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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-25
	)	
Direct Broadcast Satellite Public Service Obligations	)	

To: The Commission

REPLY COMMENTS OF DISCOVERY COMMUNICATIONS, INC.

DISCOVERY COMMUNICATIONS, INC.

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Discovery Communications, Inc. ("Discovery"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding, which seeks to implement Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act" or the "Act"). Section 25 requires the Commission to promulgate regulations imposing certain public service obligations on providers of direct broadcast satellite service, including the application of political broadcasting rules and a requirement to carry a minimum amount of noncommercial programming of an

to consider any noncommercial programming of an educational or informational nature carried on the system -- regardless of source -- in determining compliance. Similarly, providers of DBS service should be able to rely on their reasonable, good-faith judgment in complying with the political broadcasting requirements, including the ability to designate the channel or channels that are available to candidates seeking access.

I. The Commission's Rules Should Encourage All Programmers to Provide Noncommercial Programming of an Educational or Informational Nature

Section 25(b) of the 1992 Cable Act directs the Commission to promulgate rules to require providers of DBS service to carry a minimum amount of noncommercial programming of an educational or informational nature on their systems. A DBS service provider is to meet this obligation by making capacity available to

A number of commenters agree with Discovery that the Commission's rules should incorporate an expansive definition of the term "national educational programming supplier." See, e.g., Comments of United States Satellite Broadcasting Company, Inc. ("USSB") at 10-11; Comments of The Satellite Broadcasting and Communications Association of America ("SBCA") at 20-21; Comments of Mind Extension University at 4-7. These comments support Discovery's position that the fundamental goal of the Commission should be to ensure that noncommercial programming be made available to DBS subscribers -- not that a particular programmer be given preferential access to a DBS system.

regular part of their program services in order to increase their value to the DBS service provider.[2]

A few commenters, however, urge the Commission to adopt rules that would restrict the ability of a DBS service provider to fulfill its public service obligations by limiting the list of eligible entities to a select few. See Comments of Association Of America's Public Television Stations and Corporation for Public Broadcasting ("AAPTV") at 21-23; Comments of Educational Broadcasting Corporation at 3-4. These commenters seek to obtain beneficial treatment neither mandated by the Act nor supported by public policy.

AAPTV seeks to achieve this restrictive goal by having the Commission incorporate the definitions contained in Section 397 of the Communications Act into the definition of "national educational programming supplier." Comments of AAPTV at 21-23. Had Congress sought to limit the list of eligible entities in such a manner, however, it could easily have done so. Instead, Congress fashioned a definition that, while taking care to ensure that entities of the type defined in Section 397 were included in the term, did not seek to exclude others from supplying national educational programming. The legislative history similarly offers no support for AAPTV's proposal.

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[2] Obviously, under such an approach, a DBS operator would need the flexibility to meet its obligation by spreading the noncommercial programming over a number of channels. Accordingly, Discovery strongly opposes any suggestion that the DBS service provider be required to set aside a discrete channel (or channels) on which to place all noncommercial programming.

Moreover, as set forth above, this proposal runs counter to a policy that should be designed to increase the amount of noncommercial programming of an educational or informational nature available to DBS subscribers. For example, there can be no dispute that TLC's "Ready, Set, Learn" programming is noncommercial programming of an educational or informational nature. Indeed, some of the programming that appears on "Ready, Set, Learn" has appeared on public television stations. Under AAPTV's proposal, however, a provider of DBS service would not be able to count this programming toward fulfillment of its public service obligations because the source of the programming did not meet its restrictive qualifying guidelines. There simply is no rational basis to draw such a distinction.

II. The Commission Should Afford Providers of DBS Service Maximum Flexibility in Implementing Political Broadcasting Requirements

The majority of commenters also agree with Discovery that the Commission should be flexible in applying the political broadcasting requirements of Sections 312(a)(7) and 315 of the Communications Act to providers of DBS service. See, e.g., Comments of USSB at 2-7; Comments of SBCA at 12; Comments of PRIMESTAR Partners, L.P. at 11. They emphasize that Commission rules should foster the ability of the nascent DBS industry to become a viable competitor to cable -- not shackle it with restrictive regulations. Id.

Thus, with regard to application of the political broadcasting rules, the Commission should rely on the reasonable,

good faith judgment of the provider of DBS service to determine the proper parameters of reasonable access. Accordingly, a provider of DBS service should, within reason, be able to determine that it need not make all channels available to candidates for access, but can meet its access obligations by making one or more channels available. Similarly, like cable operators, a provider of DBS service should be able to satisfy its equal opportunity obligations by providing a qualified candidate with access to a channel that has an audience size comparable to that of the channel on which the initial use occurred.

The Consumer Federation of America disagrees with this approach. See Comments of Consumer Federation of America ("CFA") at 24-27. CFA essentially argues that all channels must be made available for access. This approach, as demonstrated in Discovery's initial comments, is essentially unworkable, given the contemplated configuration of DBS systems and the manner in which operators propose to obtain programming. The provider of DBS service generally will not retain direct control over the programming carried on most channels. Rather, it will enter into an agreement with a programmer, which will then supply programming, usually on a 24-hour per day basis. Thus, to require that all channels be made available to candidates would result in programmers being required to make time available on their program services. There is no indication, however, that this was the intent of the Act. Indeed, it is especially significant to note that Congress did not seek to impose the

political broadcasting requirements on the cable industry. Given that, at least initially, the bulk of programming on DBS systems will be provided by current "cable networks," requiring a

determine that it would be unreasonable for DBS service providers to limit access to that extent. Thus, the concerns of CFA can be addressed by relying on the reasonable, good faith judgments of DBS service providers to fulfill their reasonable access obligations without imposing the extreme and ultimately counterproductive measure of requiring that all channels be made available for access.

III. Conclusion

For the foregoing reasons, Discovery urges the Commission to give the DBS industry maximum flexibility to comply with the public service obligations imposed by Section 25 of the 1992 Cable Act.

Respectfully submitted,

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