



Federal Communications Commission
Washington, D.C. 20554

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DA 01-1049
CSB-ILR 01-1

Daniel L. Brenner
Senior Vice President for Law and Regulatory Policy
National Cable Television Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120

Dear Mr. Brenner:

You wrote to me in the context of the recently released *First Report and Order and Further Notice of Proposed Rulemaking* in the Digital Television Must Carry¹ proceeding asking why the Cable Services Bureau sent a survey to cable operators but did not survey specific broadcasters on the subject of broadcasting digital signals. Essentially, the answer is that we believe broadcasters that advocate dual carriage have an incentive to provide us with information in an effort to justify such a requirement. The Commission was clear in the DTV Must Carry *Order and FNPRM* that the current record did not support imposing a dual carriage requirement; thus offering a further incentive to those who favor dual carriage to present substantial evidence on this issue.² Moreover, the questions posed to cable operators in the Cable Services Bureau survey are more objective and suitable for tabulation than the questions we might pose to individual broadcast stations.

As you noted in your letter, the Commission posed three specific questions to broadcasters in the FNPRM.³ We believe these questions seeking specific information on plans for digital programming and format will help to focus commenters on the Commission's need for specificity in the record. The FNPRM invited commenters that support a dual carriage requirement to "provide specific empirical information to demonstrate how mandatory dual

¹ *Carriage of Digital Television Broadcast Signals, Amendments to Part 76 of the Commission's Rules, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals, ("DTV Must Carry Order and FNPRM")*, CS Docket Nos. 98-120, 00-96, 00-2, FCC No. 01-22, released January 23, 2001.

² *Id.* at ¶ 112.

³ *Id.* at ¶ 120.

carriage requirements would satisfy the requirements of both *Turner* and *O'Brien*.⁴ The Commission noted in the FNPRM that the statute is ambiguous on the question of mandatory dual carriage and tentatively concluded, based on the record in hand, that such a requirement appears to burden cable operators' First Amendment interests more than necessary to further important governmental interests.⁵ The onus is on those who favor mandatory dual carriage to provide the necessary information to overcome this existing presumption. In particular the Commission stated that the record is insufficient to demonstrate the degree of harm broadcasters would suffer without carriage of both signals.⁶ The FNPRM also notes that there appears to be "a limited amount of original digital programming being broadcast," and, as a consequence, calls into question the practicality of mandating dual carriage. These presumptions and concerns lay the groundwork for the specific questions to broadcasters that you cited in your letter.⁷ We believe this stated presumption and specific request for information provides an incentive to broadcasters to respond with specificity in their comments.

The FNPRM also asked for information from cable operators, in general, and from small cable operators in particular.⁸ In contrast to the questions posed to broadcasters, we believe that cable operators should be able to provide us with very specific information about current system capacity, plans for future capacity, and retransmission consent agreements as they pertain to voluntary digital carriage. This type of information is largely objective and quantifiable. Moreover, by querying only 16 cable operators we can cover over 80% of cable households.⁹ Therefore, we concluded that a survey instrument would be more appropriate and efficient to obtain needed information from cable operators than a comparable document would be in the context of broadcast stations. Nevertheless, we appreciate your suggestion, and we hope that broadcasters that favor a dual carriage requirement will appreciate the importance of providing the Commission with complete information and data for the record.

⁴ *Id.* at ¶ 114. On this point, we discouraged commenters from repeating previously submitted legal arguments, and we are hopeful that the comments will focus instead on the factual information we request.

⁵ *Id.* at ¶ 3 and 112.

⁶ *Id.* at ¶ 115.

⁷ *Id.* at ¶ 120.

⁸ *Id.* at ¶¶ 112, 121.

⁹ As you suggest in your letter, we might have to survey 170 or more broadcasters to obtain useful information about widespread plans for digital signal broadcasting.

We look forward to receiving and reviewing the cable operators' responses to the survey the Bureau sent to them in January. We are hopeful that NCTA will encourage its members to provide their survey responses in a complete and timely fashion.

Sincerely,

Deborah A. Lathen
Chief
Cable Services Bureau

cc: Jack Goodman, National Association of Broadcasters