

**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

**PETITION FOR RECONSIDERATION OF
THE NATIONAL ASSOCIATION OF BROADCASTERS AND
THE ASSOCIATION OF MAXIMUM SERVICE TELEVISION, INC.**

INTRODUCTION

Pursuant to Section 1.429 of the rules of the Federal Communications Commission ("Commission"), 47 C.F.R. § 1.429, the National Association of Broadcasters ("NAB")¹ and Association for Maximum Service Television, Inc. ("MSTV")² hereby seek reconsideration of aspects of the Commission's *Fourth Report and Order*³ in the above-captioned proceeding. In the *Fourth Report and Order*, the Commission adopted an exemption to its interpretation of the statutory material degradation

¹ 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.

² 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.

³ 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*").

standard⁴ for certain cable systems.⁵ NAB and MSTV seek reconsideration only for the limited purpose of requesting simple procedures to ensure that consumers have the facts necessary to make informed decisions and that only qualifying cable systems reap the benefits of the new exemption. Specifically, NAB and MSTV propose that the 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.

DISCUSSION

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 transition to digital television (DTV). 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 Commission has established a variety of DTV-related education and notification requirements to supply

⁴ 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).

⁵ Under the exemption, qualifying systems will not be required to carry the high definition (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 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.

information to consumers for this very purpose.⁶ Indeed, many Commission rules governing a wide range of communications services are intended to provide information relevant to consumer choice.⁷

The exemption to the material degradation requirements adopted in the *Fourth Report and Order*, however, requires no form of notification or certification to the Commission or to anyone else. This means that there is no way for the Commission, the public, existing or potential cable subscribers, or broadcasters whose signals will be degraded to know which systems plan to use the HD exemption and, if so, why. The Commission should remedy this by requiring a simple notice that will not unduly burden cable systems. Such a notice is critical for consumers who seek to make informed decisions about subscribing to MVPD services and purchasing expensive equipment.

The Commission's material degradation rules should protect consumers' ability to reap the full benefits of the digital transition. As the Commission has observed, its "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

⁶ See, e.g., 47 C.F.R. §§ 15.117(k) (requiring consumer alert disclosures on analog-only television receiving equipment); 15.124 (requiring DTV transition notices by manufacturers of televisions and related devices); 27.20 (requiring DTV transition education reports by WCS licensees operating in the 700 MHz band); 54.418 (requiring DTV transition notices by eligible telecommunications carriers); 73.674 (requiring DTV transition notices by broadcasters); 76.1630 (requiring DTV transition notices by MVPDs).

⁷ See, e.g., 47 C.F.R. §§ 76.1618 (requiring cable operators to provide new subscribers with written notification of the availability, cost, and services included with basic tier service); 76.1619 (requiring cable bills to be "clear, concise, and understandable"); 64.2400 *et seq.* (setting forth truth-in-billing obligations for common carriers in order to "aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service").

format.”⁸ 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. 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 be available in HD on their particular cable system. The availability of particular channels in HD is undoubtedly relevant to that consumer’s decision about whether to invest in an HD set. Indeed, availability of HD broadcast signals 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. In the digital era, picture quality is increasingly important to consumers and programmers.⁹ Consumers should not be denied access to information about picture quality.

The lack of available information about cable systems that wish to use the exemption presents problems not only for purposes of keeping consumers informed, but

⁸ 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) (“*Second NPRM*”).

⁹ See, e.g., Maryan Pelland, “Go High-Definition Television?,” *Suite 101.com*, January 10, 2007, available at: http://aginggrandparents.suite101.com/article.cfm/go_high_definition_television_ (“The quality difference between high def signal on high def equipment vs. standard TV is like the difference between photos taken with a 10 megapixel digital camera and a Brownie box camera.”); Jack Bell, “Soccer in High-Definition: It’s the ‘Wow’ Factor,” *The New York Times Soccer Blog*, April 12, 2008, available at: <http://goal.blogs.nytimes.com/2008/04/12/soccer-in-high-definition-its-the-wow-factor/> (switching between HD and SD is “extremely jarring to the senses. It’s HD or bust.”). A newly coined colloquial term, the “pixel snob,” is “[s]omeone who snubs viewing television, movies, or sporting events in anything but High Definition” and “pit[ies] those that have to watch things in standard definition.” See *Definition of “Pixel Snob” on Urban Dictionary.com*, available at: <http://www.urbandictionary.com/define.php?term=Pixel%20Snob>.

also for ensuring compliance with Commission rules. Up-to-date information on the subscribership, technical capacity, and ownership structure of individual cable systems is not readily available via the Commission's website or public files.¹⁰ There is no means by which anyone can monitor cable systems' compliance with the material degradation rules. As a result, anything from good faith errors to intentionally deceptive behavior by cable systems will go unchecked. In the absence of any form of reporting, certification, or notification, it is impossible for the Commission or anyone concerned about compliance to determine whether a particular system qualifies for the HD exemption or which systems are using it.

