

National  
Religious  
Broadcasters

9510 Technology Drive  
Manassas, Virginia 20110  
Phone: 703-330-7000  
Fax: 703-330-7100

Capitol Hill Office:  
603 Second Street, NE  
Washington, DC 20002  
Phone: 202-543-0073

Fax: 202-543-2649

[www.nrb.org](http://www.nrb.org)

[info@nrb.org](mailto:info@nrb.org)

Christian  
Communicators  
Impacting  
the World

June 4, 2012



The Honorable Greg Walden  
U.S. House of Representatives  
2182 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Walden,

As President and CEO of the National Religious Broadcasters (NRB), I write to express deep concern that the Federal Communications Commission (FCC) may permit the expiration of the "viewability" rule, which requires cable companies to ensure that the programming on "must-carry" stations, including local religious programming, be "viewable" to their subscribers, regardless of whether the cable system is analog, digital, or a hybrid system. This completely undermines "must-carry" and we have strongly urged the FCC to extend this "viewability" requirement so as to avoid a substantial burden on our faith-based stations, particularly after the significant investment of those stations to satisfy the recent digital transition mandate. Please see the enclosed *Ex Parte* letter that we have filed with the Commission to this effect.

When the Commission issued its February 10, 2012 Notice of Proposed Rulemaking (NPRM) on this subject, it proposed to extend this rule for another three years, but sought comment on whether "this should be the final extension."<sup>i</sup> Now, however, it seems that the Commission is likely to reverse this course, and is entertaining the option of permitting cable companies to impose on consumers the requirement that they purchase or rent set-top devices in order to access the very same local programming that the "must-carry" rules established by Congress sought to make available for free.

We consider this to be unacceptable. We have polled some of our television broadcasters and they are very concerned about the adverse effect that will occur if the Viewability Order is allowed to expire. In the words of one of our Christian television stations: "Our viewing area includes some of the poorest parts of the nation. These people may barely

pay for basic cable, but many won't be able to afford the increased costs of the digital cable box or a digital TV set." This would have not only a devastating effect on consumers, but would also negatively impact our member stations, which do not have protection through retransmission consent proceedings, but must rely on "must-carry" rules for carriage on cable of their programming. Even further, if cable companies can force some of their subscribers to pay for set-top devices now, can future fees imposed on customers to access local programming, including religious content, be far behind?

We respectfully request that your office urge the Federal Communications Commission to extend the Viewability Order for at least the next three years, as was the intent voiced in the NPRM issued by the Commission, and in the absence of assurances from the Commission that it will do so, to entertain legislation to remedy this unfortunate situation. As always, we stand ready to discuss this further with you and we greatly value any attention you can bring to bear on this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Wright", with a stylized flourish extending from the end.

Frank Wright, Ph.D.  
President & CEO

Enclosure

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<sup>i</sup> *Carriage of Digital Television Broadcast Signals*, CS Docket No. 98-120, Fourth Further Notice of Proposed Rulemaking and Declaratory Order (2012) ("Viewability NPRM") at ¶ 3





April 26, 2012

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Manassas, Virginia 20110

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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RE: Written *Ex Parte* Communication  
CS Docket No. 98-120

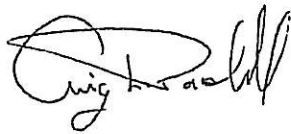
Dear Ms. Dortch:

This letter represents the written *Ex Parte* communication from the National Religious Broadcasters ("NRB") to the below-indicated persons within the Federal Communications Commission ("FCC") listed as recipients of this emailed letter regarding the proposed extension of the statutory viewability requirement. The current rule requires that cable companies ensure that must carry stations be "viewable" to their subscribers, regardless of whether the cable system is analog, digital or a hybrid system. NRB supports the extension of the current viewability rule.

NRB previously recognized the merits of the current rule during the digital transition process; because cable viewers are still in a process of adapting to the digital conversion we believe that the rule should be extended. Beyond that, however, we also believe that the current viewability rule captures both the letter and the spirit of the statutory requirement that signals "shall be viewable on cable on all television receivers of a subscriber." 47 U.S.C. § 534 (b) (7). Requiring that subscribers purchase and install additional equipment in order to view programming converts viewability, presently an obligation of cable companies under the current state of the law, into a consumer option with a consumer price tag attached. In particular we do not believe that such a development would promote viewability, and it would also negatively impact the carriage of local programming. NRB has consistently supported must-carry regulations, most recently evidenced by an April 23 letter from NRB President and C.E.O. Frank Wright, Ph. D. to Sen. Jim DeMint (R-SC) and Rep. Steve Scalise (R-La), advising that the elimination or lessening of must-carry regulations "would be a significant detriment to stations NRB represents and the viewers that rely on them for spiritual guidance." We see the viewability rule as a logical and necessary adjunct to must carry regulations that are vital to the public interest.

Lastly, there are no First Amendment concerns with the extension of the viewability rule. The Supreme Court has affirmed the constitutionality of must carry regulations as against the protestations of the cable industry. *Turner Broadcasting Sys., Inc. v. FCC*, 520 U.S. 180 (1997). In the same way, the commenters in this proceeding from the cable industry have failed to provide evidence that a viewability extension would in any way substantially burden their First Amendment rights, or that their proposed alternative is constitutionally mandated. See: *Turner, id.* at pages 217-218 ("Our precedents establish that when evaluating a content-neutral regulations which incidentally burdens speech, we will not invalidate the preferred remedial scheme because some alternative solution is marginally less intrusive on a speaker's First Amendment interests.").

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig L. Parshall". The signature is fluid and cursive, with the first name "Craig" being more prominent than the last name "Parshall".

Craig L. Parshall  
Senior Vice-President & General Counsel  
National Religious Broadcasters

cc: William Lake, Michelle Carey, Mary Beth Murphy, Steven Broeckert, Evan Baranoff, Alison Neplokh, John Gabrysch, Austin Schlick, Susan Aaron, Sherrese Smith, Erin McGrath, Dave Grimaldi