

## SEPARATE STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

*Re: Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules; CS Docket No. 98-120; Second Report and Order and First Order on Reconsideration*

It's been somewhat agonizing to reach the decision I'm voting to approve today. Neither the timing nor the conclusion is ideal. I tried unsuccessfully to work both within the Commission and with the broadcasting industry to steer a different path, one premised upon guarantees for the public interest. But the Commission has thus far failed to address the public interest proceedings. So, in many ways, this decision is the unfortunate result of neglect, during the past two years that I so strongly pressed for the public interest.

I appreciate the support of my colleagues in making changes to the item that greatly improved it. I certainly commend the Chairman and my colleagues for agreeing in this item to move the public interest and enhanced disclosure items in the next few months, and to complete them within the year. This is an historic commitment by the Commission. But this gesture comes too late to prove of any consequence in calculating the proper outcome of this must-carry proceeding.

As I have traveled this country engaging the public on the state of their local media, I heard heartwarming stories of local broadcasters who epitomize responsible stewardship of the public airwaves. I have witnessed extraordinary local service provided by broadcasters all across our country. I saw many examples in small and rural markets. I applaud those broadcasters who are building upon that special local service with digital programming. Unfortunately, without some baseline public interest obligations, I cannot conclude that every broadcaster will treat extra digital program streams with the same sense of responsibility for local service.

In the analog world, the strong local service that broadcasters were already providing went a long way toward Congress establishing and the Supreme Court narrowly upholding a single-channel carriage mandate.<sup>1</sup> At that time, without must-carry, over-the-air viewers were threatened with being deprived of many broadcast channels. Today's action does not affect the required carriage of a single digital channel, so the over-the-air viewing public will not face the same type of threat. Here, instead, broadcasters seek carriage of additional program streams that are largely unknown and remain unaccountable to the public. The more pertinent question is how much benefit the extra program streams – without any public interest protections – provide to this audience. For this reason, I've long held and expressed forcefully that it's imperative for the Commission to articulate strong public interest obligations before reconsidering multicast carriage issues. My efforts proved futile.

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<sup>1</sup> Congress based analog must carry on public interest justifications, including broadcast television as a source of "local origination of programming," and an "important source of local news and public affairs programming and other local broadcast services critical to an informed electorate." Cable Consumer Protection & Competition Act of 1992, Pub. L. No. 102-385 § 2(a)(10) & (11).

Having no assurance that true local service will materialize on each new digital program stream, I am not prepared to conclude as a legal or policy matter that Congress intended carriage of these streams.

*Primary Video & My Primary Considerations:*

From my earliest days on the Commission, I have been bombarded with various definitions of the term “primary.” Since that time, the intensity of the multicast carriage debate has never waned. The statute’s undeniable ambiguity means underlying policy factors and Congressional intent take on greater importance.<sup>2</sup>

*1. Protecting Public Broadcasters:*

A top consideration of mine in this proceeding was to understand how digital must-carry rules would affect public broadcasters. Public television stations have shown a real commitment to making the digital transition happen while serving the public interest. They were the first with real plans for how their multicast program streams could enrich and sustain the public, including new programs for children, teachers, seniors, non-English speakers, individuals with disabilities, and other underserved populations. Through local educational interactive services, increased local public affairs coverage, including state legislatures and local town meetings, and workplace development programs, it’s easy to understand how these digital plans translate into benefits for the viewing public. Also, because public broadcasters do not share the same statutory retransmission consent rights as commercial broadcasters, the carriage of each of their program streams was a vital consideration for me.

So I was particularly pleased that the cable industry stepped forward and, through the personal leadership of Robert Sachs, reached a comprehensive and long-term agreement to carry the bold new offerings planned by America’s public television stations. I understand this agreement took hard work and compromise on both sides. I commend the cable and public television industries for working through the details to reach common ground. APTS President John Lawson has been a tireless advocate and leader for public television stations. The agreement between the cable industry and public television takes away one of my major concerns in the multicasting debate, as I can see clearly that the public stands to benefit in very tangible ways from this arrangement.