Additionally, information on the format in which broadcast signals will be delivered by cable operators is critical to broadcaster operations. Broadcasters whose HD signals are being retransmitted by exempt cable systems will need to provide those cable systems with information on how to treat the picture format of the widescreen HD content being supplied to them. As previously explained in our joint comments in response to the *Third Further Notice of Proposed Rulemaking* in this proceeding, if a broadcaster's HD signal is going to be downconverted by a cable system to standard definition (SD) or sent in analog for analog viewers, then "[b]roadcasters and their viewers, not cable operators, should be able to determine the format in which their

¹⁰ Even if this information were required to be in systems' public files, the public file obligations would provide little information concerning smaller systems. The obligations are tiered according to system size so that systems with fewer than 1,000 subscribers have very few public file obligations, systems with 1,000 to 4,999 subscribers have more obligations, and only systems with 5,000 or more subscribers are subject to the full suite of public file requirements. 47 C.F.R. § 76.1700 (a).

downconverted programming is displayed on an analog television set.”¹¹ Absent a system for advance notice, there is no means by which broadcasters could provide the information necessary to ensure that their signals will not be materially degraded through aspect-ratio conversion, and conversion will be solely within the discretion of cable operators. At a minimum, and regardless of what rules the Commission ultimately adopts on control over downconversion, the Commission should adopt a notice requirement that would facilitate communication between broadcasters and cable operators about operational issues associated with downconversion.

To protect consumers, ensure compliance, and facilitate communication between affected broadcasters and exempt systems, the Commission should require some form of notice that a system qualifies for and plans to take advantage of the exemption, and the basis for that qualification. A single notice, made available to consumers, affected local broadcasters, and the Commission would suffice. Indeed, the Commission already requires cable operators to provide notices to affected broadcasters and/or subscribers in several other analogous circumstances. For example, a cable system must provide advance notice of: (i) plans to delete or reposition television broadcast signals;¹² (ii) changes in subscribership triggering application of the syndicated exclusivity and network non-duplication rules;¹³ (iii) notification of activation of a cable system to local stations that qualify for mandatory carriage;¹⁴ and (iv) consumer

¹¹ Joint Comments of the Association for Maximum Service Television and the National Association of Broadcasters in CS Docket No. 98-120 at 3-6 (filed Mar. 3, 2008).

¹² 47 C.F.R. § 76.1601.

¹³ 47 C.F.R. § 76.1609.

¹⁴ 47 C.F.R. § 76.1617.

equipment compatibility issues,¹⁵ among others. The notice proposed herein would serve purposes similar to many of these requirements, and would be no more burdensome. Like many of the foregoing notice obligations, an exemption notice would ensure that consumers have the information they need to make educated decisions and that cable operators seeking the benefit of this exemption to the material degradation requirements are in fact qualified for it. Such an exemption also will provide information to broadcast stations relevant to their operation and competitive position in the marketplace, as do several of the existing cable notice requirements.

A rule requiring an exemption notice rule could be modeled after the station deletion/channel repositioning notice rule. Such a rule might read as follows:

”A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the system’s compliance with material degradation rules due to a determination that the system is exempt from or has been granted a waiver of the rules. Such notification shall also be provided to subscribers of the cable system, and to the Commission. The notice shall identify the specific factual basis for the exemption (*i.e.*, the number of subscribers served or capacity of the system).”

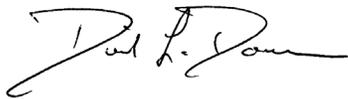
Such a notice, if included in subscriber bills as are other forms of required notification, would not require any additional postage. Very little burden would be incurred by a system sending an identical notice to affected must carry stations and to the Commission, particularly in light of the benefits gained by cable systems claiming the new exemption.

¹⁵ 47 C.F.R. § 76.1622.

CONCLUSION

The Commission's new material degradation exemption should not be so self-effectuating that it leaves consumers uninformed about available services and unable to make knowledgeable decisions about the value of investing in expensive HD sets or subscribing to cable when certain HD broadcast signals will not be viewable in HD. The exemption also should not be implemented in a manner that impedes coordination between affected stations and exempt systems, or that hinders the ability of the Commission and affected parties to monitor operators' compliance with the rules. For these reasons, the Commission should adopt a simple notification requirement that will inform affected parties of a cable system's plan to use an exemption and the basis upon which it qualifies for exemption.

Respectfully submitted,



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