

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Cable Carriage of Digital Television Broadcast Signals, Second Further Notice of Proposed Rule Making, CS Docket No. 98-120*

I support this *Notice* to seek comment on cable operators' carriage obligations in the post-transition era. It is clear that under section 614 and 615 of the Communications Act, both today and post-transition, cable operators must not degrade the primary video signal transmitted by must-carry stations and must make the primary video viewable by all of their subscribers. It also seems clear that, beyond these legal requirements, cable operators have a direct financial incentive to make sure that their subscribers get good quality pictures.

In the analog world, we apply a comparative, non-discriminatory standard to determine whether cable operators are satisfying their obligation to refrain from materially degrading the picture quality of must-carry stations. To date, I do not believe we have a record of any complaints alleging material degradation. In fact, for many households cable service improved substantially their television's picture compared to over-the-air transmission.

In the digital world, where picture quality will be a significant product differentiator in a competitive video marketplace, the financial incentive seems just as strong as it is in the analog world.

While we ought to be able to quantify what material degradation is or is not, to date we have not identified what percentage of content bits, if not transmitted to the consumer, would constitute degradation in picture quality that is *material* to the average viewer. It is not sufficient to simply declare, "carry all the program bits." Such a standard would establish the ceiling – the best resolution possible – not the floor, which is more akin to statutory meaning of "material degradation." I believe the Commission should refrain from making a proposal that is essentially reverses our 2001 decision before we have had a chance to review a refreshed record.

I think it is also important for the Commission to refrain from tentatively and prematurely reversing prior Commission decisions before we have had a chance to get public comment and deliberate over a complete and refreshed record.

Regarding the viewability of broadcast signals, on two separate occasions the Commission previously decided, for various reasons, to refrain from imposing dual carriage obligations on cable operators. There are important constitutional, technical, economic, and equity-based concerns that have been thoughtfully considered. Before the Commission publicly supports a new proposal that will likely lead us to a previously-rejected dual carriage regime, we should first seek comment on a set of objective questions that considers all options and does not pre-judge the outcome or weigh heavily against viable alternatives.

We should consider fully the consequences before limiting ourselves and an entire industry to options that could have unintended consequences for technological development and consumer choice. Today's proposal could force cable operators to move more and more channels from their expanded basic tier in order to reclaim capacity that will, in turn, be used to provide more high-definition programming – the main reason consumers are purchasing expensive HDTV sets. This migration of popular channels to the digital tier will likely force cable subscribers to rent digital set-top boxes. We may inadvertently be forcing set-top boxes on many consumers who have strived mightily to avoid them.

What are we telling consumers if we limit cable operators' options to either carry dual broadcast signals or deploy expensive digital set-top boxes, while the Media Bureau has rejected operators' pleas to provide cheaper, low-end set top boxes to consumers? We are potentially putting consumers in a squeeze where they will be forced to pay for expensive new digital cable boxes at a time when they are already complaining about steep hikes in cable prices.

Limiting cable operators to a choice of dual carriage or deploying expensive digital set-top boxes throughout their footprint rejects outright the possibility of other workable, negotiated solutions that have been contemplated and supported by many Members of Congress, and negotiated by interested stakeholders. At this point, all proposals should be on the table.

The fact is that, personally, I have not decided the right outcome. But I am open-minded and willing to consider the facts in an objective manner. That is why I have advocated for all proposals to be considered on a level playing field. I am hopeful all of us on this Commission will keep an open mind as we review comments filed in this proceeding.