98-120

STAMP & RETURN

Lowell W. Paxson / Chairman

May 12, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Full Digital Multicast Must Carry
CS Docket 98-120

Dear Chairman Powell:

On behalf of Paxson Communications Corporation ("PCC"), I am writing you and your fellow Commissioners to respond to the Comments of A&E Television Networks ("A&E") that were filed on April 21, 2003, in the Commission's Second DTV Biennial Review proceeding. I would initially note that A&E did not address any of the important DTV operational and transition issues for which the Commission actually sought comment. To the contrary, A&E filed Comments that consist of little more than a diatribe against the must-carry scheme enacted by Congress in 1992, upheld by the Supreme Court in 1997, and enforced by the FCC for over 10 years. As such, A&E's Comments add nothing to the DTV Biennial Review process but must be addressed in order to correct the record on full digital multicast must-carry.

The dubious procedural posture of A&E's Comments is, unfortunately, the least flawed aspect of its submission. To begin with, A&E erroneously suggests that PCC advocates simultaneous cable carriage of both analog and DTV signals. As you and your fellow Commissioners are well aware, dual carriage is not PCC's position. To the contrary, PCC has demonstrated time and again that that statute and the underlying congressional intent mandate nothing more than, and nothing less than, carriage of a broadcast television station's entire broadcast signal, without regard to whether that signal is in an analog format or in a digital format – in short, carriage parity between analog and digital.

A&E's mistaken reading of PCC's position appears to result from its erroneous impression that mandatory carriage of *both* an analog signal *and* a digital signal imposes the same technical burdens and therefore implicates the same legal issues as mandatory carriage of *either* an analog signal *or* a digital signal. This is plainly not the case, and PCC is compelled to set the record straight.

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The evidence before the Commission establishes that a cable system using standard 256 QAM modulation will devote 6 MHz of bandwidth to carry a single analog signal, but only 3 MHz of bandwidth for a digital signal. Furthermore, six standard definition programming streams occupy the same 3 MHz of bandwidth required to carry a single high definition programming stream. In other words, while dual carriage would *increase* the technical burden on cable operators by fifty percent, carriage parity would *decrease* the operator's burden by fifty percent. By lumping together the concepts of dual carriage and carriage parity for analog and digital, A&E reveals a fundamental misunderstanding of the issues. Having remedied this misunderstanding, A&E's legal arguments collapse.

In the 1992 Cable Act, Congress imposed mandatory carriage requirements for the entirety of a broadcast television signal to preserve the benefits of free, over-the-air television, to promote the widespread dissemination of information from a variety of sources, and to counteract the cable industry's incentive to engage in anti-competitive behavior against local television stations. Requiring carriage of a broadcaster's entire digital signal advances each of these interests, as well as the additional important governmental interests in expediting the DTV transition and promoting spectrum efficiency. In fact, full digital multicast must-carry will add immeasurably to diversity and localism – that is, the very goals cited by the Supreme Court. Carriage parity, therefore, is fully consistent with the congressional intent underlying the 1992 Cable Act as well as the Supreme Court's endorsement of that statute.

Since enactment of the 1992 Cable Act, cable penetration has increased considerably, and in turn increased the ability of the cable industry to threaten the viability of the television broadcast industry. Mr. Chairman, in a speech to the Media Institute in late March, you eloquently outlined this threat and concluded that "market trends are against free TV." In 2003, therefore, it is more important than ever to preserve the benefits of free, over-the-air television from those who would profit from its peril.

Ensuring that cable operators continue to carry the entirety of each DTV signal during and after the DTV transition will also promote the widespread dissemination of information from a variety of sources. Broadcasters cannot be expected to invest the considerable resources necessary to exploit the multicast opportunities made possible by DTV technology if the vast majority of their local audiences will not have access to their multicast program offerings. As a result, the lack of carriage parity will deprive subscribers and non-subscribers alike of expanded programming diversity and choices – at least from those broadcasters who benefit from the must-carry provisions. This will certainly deprive the public of the opportunity for a multitude of new, local programming sources to increase diversity in their communities.

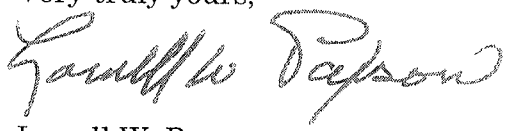
Although we may be years away from the close of the DTV transition, the largest media companies already have had some success in obtaining cable carriage of the entirety of their television stations' digital signals. The largest companies, therefore, are assured of cable carriage of their multicast offerings, while broadcasters who depend on must-carry rights currently have no such assurances. Carriage parity, therefore, not only ensures parity of analog and digital signals, it also ensures parity between the largest media companies and those broadcasters who are affiliated with emerging networks such as PAXTV or who offer independent, noncommercial, religious, and foreign-language programming. In short, carriage parity promotes diversity, localism, competition, and viewer choice – that is, the very same interests promoted by carriage of a broadcaster's entire analog signal, and the very same interests that underlie the Commission's own mandate.

In closing, we ask that you envision the world that A&E asks the Commission to create. In this world, television stations that are not owned by the largest media companies will lose their ability to provide all of their free, over-the-air video programming to the large majority of their local audiences. This in turn will make such stations less likely to compete against those whose carriage of their multicast offerings have been secured by their large corporate owners.

In A&E's preferred world, the winners are those television stations owned by companies such as Disney, NBC, and Hearst – companies that, perhaps not coincidentally, also own A&E. Their competitive victories will produce many losers, however, most notably the local viewers who lose local programming diversity and choices that otherwise could be provided by the television stations whose full signals are not carried by local cable operators.

Such a world is not difficult to imagine. It is, of course, the very situation that Congress sought to eliminate through its enactment of the 1992 Cable Act.

Very truly yours,



Lowell W. Paxson
Chairman and CEO
Paxson Communications Corporation

cc: Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein