



# Virginia Association of Broadcasters Legal Review



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## **FCC CONSIDERS WHETHER TO EXTEND EXEMPTION FROM “MATERIAL DEGRADATION” HD CARRIAGE REQUIREMENT FOR CERTAIN SMALL CABLE SYSTEMS**

In response to a petition from the American Cable Association (“ACA”), the FCC has issued a Further Notice of Proposed Rulemaking (the “Notice”) seeking comment on whether to extend for an additional three years—until 2018—the exemption granted to certain small cable systems from the requirement that HD broadcast signals be carried under the “material degradation” provisions of the Communications Act (the “Act”). The Commission in the Notice tentatively concludes such an extension is in the public interest and seeks comments regarding this position.

The “material degradation” provisions of the Act require that cable operators carry signals of commercial and noncommercial broadcast television stations without “material degradation.” Simply, this means that cable operators must carry HD broadcast signals to their viewers in HD, and that cable operators cannot discriminate in their carriage between broadcast and non-broadcast signals.

But two kinds of small cable systems have been exempt from those requirements since 2008: (1) systems with 2,500 or fewer subscribers that are not affiliated with a cable operator serving more than 10 percent of all MVPD subscribers, and (2) systems with an activated channel capacity of 552 MHz or less. The exemption from the “material degradation” requirement permits such small cable systems to carry broadcast signals in standard definition and/or analog format, even if the signals are broadcast in HD, so long as all subscribers can receive and view the signal.

The exemption was initially granted in order to protect small systems in rural and other smaller markets from having to make large expenditures over a short period of time in order to come into compliance with the “material degradation” requirements. The exemption was slated to expire in 2012, but the Commission extended it until June 2015, finding it was needed to protect the viability of certain small systems.

Now the ACA has urged the Commission to do so again. ACA contends the exemption has worked and has given many small systems time to make necessary upgrades, but that an extension is needed in order to avoid the potential costs and service disruptions that might occur if the systems were required to deliver HD signals in HD beginning this June. According to the Notice, the ACA conducted a survey, the results of which show that 53 of its members—accounting for 143 systems—still rely on the exemption. Those systems have an average of just 348 subscribers. ACA states that these systems offer an average of 2½ must-carry stations in “down-converted” (standard definition) format only, and that 20 percent of them are currently offering at least some HD television services.

In support of its arguments for an extension, ACA claims that those cable systems falling into the 2,500-or-fewer-subscribers category still relying on the exemption lack the financial resources to buy equipment that is needed to provide HD signals; and it claims that those cable systems falling into the 552 MHz-or-less category face bandwidth constraints impacting their ability to provide must-carry signals in both HD and analog format. It also claims the number of systems relying on the exemption is declining and will continue to so do if given more time—though ACA predicts 73 systems would still need to rely on the exemption three years from now.

The Commission has tentatively agreed with the ACA’s position and concluded that the exemption is still necessary. The Commission seeks comment on a range of topics related to this conclusion, including: whether to revise the categories of small cable systems eligible for the exemption; the costs and benefits of the exemption for broadcasters and cable subscribers; whether exempt systems have discriminated against must-carry HD signals in favor of other HD signals; and whether an additional three years will allow systems to upgrade their facilities.

Finally, and on a related note, the ACA also asked for clarification as to whether cable systems offering video programming only in analog are not required—and never have been required—to transmit must-carry broadcast signals in HD, on the grounds that such carriage is not “technically feasible” under the Commission’s rules. The Commission seeks comment on this as well, asking, among other things, how many cable systems relying on the exemption are analog-only.

Comments are due April 16, and reply comments are due April 27, 2015.

*by Tim Nelson*

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**FCC SEEKS COMMENT ON NAB’S REQUEST TO DELAY  
NEW RULE REQUIRING VIDEO DESCRIPTION OF  
EMERGENCY INFORMATION CRAWLS AND GRAPHICS**

As we have previously advised, new rules are scheduled to go into effect on May 26, 2015, for television stations that air emergency information crawls and other graphics during non-news programming. In a nutshell, the new rules will require that the emergency information in such crawls and graphics be provided via video description on a secondary audio stream simultaneous with their display during non-news programming. (For further details about the new rules, please refer to our legal memorandum dated December 22, 2014.)

Stations that have been working towards meeting the May 26 compliance deadline may be experiencing some difficulty finding a vendor that offers an adequate, turn-key solution. Such stations may be heartened by the [NAB’s recent filing](#) at the Commission requesting a delay of the effective date of these new rules. While it is unknown at this time whether the Commission will grant NAB’s petition, the Commission is apparently going to carefully consider the issues raised: within a week of the NAB’s filing, a [Public Notice](#) was issued seeking comment on NAB’s petition.

NAB’s petition not only requests a six-month delay of the new rules, but also the petition requests that the Commission waive the requirement that emergency information conveyed in non-textual graphics (such as a weather map supered on the screen during non-news programming) be included in the video description provided on the secondary audio stream. Finally, the petition asks the FCC to “reconsider the utility of including school closings in its list of emergency information” required to be included in the secondary audio stream and to temporarily waive this requirement while alternatives are considered.

Comments are due at the FCC by April 13, and reply comments are due by April 20, 2015. Television stations that are finding it difficult to timely meet the requirements of the new rules may wish to consider filing comments (or reply comments) describing the specific issues that they are experiencing.

*by Stephen Hartzell*

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

*Stephen Hartzell, Editor*

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