*2. Defining the Digital Public Interest:*

My other major concern has been trying to understand how the public stands to benefit from multicasting and what that means for a governmental carriage mandate. For nearly two years, both internally and externally, I have consistently maintained that it would be premature to decide multicast carriage without assurance that each programming stream would indeed serve its local community through the imposition of

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<sup>2</sup> On the record before us, without more explicit instruction from Congress, I agree that the Commission should not impose dual carriage obligations on cable operators.

concrete and meaningful public interest requirements. I reached out directly on a number of occasions to the National Association of Broadcasters seeking an earnest dialogue on digital public interest obligations. I repeated this request to each broadcaster that came into my office. A handful of public-service minded broadcast stations and networks pledged to work with me. They expressed their pride in serving their local communities, and assured me they understood the need to put some parameters on the new digital program streams. Those companies should know that I took their pledge seriously and wanted to work with them to prescribe meaningful public interest requirements.

Unfortunately, for two years I was unable to engage the industry in an effective fashion to step forward and engage in public interest discussions. Illustrating the resistance, the NAB expressed hostility to the Commission even inquiring into broadcast localism.<sup>3</sup> And aside from concluding a children's programming item last year, the Commission until today continued to sit on an enhanced public disclosure proposal and a more than five-year old general inquiry into digital public interest obligations.<sup>4</sup> Now, the NAB has asked us to reconsider the children's television item, saying that our action simply to make broadcasters' children's programming obligations commensurate with the amount of programming they choose to air on multicast streams is constitutionally suspect and will inhibit multicasting generally.<sup>5</sup> So the public interest continues to be neglected by the broadcast industry and the Commission.

This is not for the lack of a vocal coalition of organizations dedicated to advancing the public interest. I commend the Public Interest, Public Airwaves Coalition<sup>6</sup> for presenting a public interest proposal, as well as other entities with other approaches. I deeply regret that these ideas were not put out for public comment to frame the multicasting dialogue. It would be a worthwhile discussion. I expect it will be when the Commission fulfills its commitment to act on this proceeding this year, and it certainly

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<sup>3</sup> See *In re Broadcast Localism*, MM Docket No. 04-233, Comments of the National Association of Broadcasters at i (filed Nov. 1, 2004) ("NAB Localism Comments") ("The National Association of Broadcasters oppose the Notice of Inquiry on localism.").

<sup>4</sup> See *In re Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, MM Docket No. 99-360 at ¶ 8 (Dec. 15, 1999) (seeking comment on "how broadcasters can best serve the public interest during and after the transition to digital technology," including "how broadcasters could better serve their communities of license").

<sup>5</sup> *In re Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, National Association of Broadcasters Petition for Reconsideration and Request for Clarification (filed Feb. 2, 2005).

<sup>6</sup> The Public Interest, Public Airwaves Coalition includes Alliance for Better Campaigns, Benton Foundation, Campaign Legal Center, Center for Creative Voices in Media, Center for Digital Democracy, Center for Governmental Studies, Center for Voting and Democracy, Citizens for Independent Public Broadcasting, Committee for the Study of the American Electorate, Common Cause, Democracy Matters Institute, Demos, Free Press, Georgetown University Law Center's Institute for Public Representation, Global Resource Action Center for the Environment, Media Access Project, Media for Democracy 2004, MediaChannel.org, MoveOn.org, National Council of Churches, New America Foundation, Office of Communication of the United Church of Christ, Rock the Vote, Public Citizen, True Majority, United States Conference of Catholic Bishops, U.S. Public Interest Research Group, and Women's Institute for Freedom of the Press. The Coalition submitted a proposal for quantitative standards and for disclosure of local, civic, electoral affairs, independently produced, underserved community, paid and closed captioned programming.

still can be in Congress. I give the Coalition a lot of credit - many diverse entities, all working together to further the public interest, never gave up the notion that the public has a right to be heard on matters involving their public airwaves.

That is how it should be. The Commission has a sacred responsibility to regulate broadcasting in the public interest for the American people. Through their stewardship of the public airwaves, broadcasters play a significant role in our society. Spectrum scarcity and exclusive federal licenses to use the public's airwaves set broadcasting apart from other media. A cornerstone of the public interest is that broadcasters air programming to serve the needs and interests of their communities.

The digital television transition holds the promise that broadcasters will seize upon business opportunities and deliver new and valuable services to consumers. But without protections for the public, none of this is guaranteed. In recognizing a governmental interest in preserving the benefits of free, over-the-air local broadcast television, the Supreme Court was rightly concerned with the preservation of free outlets of localism and diversity for the viewing public. For that reason, a broadcaster's public interest obligations could not be more relevant to considerations of multicast carriage.<sup>7</sup> So to me the focus should never stray from the public interest, and the benefits that free over-the-air broadcasting provides to viewers.

