

Remarks by FCC Chairman Kevin J. Martin

ACA's 15th Annual Summit

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As Prepared for Delivery

I appreciate the opportunity to be with you all today. I congratulate ACA on its 15 years of work on behalf of independent cable operators, and commend Matt Polka for his effective leadership.

Let me first apologize for the brevity of my remarks but I have to testify before Congress this afternoon.

I thought it was important to speak to you today and personally address a few specific issues. All of the public commentary aside, I think we are not so far apart in our views on many issues. I believe we agree more than we disagree.

First, I'd like to clarify a carriage issue related to the upcoming digital transition.

Last fall, the Commission took an important step to minimize the potential burden on consumers posed by the DTV transition. Specifically, we issued rules implementing the statutory requirement that cable operators make every broadcaster's signal viewable to all their cable customers.

We were concerned that after broadcasters switch from analog to digital they would not be carried to analog homes. This outcome was problematic from the

Commission's perspective because it potentially leaves 35 million of analog cable homes unable to watch broadcast television after the switch to digital. I believe that such an outcome would violate the must carry statute's requirement that the broadcast signals be viewable to *all* cable subscribers.

In order to protect the millions of analog customers from losing their broadcast stations following the transition, the Commission's viewability order determined that down-converting the digital signal to an analog signal did not violate the material degradation provision of the must-carry statute. In fact, cable operators are required to make broadcasters' signals viewable to their analog customers.

While I am always sensitive to the capacity constraints faced by small cable operators, I do not support the Commission waiving this requirement. *All* cable subscribers, not just digital subscribers, should be able to view broadcast television after the transition just as they do today. The Commission's goal is to ensure that consumers have access to video services. And I believe that is an objective you share.

As I suggested at the outset of my remarks, I believe you would agree that all of your customers should continue to be able to view their broadcast stations.

Moreover, and critically, that order *did not* increase the broadcast carriage burden on cable operators. And the order was even necessary to clarify that you were allowed to down-convert signals without violating our rule. Therefore you should have no objection to the Commission's order.

I understand that smaller cable systems are capacity constrained. In 2001, the Commission required cable operators to pass through the broadcasters' HD signals unaltered. The must carry statute required that there be no material degradation. And I appreciate the concern when such cable systems are unable to carry broadcasters' HD signal, as the Commission required back in 2001.

In order to address this real problem, I am circulating a proposal to my colleagues that would give cable systems with 552 MHz or smaller capacity an exemption from this HD requirement. Systems of this size would not need to file a waiver request; they would automatically be relieved of the 2001 obligation to carry the HD signal.

Let me explain exactly what that means for all of you who have systems with 552 or fewer MHz.

If your system is analog-only, following the digital transition you can down-convert broadcasters' digital signals to analog and send them to your subscribers exactly as you do today. *Let me be clear: there is no additional carriage burden.*

If your system has both analog and digital subscribers and your digital subscribers are able to view an analog signal, you can down-convert broadcasters' digital signals to analog and send them to all of your subscribers exactly as you do today. *There is no additional carriage burden.*

If your system has both analog and digital subscribers, and your digital subscribers are unable to view an analog signal, you can down-convert broadcasters'

digital signals to analog and send them to your analog customers while making the signal viewable to your digital subscribers as you are doing today. Most likely, that is by carrying an SD feed. *Again, there is no additional carriage burden.*

In sum, our viewability order will ensure that after February 17 2009, all of your customers will continue to be able to view their broadcast signals without increasing your carriage burden. And with the exemption order I am circulating, those of you with small systems will be relieved of the 2001 burden of carrying broadcasters' HD signals.

We stand on common ground regarding another important issue currently before the Commission. Last fall, we initiated an inquiry into the “tying” practices of programmers. As you well know broadcast and cable programmers routinely tie marquee or “must-have” programming, such as premium channels or regional sports programming, with less desirable programming. The Commission is considering whether programmers should offer channels to MVPDs on a stand-alone basis.

I believe that if a cable operator only wants to carry one channel, it should not be required to buy 10 or 20 channels in order to do so. I believe this is a particularly important issue for those of you who are small operators or serve rural communities.

I am also concerned about the implications of this tying practice for consumers who literally bear the costs of unwanted programming in the form of higher prices. Consumers have seen their cable bills double over the last decade at the same time the costs for all other communications services have declined. I take cable operators at their

word when they identify increased programming costs as the reason for the dramatic rise in consumers' cable bills. As the Commission examines these tying arrangements, we must bear in mind their impact on consumers in terms of prices and program choice.

In closing, I would like to say that my door is always open. I look forward to working with you on this and other issues of importance to you and to the Commission.

With that, I'll take a few questions, before I need to return to preparing for the questions the Senators are going to throw my way.

Thank you.