

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Revision of Rules and Policies ) IB Docket No. 95-168  
for the Direct Broadcast ) PP Docket No. 93-253  
Satellite Service )

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REPLY COMMENTS OF  
HOME BOX OFFICE

Home Box Office, a Division of Time Warner Entertainment Company, L.P. ("HBO"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits its reply to the comments filed in the above-captioned proceeding.<sup>1</sup>

HBO's reply comments in this proceeding are directed solely at the concerns expressed in the Commission's NPRM and by several commenters regarding the provision of "wholesale DBS" services.<sup>2</sup> HBO opposes any attempt by the Commission to extend "program access" rules to "wholesale DBS." By so doing the Commission effectively would regulate the means and technologies through which programmers digitize, encrypt and

<sup>1</sup> Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking in IB Docket No. 95-168, PP Docket No. 93-253, FCC 95-445 (released October 30, 1995) ("Notice" or "NPRM").

<sup>2</sup> NPRM at ¶ 61. See, e.g., Comments of EchoStar Satellite Corporation and Directsat Corporation; Comments of the United States Department of Justice.

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distribute their programming to cable operators and other multichannel video programming distributors ("MVPDs").

Despite the fact that "wholesale DBS" to date is merely a concept and not an operational service, the Commission has reacted by suggesting that programmers be required to make their programming available to all DBS operators for "wholesale" delivery.<sup>3</sup> This attempt at overregulation constitutes a radical departure from the Commission's "hands off" approach toward decisions concerning how programmers deliver their services to MVPDs. It exceeds the Commission's jurisdiction under the program access provisions of the 1992 Cable Act, and it is a proposed regulation premised upon a perceived problem that does not exist.

Programmers make critical decisions regarding the encryption, compression, and authorization of their services based on security, technical and quality concerns. The type of blanket requirement the Commission has proposed, however, would force programmers to utilize any digital technology deployed by a DBS operator regardless of whether that provider meets the programmers' technical, quality and security standards for distribution of programming to MVPDs.

The single most important components of any programming distribution system are secure encryption and high technical quality. As we enter the digital era, these facts will not change. Because theft raises the cost of doing business for

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<sup>3</sup> Id. at ¶ 62.

programmers, MVPDs and, ultimately, consumers, product security is essential to the economic well-being of operators, subscribers and program networks. In addition, product security is vital for continued investment in programming and distribution services. Technical quality of the transport system is equally important, especially for subscription services such as HBO's, because consumers will not pay for technically inferior signals.

As the Commission is well aware, the programming and MVPD industries have been plagued by theft. Heretofore, the Commission has wisely refrained from mandating standards for video programming encryption and distribution,<sup>4</sup> recognizing that the marketplace is better equipped to control theft of services. The Commission should not, through an indiscriminate requirement, mandate that programmers transport and authorize their services to MVPDs through all DBS operators, regardless of their ability to provide a secure and technologically superior means of delivery.

The Commission's concerns apparently center on the notion that programmers vertically integrated with a DBS operator would favor "wholesale DBS" distribution by that affiliated DBS operator to the exclusion of others. Those concerns are unwarranted, especially at a time when no "wholesale DBS" service exists. The paramount interest of video programmers in securing as many outlets and subscribers as possible for

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<sup>4</sup> See In the Matter of Inquiry Into Encryption Technology for Satellite Cable Programming, 8 FCC Rcd 2925 (1993).

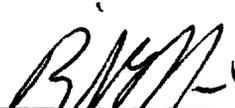
their services, not mandated access, will ensure that secure and technically superior transport and authorization systems will be deployed by programmers to maximize their subscriber/audience potential.

Finally, HBO submits that the Commission lacks jurisdiction to require programmers to make their services available to all DBS operators for "wholesale" distribution. While certain programmers are subject to program access requirements vis-a-vis MVPDs pursuant to the 1992 Cable Act, no reasonable argument can be made that Congress intended to extend that obligation to require programmers to use any transport and authorization technologies deployed by DBS operators for the purpose of distributing their programming services to their MVPD customers.

For the foregoing reasons, HBO respectfully submits that the Commission should disavow any suggestion to require programmers to provide their services to all DBS operators for "wholesale" distribution.

Respectfully submitted,

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