

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 )

To: The Commission

**REPLY OF THE NATIONAL ASSOCIATION OF BROADCASTERS AND THE  
ASSOCIATION OF MAXIMUM SERVICE TELEVISION, INC. TO OPPOSITIONS AND  
INFORMAL OBJECTION TO PETITION FOR RECONSIDERATION**

**INTRODUCTION**

The National Association of Broadcasters (“NAB”)<sup>1</sup> and the Association for Maximum Service Television, Inc. (“MSTV”)<sup>2</sup> sought reconsideration of the *Fourth Report and Order*<sup>3</sup> in this proceeding for the limited purpose of helping consumers make

---

<sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

<sup>2</sup> MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality of the local broadcast system.

<sup>3</sup> See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Fourth Report and Order, CS Docket No. 98-120, FCC 08-193 (rel. Sept. 4, 2008) (“*Fourth Report and Order*”). In the *Fourth Report and Order*, the Commission adopted an exemption to its interpretation of the statutory material degradation standard for certain cable systems. See Sections 614(b)(4)(A) and 615(g)(2) of the Communications Act, 47 U.S.C. §§ 534(b)(4)(A) and 535(g)(2). As a general matter, cable systems are required to carry both standard definition (SD) and high definition (HD) versions of must carry television broadcast signals. Under the exemption, qualifying systems will not be required to carry the HD signals delivered by must carry television broadcast stations in HD. *Fourth Report and Order* at ¶¶ 1-2. To qualify, a cable system must: (i) operate at a capacity of 552 MHz or less; or (ii) have

informed decisions through simple notification procedures.<sup>4</sup> In the Petition, NAB and MSTV proposed that the Federal Communications Commission (“Commission”) require every cable system seeking to benefit from the HD exemption to notify consumers, affected must carry stations, and the Commission of the system’s intent to utilize the exemption and the factual basis supporting its qualification for the exemption. Charter Communications, Inc. (“Charter”),<sup>5</sup> the National Cable and Telecommunications Association (“NCTA”),<sup>6</sup> and the American Cable Association (“ACA”)<sup>7</sup> (collectively, the “Cable Opponents”)

---

2,500 or fewer subscribers and be unaffiliated with a cable operator serving more than ten percent of all multichannel video programming distributor (“MVPD”) subscribers. *Id.* at ¶¶ 2, 9.

<sup>4</sup> Petition for Reconsideration of the National Association of Broadcasters and the Association for Maximum Service Television, Inc. (filed Nov. 17, 2008 in CS Docket No. 98-120) (the “Petition” or “NAB/MSTV Petition”).

<sup>5</sup> Charter Communications Inc.’s Opposition to Petition for Reconsideration by NAB and MSTV (filed Dec. 17, 2008 in CS Docket No. 98-120) (“Charter Opposition”). Contrary to the suggestion of Charter, the Commission certainly is not without authority to reconsider or clarify its decision in the *Fourth Report and Order* to require notice. Charter Opposition at 1, n. 1. By statute, the Commission may “in its discretion” grant a petition for reconsideration if it determines that the petitioner has presented “sufficient reason therefor.” 47 C.F.R. § 405 (a). There also is nothing improper about seeking reconsideration concerning the issue of notice, particularly where, as here, the issue was not explicitly addressed in the Commission’s *Fourth Report and Order*. Nothing in cases cited by Charter would impede the Commission’s grant of the Petition.

<sup>6</sup> Opposition of the National Cable and Telecommunications Association to Petition for Reconsideration (filed Dec. 16, 2008 in CS Docket No. 98-120) (“NCTA Opposition”).

<sup>7</sup> Opposition to Petition for Reconsideration of the National Association of Broadcasters and the Association of Maximum Service Television, Inc. (filed Dec. 16, 2008 in CS Docket No. 98-120) (“ACA Informal Objection”). ACA did not attach a certificate of service to its pleading and apparently failed to serve NAB and MSTV with a copy of its pleading as required by Section 1.429(f) of the Commission’s rules. 47 C.F.R. § 1.429(f). We obtained the filing via the Commission’s electronic comment filing system, but have not received a service copy. The ACA pleading is therefore only an informal objection that the Commission is not required to consider in taking action on the Petition.

would be better served by the transparency and accountability that simple notice procedures would afford. Accordingly, the Petition should be granted.

## DISCUSSION

Cable Opponents' opposition to the Petition is, in essence, an attempt to obtain the benefit of regulatory relief without transparency or accountability. They would place the burden of information-gathering on consumers and other affected parties.