Congress clearly specified that digital broadcasting must continue to serve the public interest,<sup>8</sup> but how this obligation will be fulfilled has yet to be decided. After promising to do so in 1997, and beginning a general inquiry more than five years ago, the Commission has taken few other steps to define the digital character of broadcasting.<sup>9</sup> If broadcasters choose to multicast, what should be required for the additional program streams? Should the Commission promote localism by requiring a portion of each program stream to air locally-produced programming?<sup>10</sup> How will the extra capacity be used to further diversity? Will broadcasters use this capacity to invigorate political discourse? And how will broadcasters disclose to the public how they met their public interest requirements on the additional streams? The answers to these questions will

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<sup>7</sup> Indeed, the Senate Commerce Committee recently voted for the Commission to complete both proceedings simultaneously. *See also* Letter to Hon. Michael K. Powell, Chairman, FCC from Hon. Diane E. Watson *et al.* (July 23, 2004) (signed by 35 Members of Congress urging the Commission to define public interest obligations before digital multicast must carry).

<sup>8</sup> 47 U.S.C. § 336(d) ("Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.").

<sup>9</sup> In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report & Order, 12 FCC Rcd 12809, 12830 (1997). A recent exception is the recent order on children's TV item, where the Commission determined that the public interest obligations for children's television should be commensurate with the new opportunities provided by digital channels. *See* Children's Television Obligations of Digital Television Broadcasters, Report & Order, 19 FCC Rcd 22943 (2004) ("Children's Digital TV Order").

<sup>10</sup> Indeed, I find it instructive that when identifying which low-power television stations would be entitled to must carry, Congress limited the stations only to those that meet a variety of criteria, including certain programming requirements, and a determination by the Commission that the programming will "address local news and informational needs." 47 U.S.C. § 534(h)(2)(B).

shape the digital television era, yet the Commission has never even begun a rulemaking proceeding to define the precise contours.

The need for enhanced public interest requirements in a multicasting era was established long ago. In 1998, the President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, comprised of a broad cross-section of interests including broadcasters, educators, and advocates, issued a comprehensive report. They acknowledged that the digital transition would profoundly affect "[t]he quality of governance, intelligence of political discourse, diversity of free expression, vitality of local communities, opportunities for education and instruction, and many other dimensions of American life."<sup>11</sup> The report concluded that broadcasters who choose to multicast, "and in doing so reap enhanced economic benefits," should have additional public interest responsibilities: "If the digital portion of the public airwaves does provide enhanced economic benefits to broadcasters . . . it is reasonable to recommend ways for the public to receive some benefit in return."<sup>12</sup> The Commission recently validated this principle by determining that the public interest obligations for children's television should be commensurate with the new opportunities provided by digital channels.<sup>13</sup>

Several broadcasters have told me that they could agree to definable public interest obligations and believe they would easily exceed them. I have every confidence that most broadcasters would. Some broadcasters excel at providing real in-depth political coverage. Belo's "It's Your Time" campaign, Hearst-Argyle's strong commitment to candidate-centered coverage, Scripps' and Young Broadcasting's free airtime to candidates, Capitol Broadcasting Company's extensive local political coverage, and Post-Newsweek's similar efforts are some of the standouts. Networks such as NBC and ABC have worked with their affiliates on local weather and local news multicast channels. But as a Commission, we cannot just consider these broadcasters. We also must be concerned with assuring that *every* broadcaster will meet a baseline public interest standard.

And there is reason enough to be cautious about the broadcasting industry's recent public service record. Study after study has documented declining civic affairs coverage. There is scant coverage of local or state candidates, or ballot issues. And the stories that do run focus on polls and the horse race rather than the candidates' backgrounds or positions.

The Alliance for Better Campaigns reports that local TV stations took in \$1.6 billion in political advertising from the 2004 elections.<sup>14</sup> Yet Martin Kaplan of the Annenberg School for Communications and the Norman Lear Center this week filed a

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<sup>11</sup> *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters* at xi, 1. (Dec. 18, 1998) ("Advisory Committee Report").

<sup>12</sup> *Id.* at 43.

<sup>13</sup> See Children's Digital TV Order, *supra* note 5.

