

June 8, 2006

Honorable Joe Barton  
Chairman  
Committee on Energy & Commerce  
U.S. House of Representatives  
2125 Rayburn HOB  
Washington, D.C. 20515

Dear Chairman Barton:

Multicast must-carry is an important priority for the National Association of Broadcasters (NAB) and critical to free over-the-air broadcasting's future. Accordingly, I was very disturbed and somewhat confused by your recent letter to Federal Communications Commission (FCC) Chairman Kevin Martin objecting to any FCC decision to prevent cable operators from stripping out multiple program streams contained in digital over-the-air broadcast signals. With all respect, I believe your objection is based on frequently-repeated misinformation from our cable brethren. I would like to correct the record.

First, contrary to cable's claims, nothing in sections 614 and 615 of the Communications Act bars the FCC from requiring cable systems to carry broadcasters' full digital signals, including multicast programming. The FCC recognized in its *Second Report and Order* that these sections "do not directly translate to digital technology generally," and concluded that Congress "did not expressly compel a particular result with respect to ... multicasting specifically." *Second Report and Order*, Docket 98-120, 20 FCC Rcd 4516, 4533 at para. 34 (2005). In other words, there is no statutory barrier.

The FCC made very clear in this last order that its decision not to require full carriage was based on its then "current record." *See, e.g.*, paras. 37 – 41. While broadcasters believed that there was enough record evidence to support a full digital carriage requirement at that time, we now point to even more evidence to support the need for the requirement. For example, very recent data from Decisionmark, an independent research firm that tracks industry data, shows that as of June 6, 2006, only about nine percent of commercial multicast channels currently receive carriage on any cable system. Cable systems regularly operate as gatekeepers, stripping out commercial broadcasters' multicast channels that carry unique local programming – clearly programming that the public wants.

Independent programmers would not suffer if the FCC required full digital carriage. Independent programmers have been complaining for some time that they cannot get carriage because the large cable operators favor their own affiliated programmers. That is unlikely to change given the concentrated nature of the cable industry. Broadcasters, on the other hand, will be open to independent programmers because they will have an increased need for programming on multicast channels – if they can get them started.

I submit, Mr. Chairman, that Congress should allow the FCC to complete the rulemaking that is before it. As you know, there are many different views in Congress, within the House Energy and Commerce Committee and elsewhere about how this complicated issue should be resolved. As the expert agency, subject to judicial review, the FCC is in the best position to resolve the issue in a manner that will serve the public interest.

Finally, I note that the Deficit Reduction Act (P.L. 109-171) does not preclude the FCC from preventing cable operators from stripping out multicast channels. That Act was not a comprehensive response to all digital issues. Indeed, it was limited by the Senate rules to budget issues. Thus, it would be inaccurate to read any barrier into that legislation.

NAB and our approximately 8,300 members strongly support Chairman Martin's effort to require carriage of more desirable free local programming for your constituents and all American consumers. In the digital world, cable systems can easily carry additional local programming from broadcasters without impinging on non-broadcast programming. This would be consistent with the intent of Congress for more localism and greater diversity in programming. We look forward to discussing these critical issues with you further in the near future.

Sincerely,

A handwritten signature in black ink that reads "David K. Rehr". The signature is written in a cursive, slightly slanted style.

David K. Rehr

cc: The Honorable Fred Upton  
The Honorable Kevin J. Martin  
The Honorable Michael J. Copps  
The Honorable Jonathan S. Adelstein  
The Honorable Deborah Taylor Tate  
The Honorable Robert M. McDowell