

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Amend)	MB Docket No. 10-71
Commission's Rules Governing)	
Retransmission Consent)	
)	
)	
)	
)	
)	

TO: THE COMMISSION

Reply Comments of National Religious Broadcasters

Dr. Frank Wright
President and C.E.O.
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

Craig L. Parshall, Esq.
Senior Vice-President and General Counsel
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

June 3, 2010

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	3
INTRODUCTION	3
I. DISCUSSION	
A. Any Reevaluation of Retransmission Consent Rules Must Retain the Current “Must-Carry” Component, Particularly As to Religious Broadcasters.....	4
B. Christian Broadcasting will Disappear from Cable Without “Must Carry”	6
C. The “Must Carry” Rule, Requiring Carriage of Local Christian Non-Commercial Television, is Constitutional and is in the Public Interest	6
II. CONCLUSION	9

SUMMARY AND INTRODUCTION

National Religious Broadcasters (NRB) is a non-profit association that exists to keep the doors of electronic, broadcast, and digital media open and accessible for the communication of the Christian Gospel. Generically, the Christian position of our broadcasts could be aptly described as “Evangelical” in the orthodox and traditional sense.

Our membership includes Christian television broadcasters that produce and/or telecast religious programming which is carried over cable systems by virtue of the F.C.C.’s current “Must Carry” rule. As such, our television broadcast members have a deeply vested interest in the “Must-Carry” rules of the Commission. Such rules are clearly implicated in the current proceeding regarding retransmission consent procedures and the suggestion of some parties that those rules should be changed. We oppose any change in the “Must Carry” scheme. Any diminution of that rule would have a devastating effect on Christian television broadcasting.

Local non-commercial Christian television broadcasters do not benefit from, nor do they participate in retransmission fee negotiations with cable companies, as they lack a discernable market platform or history to force content-for-price discussions with cable, and also lack any bargaining power to successfully negotiate.

These Christian television broadcasters fall squarely within the rationale of the “Must Carry” rule which has been upheld twice by the Supreme Court in the *Turner* decisions and most recently upheld by the Second Circuit Court of Appeals in the *Cablevision* decision.

In addition, the current context, as well as the pre-enactment history of non-carriage of local broadcasters by cable companies prior to the “Must Carry” provisions strongly suggests that Christian television would disappear from cable in the absence of those rules.

Continued carriage of local Christian television programming under the “Must Carry” rules would also serve the public interest because: (a) local Christian television broadcasters provide valuable “localism” in news and information services; (b) such programming meets the needs of a huge demographic segment of the American public, a segment that would be drastically underserved by any degradation of those rules; (c) consumers who desire Christian television content on cable do not presently add to the cost of the public’s average cable bill, but will be doubly economically harmed as will non-commercial Christian television broadcasters if “Must Carry” is eradicated.

I. DISCUSSION

A. Any Reevaluation of Retransmission Consent Rules Must Retain the Current “Must-Carry” Component, Particularly As to Religious Broadcasters

Current Commission rules require local broadcasters, including non-commercial Christian broadcasters to elect either to rely on “Must-Carry” rules for carriage of their programming on a cable system, or to proceed with a retransmission negotiation process with multi-channel video programming distributors (MVPDs) in hopes of securing compensation for the distribution of their content over cable. Unlike major commercial broadcasters, our Christian television stations are not in a position to negotiate for retransmission fees. Instead, they exercise their rights under “Must-Carry.” The reasons are two-fold. First, there is no established commercial market for religious programming.

Christian television broadcasting is substantially a non-profit/non-commercial venture. Because it is supported and funded by donations, no revenue-based model for compensation bargaining exists.

Second, and ancillary to the lack of an economic market for their content, Christian television broadcasters have an utter lack of bargaining power to make any demands for retransmission compensation. Thus, more than any other genre of broadcasting, non-commercial Christian television would be entirely at the mercy of cable companies but for the protections of the “Must-Carry” rule.

As local broadcasters, Christian stations fall squarely within the rationale for the “Must-Carry” rule, which was intended to require, in addition to other programming, carriage of certain local public broadcast television stations, referred to in the Act as local “noncommercial educational television stations.” 47 U.S. C. § 535(a) (1988 ed., Supp. IV). *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622 (1994). Such stations include non-commercial religious broadcasters.

As noted above, our faith-based stations are uniquely economically disadvantaged. This is a telling fact, considering that, as the Supreme Court noted, the rule was formulated in the first place “to prevent cable operators from exploiting their economic power to the detriment of broadcasters ...” *Turner*, supra, at 512 U.S. at 649.

Whatever becomes of this evaluation of the retransmission consent process, our association, National Religious Broadcasters, urges the Commission not to tamper with existing “Must-Carry” rules. At least as concerns non-commercial religious television stations, those same economic bargaining conditions that originally compelled the Commission to adopt “Must-Carry” certainly still exist today.