<sup>14</sup> Alliance for Better Campaigns, "Local Stations Are Big Winners in Campaign 2004: TV Broadcasters Rake in More Than \$1.6 Billion in Political Advertising," available at [www.bettercampaigns.org/standard/display.php?StoryID=322](http://www.bettercampaigns.org/standard/display.php?StoryID=322).

stunning report that more than 90% of news broadcasts for the month before election day in 2004 contained no stories at all about any local candidate races.<sup>15</sup> Of those election coverage stories that aired, only one-third focused on actual issues, as opposed to campaign strategy and the horse race.<sup>16</sup> Eight times more coverage was devoted to stories about accidental injuries than to coverage of all local races combined.<sup>17</sup>

And this was *after* Senate Commerce Committee Chairman John McCain, Chairman Powell and I all stood together at a press conference and put broadcasters on notice that we would be watching the 2004 coverage, and that we expected broadcasters to do better job than they had in past elections. The broadcasting industry may dispute these findings, yet the industry fails to provide its own comprehensive and systemic studies, despite my request that they do so. Absent industry studies, I will continue to rely on the few good studies that we do have.

Recent events seem to validate claims that broadcasters' news coverage has been increasingly devoid of information to help citizens participate in their democracy, or, worse yet, promoting an ideology or unbalanced political agenda thinly disguised as journalism.<sup>18</sup> Sinclair Broadcasting Group, which refused to air an ABC Nightline tribute to U.S. soldiers killed in Iraq deeming the show "politics disguised as news," then instructed its 62 television stations to preempt regularly scheduled programming to air a politically-charged documentary, "Stolen Honor: Wounds That Never Heal," even going so far as to fire its long-time reporter Jon Lieberman for criticizing the company's plans.<sup>19</sup> Lieberman subsequently asserted that Sinclair's entire news operation is systematically ideologically driven by its owners' political perspective. Although Sinclair broadcast a modified program, Paxson, which sells much of its non-prime air time for paid programming, then quietly broadcast the "Stolen Honor" documentary in its entirety ten times the weekend before the election on the PAX broadcasting network as an infomercial.<sup>20</sup> CBS News and anchor Dan Rather were derailed over forged documents related to President Bush's Vietnam-era military service.<sup>21</sup> And just before

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<sup>15</sup> Lear Center Local News Archive, *Local News Coverage of the 2004 Campaigns: An Analysis of Nightly Broadcast News in 11 Markets* 3, 8 (filed in FCC Docket No. 04-233).

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> See, e.g., Mark Gillespie, "Media Credibility Reaches Lowest Point in Three Decades," Gallup Organization (Sept. 23, 2004) (Gallup Poll indicating that just 44% of Americans express confidence in the media's ability to report news stories accurately and fairly).

<sup>19</sup> See, e.g., "Public Airwaves, Private Purpose," *Business Week* (Oct. 25, 2004); Michael Learmonth, "B'casters Caught in Sinclair Glare," *Variety* (Oct. 24, 2004); Reed Hundt, "Sinclair Ought to Know Better – and So Should the FCC," *Minnesota Star Tribune* (Oct. 13, 2004) (noting that "in a large, pluralistic information society democracy will not work unless electronic media distribute reasonably accurate information and also competing opinions about political candidates to the entire population").

<sup>20</sup> According to press reports, the conservative news website, NewsMax.com, spent \$294,500 to buy infomercial time for the film on the PAX broadcast network, which reaches nearly 90% of U.S. television homes. See, e.g., Walter F. Roche Jr., "Group Challenges Sinclair Licenses," *Los Angeles Times* (Nov. 2, 2004).

<sup>21</sup> See, e.g., Josh Getlin & Scott Collins, "Report Condemns CBS News," *Los Angeles Times* (Jan. 11, 2005). Sumner Redstone, the Chairman of CBS's parent company, Viacom, later enthusiastically endorsed the election of a Republican administration because it "has stood for many things we believe in, deregulation and so on." Johnnie L. Roberts, "Media Mogul Maelstrom," *Newsweek* (Oct. 4, 2004).

the election, Pappas Telecasting Companies was faulted by the FCC for blatantly violating our equal time rules by donating \$325,000 in airtime to one party's candidates without offering the same amount of free time in comparable time periods to the other party's candidates.<sup>22</sup>

Increasingly, it seems we're in an era where ownership and ideology shape what viewers see and hear over their public airwaves. An exclusive federal license to use the public airwaves ought to carry a higher level of civic responsibility and accountability. Broadcast licensing should serve the civic needs of a democracy by preserving the freedom of an "uninhibited marketplace of ideas"<sup>23</sup> to serve the common good. Instead, if broadcasters use their exclusive federal licenses to promote an ideology or political agenda, they put their own private beliefs ahead of the needs of a democratic society.

