

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN
DISSENTING IN PART AND APPROVING IN PART**

Re: Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, Second Report and Order and First Order on Reconsideration, CS Docket 98-120

Today, the Commission concludes that broadcasters should not get cable carriage of their multicasted broadcast signals. This issue has been pending for several years and the decision was a difficult one for the Commission. Indeed, even the majority acknowledges that the statutory language is ambiguous, and therefore that we could have interpreted it to mandate broader carriage. Ultimately, the Commission made a policy judgment that the benefits of this programming were outweighed by the burden on cable operators. I disagree. I think the public would benefit more from more free programming.

Congress gave broadcasters valuable spectrum to use to offer "advanced" television to American consumers. Thanks to recent technological developments, broadcasters now can use this digital spectrum to offer high-definition programming as well as several additional standard definition programming streams at the same time. Without cable carriage, however, many of these programs will not have the opportunity to succeed commercially. As a result, by denying cable carriage to all but one of the potential broadcast streams, this Order effectively prevents any broadcaster relying on "must carry" from investing in multiple programming streams. The record is replete with examples of the free programming services broadcasters want to provide or expand, including local news, local weather, local sports, coverage of local elections and government proceedings, and foreign language programming. Yet, with carriage rights for only one stream, these broadcasters cannot support all of this additional programming. The burden on cable of a requirement to carry these multicasted channels, however, actually would be significantly less than it was in the analog world, due to compression technology and dramatically expanded cable capacity. Moreover, the burden on cable capacity is capped by statute—a cap that has been upheld by the Supreme Court.

Finally, it should be kept in mind that this decision will have the most adverse impact on small, independent, religious, family-friendly and minority broadcasters. Network stations and most large-market broadcast affiliates are likely to get their signals carried through retransmission consent; must-carry was never about the large broadcasters. Must carry was designed for these smaller broadcasters that in the past have been unable to negotiate with larger cable operators. These broadcasters play an important part in their communities, and we should not be hindering them from investing in new, free programming for their viewers.