Initially, we note that the Cable Opponents' arguments that the relevant information is readily available to the public fail to withstand even a cursory review. NCTA, for example, states that there is "ample existing data easily accessible at the FCC from which to make these determinations" and cites the FCC's Cable Operations and Licensing System ("COALS") database.<sup>8</sup> NCTA's argument that this information can be found in the COALS database is unavailing. Our research indicates that the only information on subscribership and capacity available in COALS is in the results for "cable television system reports" which are filed on FCC Form 325. But as the Commission's rules make clear, these reports are *only required to be filed by cable systems that serve 20,000 or more subscribers*.<sup>9</sup> Thus, the data would *almost never* be

---

<sup>8</sup> NCTA Opposition at 4-5.

<sup>9</sup> See 47 C.F.R. § 76.403. The Commission occasionally requires the filing of such reports by a random sampling of smaller systems, but this smattering of data on a handful of small systems from various years simply cannot provide a source of up-to-date, reliable data on capacity or subscribership. See *National Cable & Telecommunications Association, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices*, 22 FCC Rcd 11767, 11776 n. 88 (2007) ("Form 325, the Annual Cable Report is filed each year by cable operators upon notification by the Commission that filing is required. All cable operators with more than 20,000 subscribers must file, *along with a sample of smaller cable*

available for any system that meets the standard for the HD carriage exemption. Most importantly, even if all of the necessary information was consistently available in COALS, and even if it were reasonable for broadcasters to be expected to do COALS research, COALS is certainly *not* an acceptable means for *consumers* to determine which channels will or will not be available in HD.

Indeed, the Cable Opponents are in unanimous disagreement about what information is available to the public concerning cable system ownership, subscribership, and capacity. ACA states that “[b]roadcasters already have a means to obtain relevant information from cable systems—through the system’s public file.”<sup>10</sup> Yet, as NAB/MSTV pointed out in the Petition,<sup>11</sup> and as Charter readily concedes, the FCC exempts small cable operators from some paperwork requirements, including several public file requirements.<sup>12</sup> No Cable Opponent explains which public file rules or other filing obligations would require systems to specify the operating capacity and subscribership totals needed to ascertain a system’s qualifications for the degradation

---

*operators.”*(emphasis added). Further complicating the reliability and availability of subscriber and/or capacity data in COALS are cable operators’ requests that such remain confidential. *See, e.g., Request for Confidentiality for Information Submitted On Forms 325 For The Year 2004, Adelphia Communications Corporation; Cable Services, Inc.; Charter Communications; Comcast Cable Communications, Inc.; Time Warner Cable; Cox Communications, Inc.*, 21 FCC Rcd 2312 (MB 2006); *Cox Communications, Inc., Request for Confidentiality for Information Submitted On Forms 325 For The Year 2003*, 21 FCC Rcd 2309 (MB 2006); *Altrio Communications, Inc., Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12176 (MB 2004).

<sup>10</sup> ACA Informal Objection at 4-5.

<sup>11</sup> Petition at 5.

<sup>12</sup> Charter Opposition at 2-3, citing 47 C.F.R. § 1700(a).

exemption. Moreover, even with that information, it would not necessarily be clear that a cable system plans to exercise the exemption.

Nor should the Commission accept the Cable Opponents' assertions that a notice requirement would place an unfair burden on cable operators. It is entirely appropriate for there to be some means of verifying that a regulatee qualifies for the benefit of special relief from regulations.<sup>13</sup> Yet, there is no filing requirement that would allow the Commission or any other interested party to verify that a cable system meets the standard for this exemption.<sup>14</sup> Although each of the Cable Opponents claims that the notice proposal is burdensome and costly,<sup>15</sup> no Opponent attempts to quantify or describe the costs. The Commission should not simply assume that undue burden exists.

Contentions by Cable Opponents that consumers do not need or will be more confused by a notice are equally unavailing. As the Commission has recognized, the

---

<sup>13</sup> For example, although most broadcast licensees are required to file biennial ownership reports, those that are sole proprietorships and partnerships comprised entirely of natural persons are excepted from the biennial filing requirement. 47 C.F.R. § 73.3615 (a). Even though these licensees are excepted from the biennial filing obligation, the Commission has on file—and the public can access—the initial ownership report associated with the acquisition or construction of the station. Thus, there is a ready means by which the Commission or any interested party can verify whether a broadcaster who does not timely file its report is excepted from the rule.

<sup>14</sup> See note 9, *supra*. See also, FCC, *FCC Adopts 13th Annual Report To Congress on Video Competition and Notice of Inquiry for the 14th Annual Report*, News Release, MB Docket Nos. 05-255, 06-189, and 07-269 (rel. Nov. 27, 2007), Separate Statement of Chairman Kevin Martin (noting that the Commission “collects Form 325 data from approximately 1,100 cable systems (representing only 14.4% of the total 7,634 systems in our database)”).