A broadcasting license should do more than line the pocketbooks of the broadcaster. I'm concerned with reports of the rising level of paid programming on the public airwaves. A 2003 study by the Alliance for Better Campaigns found that community public affairs programming accounts for less than 1/2 of 1 percent of local TV programming nationwide – that compares to 14.4 percent for paid programming.<sup>24</sup> Even Paxson, which so strongly advocates multicasting must-carry, boasts that paid programming represented 41% of PAX TV's 2003 revenue.<sup>25</sup> This bears heavily on the underlying policy issue of multicasting – should public policy reward those broadcasters who sell the public airwaves with full multicast cable carriage?

Since much of television and radio was deregulated in the early 1980s, market forces alone, without concrete regulatory monitoring and enforcement, have seemingly eroded much of the local service on which the industry was founded. Yet the NAB opposes a mere inquiry by the Commission into the local service that is currently being provided.<sup>26</sup> NAB laments more disclosure and accountability as an impediment to the journalistic discretion of broadcasters – apparently discounting that they hold their licenses as stewards of the public interest. NAB even suggests that a requirement to air a certain amount of local programming would face constitutional problems. Yet it argued exactly the opposite in its petition to have the Commission restrict the local programming of satellite radio providers.<sup>27</sup> If NAB claims banning local content is constitutionally permissible, surely requiring local content could also be.

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<sup>22</sup> See In re Equal Opportunities Complaint Filed By Nicole Parra Against Pappas Telecasting Companies, Order (rel. Oct. 29, 2004).

<sup>23</sup> Red Lion Broadcasting v. FCC, 395 U.S. 367, 390 (1969).

<sup>24</sup> Alliance for Better Campaigns, "All Politics is Local," available at <http://www.bettercampaigns.org/reports/display.php?ReportID=12>.

<sup>25</sup> PAX TV, Annual Report, available at <http://www.sec.gov/Archives/edgar/data/923877/000100515004000854/0001005150-04-000854.txt>.

<sup>26</sup> See NAB Localism Comments, *supra* note 3, at i ("The National Association of Broadcasters oppose the Notice of Inquiry on localism.").

<sup>27</sup> See, e.g., In re Request for Comment on Petition Filed by the National Association of Broadcasters Regarding Programming Carried by Satellite Digital Audio Radio Services, MB Docket No. 04-160, Reply Comments on the National Association of Broadcasters at 12-13 (filed Apr. 14, 2004).

NAB's outright hostility to the localism inquiry raised real questions for me about how broadcasters will choose to fill the extra digital programming capacity. NAB admits that many stations have dropped local newscasts, without discussing the effect this is having on the station's stewardship in those communities. NAB sees little connection between broadcast localism and national playlists and voice-tracking technology,<sup>28</sup> oblivious to the loss of localism from these tactics. NAB relies upon a study showing that syndicated programming costs less than news production.<sup>29</sup>

So without strong public interest obligations, how can the Commission, let alone the viewing public, be assured that the extra digital channels will add to localism and diversity? Without concrete public interest obligations, there are no protections against non-local or paid programming content filling up the entire extra capacity. Without some modicum of balance, the government could be multiplying an ideological agenda five-fold. Without assurances of localism, the extra broadcast program streams could merely be the same type of 24-hour national feed that are found on cable systems. Worse, the government could theoretically be mandating carriage of 24-hour a day infomercials. I'm not suggesting this would happen, but the mere possibility gives me enormous pause.

I remain steadfastly committed to the strong governmental interest in ensuring "public access to a multiplicity of information sources."<sup>30</sup> While I respect the need for diverse sources of information, particularly for news and civic information, magnifying one owner's views over more channels does not translate into more diversity of information sources. It just gives a bigger megaphone to voices that are already booming. Since the vast majority of television signals on cable are carried under retransmission consent arrangements, granting multicast must-carry could embolden big media companies to leverage their clout into even bigger platforms for disseminating their views.

Broadcasters do not appear eager to turn over extra programming capacity to underserved segments of the community, or take other steps to further the strong governmental interest in expanding the diversity of viewpoints and voices available to the American public over its airwaves. President Clinton's Advisory Committee on the Public Interest of Digital Television Broadcasters recommended that multicasting broadcasters, in exchange for the benefits the capability may give them, make multicast channels available to local voices and unaffiliated programmers.<sup>31</sup> Public interest protections like these would greatly strengthen the argument that granting multicast must-carry would contribute to the widespread dissemination of information from a multiplicity of sources. It would buttress the case for multicasting in court against a constitutional challenge. Without such steps, I fear a multicasting carriage mandate could

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<sup>28</sup> See NAB Localism Comments, *supra* note 3, at iv, 53-61.