B. Christian Broadcasting will Disappear from Cable Without “Must Carry”

As the Supreme Court noted in the second “Must-Carry” decision in 1997, cable companies had been wholesale dropping, or refusing to carry local broadcasters in the pre-enactment period before the “Must Carry” rule, thus creating the real threat of financial ruin for broadcasters. *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180 (1997) (Turner II).

As National Association of Broadcasters (NAB) and four television broadcaster associations have noted in this proceeding, even with “Must Carry” rules in place local broadcasters were found by the Commission to have suffered violations of those regulations, resulting in lack of carriage on four occasions since February 2009.¹

There seems to be no question that individual religious broadcasters, who have an utter lack of bargaining power in the retransmission consent process, and no leverage to insure carriage over cable without “Must Carry” rules in place, would disappear from cable in short order.

C. The “Must Carry” Rule, Requiring Carriage of Local Christian Non-Commercial Television, is Constitutional and is in the Public Interest

The Supreme Court has held that the “Must Carry” rule is constitutional, does not violate the First Amendment rights of cable companies, and has also determined that those regulations “further important governmental interests.” *Turner Broadcasting System, Inc.*, *supra*, 520 U.S. at 185. *Cablevision Systems Corp., v. FCC*, 570 F.3d 83 (2nd Cir. 2009), *cert. den.*, ___ U.S. ___ (2010).

¹ Opposition of the Broadcaster Associations, page 59, n. 189.

Beyond even that, however, there are at least three major ways in which carriage of Christian television broadcasting over cable serves the public interest.

First, as local broadcasters, Christian television stations devote valuable time and resources to the coverage of local issues and events. Without the “Must Carry” rule, such coverage, particularly from a Christian perspective will disappear from cable. The Commission has indicated its interest in resolving the apparent decline of local news coverage by initiating its Public Notice – The Future of Media and Information Needs of Communities in a Digital Age, DA-10-100, GN Docket No. 10-25. Our data at NRB indicates that among Christian media content producers (both radio and television), nearly 60% of the content that is generated for broadcast is news, news analysis, commentary, or information.²

Second, if Christian television is allowed to evaporate from the cable landscape with the devaluation or eradication of the “Must Carry” rule, a huge segment of the United States population who are cable subscribers will be underserved. According to the Institute for the Study of American Evangelicals, approximately 35% - 40% of the American population can be described as Christian Evangelicals.³ If Christian programming is dropped from cable because of the demise of the “Must Carry” rule, their cable television access to news, information, and analysis from a Christian perspective could well be eradicated. As Dr. Frank Wright, President and C.E.O. of National Religious Broadcasters put it, local religious television, as a result of “Must Carry” rules, “will be able to offer programs ... that reaffirm the values of American society. They will

² Comments of National Religious Broadcasters in Response to Public Notice – The Future of Media and Information Needs of Communities in a Digital Age, page 11.

³ <http://isaewheaton.edu/defining-evangelicalism/how-many-evangelicals-are-there/>

be able to pair with religious, children's, civic and other program providers to offer the American consumer the wholesome programming so often lacking today.”⁴

Third, currently those cable consumers who are getting Christian non-commercial programming by virtue of “Must Carry” provisions are not being harmed economically, because such programming does not carry with it a retransmission price tag. However, if those rules are changed, they *will* sustain economic harm. They will either be forced to pay a special price to their cable company for carriage of Christian television content (if their cable company offers it) or else they will have to switch to a satellite provider and pay a fee for that service. In either instance, many of those consumers who desire Christian television content will end up facing the possibility of paying a double sum: an extra pay-for-content charge paid to their cable or satellite company for religious programming, and then also their donation to those non-commercial religious television broadcasters that they watch and support. In the end, as a result of such a “Hobson’s choice,” donations to non-profit Christian television broadcasters could be thus drastically reduced, further jeopardizing the survival of local Christian television.

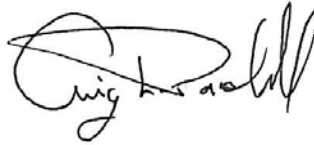
⁴ Letter of Dr. Frank Wright to President George W. Bush, March 5, 2007, regarding the impact of Digital TV transition legislation on Multi-Channel Must Carry.

II. CONCLUSION

For the foregoing reasons, we urge the F.C.C. to refrain from taking any action that would change, mitigate, or eradicate current “Must Carry” provisions, particularly as they impact non-commercial educational Christian television stations.

Dated this 3rd day of June, 2010

Respectfully submitted,



Dr. Frank Wright
President and C.E.O.
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149

Craig L. Parshall
Senior Vice-President and General Counsel
National Religious Broadcasters
9510 Technology Drive
Manassas, VA 20110-4149
Counsel for National Religious Broadcasters