<sup>15</sup> NCTA Opposition at 2-3; Charter Opposition at 3; ACA Informal Objection at 6.

benefits of digital broadcasting, particularly HD broadcasting, are significant.<sup>16</sup> A cable consumer subscribing to an exempt system, however, will not have full access to that programming. And, without any notice requirement, consumers will not know why the signals they see are not the same quality they may see or learn of elsewhere.

Subscribers on exempt systems are likely to wonder why friends or family who subscribe to neighboring, non-exempt systems can view more broadcast stations in HD. Additionally, because the availability of particular programs in HD is often featured in print or online program guides, consumers on exempt systems may wonder why they are unable to view that programming in HD. To paraphrase from NCTA's Opposition, a notice stating "we have no bananas"<sup>17</sup> would be entirely appropriate and useful to consumers in an environment where other grocery stores carry them.<sup>18</sup> In acting on the Petition, the Commission should continue to prioritize consumer needs by ensuring that they have the information required to make appropriate choices about investing in HDTV and subscribing to MVPD service.<sup>19</sup>

---

<sup>16</sup> See Petition at 3-4, citing *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Second Further Notice of Proposed Rulemaking, CS Docket No. 98-120, 22 FCC Rcd 8803, at ¶ 5 (rel. May 4, 2007) (the Commission's "prohibition against material degradation ensures that cable subscribers who invest in a HDTV are not denied the ability to view broadcast signals transmitted in this improved format").

<sup>17</sup> NCTA Opposition at 3.

<sup>18</sup> The fact that direct broadcast satellite providers are subject to different statutory and regulatory signal carriage obligations also does not justify a lack of notice. ACA Informal Objection at 2-3; Charter Opposition at 2; NCTA Opposition at 3,5 (citing *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, 23 FCC Rcd 5351 (2008)).

<sup>19</sup> Petition at 4 ("A cable subscriber who is considering whether to purchase a costly HD set, for example, should be made aware that some television broadcast signals may not

Finally, NCTA's contention that a notice is not necessary to promote information sharing between broadcasters and cable operators is unfounded. Voluntary efforts can often obviate the need for regulatory intervention, and DTV transition-related coordination is ongoing. However, the exemption at issue is newly adopted, has no "deadline" by which it needs to be executed, and therefore introduces new uncertainty and unpredictability into the coordination process. Cable operators who newly qualify for an exemption from HD carriage, not broadcasters or consumers who are losing the benefit of HD signal carriage, should be tasked with alerting broadcasters and consumers of their plans.

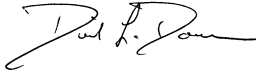
### **CONCLUSION**

Throughout this proceeding, NAB and MSTV have urged the Commission to focus on the needs and interests of consumers as it develops rules and policies that will govern carriage of television broadcast signals during and after the DTV transition. This means that, among other things, consumers should have access to the information they need to make educated decisions about their selection of equipment, programming, and services throughout the transition. The notice proposed in the Petition will serve this public interest objective and should therefore be adopted.

---

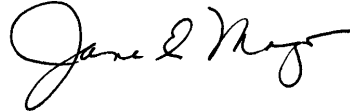
be available in HD on their particular cable system" because "[t]he availability of particular channels in HD is undoubtedly relevant to that consumer's decision about whether to invest in an HD set" and "may also be relevant to a consumer's decision to continue subscribing to a particular cable service if other available MVPD or over-the-air options will allow that consumer to access the HD television broadcast signals (s)he seeks.").

Respectfully submitted,



---

David L. Donovan  
**ASSOCIATION FOR MAXIMUM SERVICE  
TELEVISION, INC.**  
4100 Wisconsin Avenue, NW  
Washington DC 20016  
(202) 966-1956



---

Jane E. Mago  
Jerianne Timmerman  
Erin L. Dozier  
Lynn Claudy  
**NATIONAL ASSOCIATION OF BROADCASTERS**  
1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430

December 23, 2008



**Certificate of Service**

I hereby certify that a copy of the foregoing Reply to Oppositions of the National Association of Broadcasters and the Association for Maximum Service Television, Inc. was served via postage-prepaid first-class mail to:

Matthew M. Polka  
President and CEO  
American Cable Association  
One Parkway Center  
Suite 212  
Pittsburgh, Pennsylvania 15220

Jeremy M. Kissel  
Cinnamon Mueller  
307 North Michigan Avenue  
Suite 1020  
Chicago, Illinois 60601  
*Attorney for the American Cable Association*

Megan M. Delany  
Vice President, Senior Counsel  
Charter Communications, Inc.  
1919 Pennsylvania Ave. NW, Suite 200  
Washington, DC 20006

Paul Glist  
Davis Wright Tremaine, LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006-3402  
*Attorney for Charter Communications, Inc.*

Daniel L. Brenner  
National Cable & Telecommunications Association  
25 Massachusetts Avenue, N.W.  
Suite 100  
Washington, D.C. 20001-1431

December 23, 2008



---

Patricia Jones