<sup>29</sup> *Id.* at 33.

<sup>30</sup> Turner Broad. System. v. FCC, 520 U.S. 180, 190 (1997) (quoting Turner Broad. System v. FCC, 512 U.S. 622, 633) (1994)).

<sup>31</sup> Advisory Committee Report, *supra* note 11, at 55 (suggesting that digital television broadcasters who multicast, and "in doing so reap enhanced economic benefits," might "include a commitment to provide robust programming and access for local voices, or lease one such channel at below market rates to an unaffiliated programmer who is local and has no financial or other interest in a broadcast station").

have an overall deleterious effect on diversity by crowding out other publicly-oriented programming.

Quite simply, without public interest protections, any claim that multicast must-carry is needed for the preservation of free over-the-air broadcasting rings hollow. It is simply unacceptable to maintain that broadcasting should operate in a free market whenever proposals are made about accountability, but then, without blinking, turn around and demand a government mandate for free cable carriage of multiple signals, not to mention other protections for the industry. If broadcasters want to be treated as an integral public square on our modern-day digital platforms, then they must realize the public has a right to be squarely involved in that endeavor. To grant multicasting carriage without any protections for the public would test the willingness of the broadcasting industry to serve public ends as never before. It's a risk the recent record does not justify taking.

That said, I remain concerned that broadcasters' quality local multicast content must receive carriage from cable companies on its own merits. I have heard troubling allegations of cable companies refusing to carry programming – not because it fails to provide quality local content but for a business or economic decision that favors other channels which bring advertising revenue or other advantages to the operators. I'm also concerned that independent or publicly-oriented channels receive cable carriage on a merit basis without the cable industry extracting an ownership percentage in return. If cable operators fail to carry local content that broadcasters seek to air on multicast streams, they should know that I will do all I can to help bring about that carriage. I will openly condemn any cable operators that do not agree to carry such programming, as long as it is offered by broadcasters without any strings attached.

To not risk losing relevance in the digital future, broadcasters can continue to choose to drive innovation and champion the potential of digital broadcasting. They can produce the kind of strong local programming that would serve their communities and would fuel the transition. They can run public service announcements promoting the benefits of the transition for viewers. The recent Consumer Electronics Show displayed countless devices seeking to enrich digital video content, making the potential of digital television all the more evident. By driving the transition, broadcasters stand only to transform the television viewing experience in dazzling and potentially lucrative new ways.

Indeed, while I understand the broadcast industry has incurred great costs, it has also been granted generous benefits in the DTV transition. Broadcasters have already been given a free second allotment of spectrum, free guaranteed cable carriage for a DTV signal (upon surrendering their analog spectrum), guaranteed access to the basic service tier, retransmission consent rights, and the right to use their spectrum for revenue-producing ancillary and supplemental services – all without agreeing to abide by any specific and meaningful public interest commitments.

This country has waited long enough with the hope that this Commission would act upon the longstanding public interest matters in a way that enhances the digital transition for consumers. The public interest inquiry has lingered for more than five years, far longer than the reconsideration petitions in this proceeding. Perhaps Paxson's direct challenge in the courts forced the timing of today's item. One wonders whether the public interest community would have had similar success had they pointed out their remarkable patience to the D.C. Circuit.

That is not to say that I would have chosen this process under any circumstance. And I remain hopeful that Congress will have more ability to bring about protections for the public. If each additional program stream were guaranteed to carry other voices, or a significant percentage of locally-produced content subject to meaningful public interest protections, the governmental interest in fostering localism and free-over-the-air television for viewers would carry far more weight.

The tragedy of this is that a well-reasoned multicasting carriage requirement could be designed to serve the interests of the public in promoting localism and diversity. Of course, recognizing the tremendous value of localism, one would expect – and I will demand – that the cable industry carry all such programming voluntarily without hesitation or discrimination. The Act, after all, already identifies as a purpose that “cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.”<sup>32</sup>

So today I stand up today for the public. I take today's action entirely for the viewers who entrust the Commission to oversee the stewardship of their airwaves in their best interest.

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<sup>32</sup> 47 U.S.C. § 601(4).