inaccessible due to terrain or weather conditions.

²¹ Pre-DTV transition, many ACA members downconvert broadcasters' HD signals to analog to provide a better quality signal to subscribers.

²² As mentioned above, most broadcasters do not use AFD equipment, so cable operators' conversion equipment would need to be reset manually. See also, *NCTA's Comments* at 8.

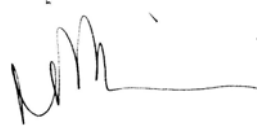
VI. Conclusion

The demonstrated cost of carrying must-carry signals in digital format and capacity constraints warrant an exemption from the obligation to provide must-carry signals in digital format for systems (i) serving 5,000 or fewer subscribers, or (ii) with 552 MHz of capacity or less. *NAB's Comments* offer no convincing arguments to the contrary.

In addition, the Commission should allow cable operators to determine the format for signals converted from HD to analog. Cable operators are best-positioned to know the format in which their subscribers wish to view converted signals. Permitting broadcasters to dictate this choice could result in a displeasing experience for consumers, and would be unworkable on a program-by-program basis.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



By: _____

Matthew M. Polka
President and CEO
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Nicole E. Paolini-Subramanya
Christopher C. Cinnamon
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

March 17, 2008