

same channels or to take into consideration the demographics of channels.”³⁸ Rather, cable operators have been advised “to ensure that the channels utilized have comparable audience size.”³⁹ Similarly, there is no reason to impose a different or more burdensome policy to program services under the control of a DBS provider. Indeed, a flexible approach would allow the provider to more efficiently and effectively provide its subscribers with access to opposing political messages. Furthermore, as in cable and broadcasting industries, bona fide newscasts, interviews, documentaries, and news events should continue to be exempt from these rules.⁴⁰

IV. THE COMMISSION SHOULD NOT IMPOSE LOCALISM OR ANY OTHER PUBLIC INTEREST OBLIGATIONS ON DBS PROVIDERS

TEMPO supports the Commission’s tentative conclusion that “given the flexible regulatory approach taken for DBS and its early stage of development,” no other regulatory

³⁸ NPRM, 8 FCC Rcd at 1594.

³⁹ Id.

⁴⁰ With regard to lowest unit charge (“LUC”) rules that may be adapted to DBS, the Commission should keep in mind, as DIRECTV previously noted, that “many DBS providers are not likely to engage heavily in the aggressive sale of commercial advertising time on their systems, at least not on any scale that approximates such activity in the broadcast area. Hence, the applicability of the LUC concept to DBS may be attenuated.” DIRECTV at 15; see also SBCA at 16; USSB at 7. Furthermore, TEMPO has no objection to requiring DBS providers to maintain and permit inspection of a political file, which contains a complete record of all requests made by or on behalf of candidates for broadcast time on program services under the operator’s control, the disposition made with regard to such requests, and the charges, if any, made for the time. TEMPO also agrees that such a political file should be maintained at the operator’s corporate headquarters. See NPRM, 8 FCC Rcd at 1595; see also DIRECTV at 16; USSB at 7; PRIMESTAR at 13.

obligations should be considered.⁴¹ As the Commission noted, “the reservation requirements for noncommercial, educational, and informational programming . . . are intended by Congress to satisfy the public interest obligations of DBS licensees and service providers,” and “neither Section 25(a) nor its legislative history suggests any other specific requirements.”⁴² Indeed, the public interest obligations of Section 25 are substantial. Further government regulation of DBS service is therefore unwarranted.

TEMPO also submits that no additional obligations are appropriate to “accommodate local concerns” or to require operators to provide local service to individual communities.⁴³ The Commission recognized that it originally authorized DBS as a non-local service based in part upon the unique technical characteristics of DBS. It reasonably determined (and the Court of Appeals agreed) that Section 307(b) of the Communications Act does not preclude authorizing a non-local service such as DBS.⁴⁴

Even though some members of the industry are exploring the potential use of spot beam technology to deliver local broadcast service, it is inappropriate to impose any specific obligations on DBS providers. Unlike cable systems and broadcast stations, which are

⁴¹ NPRM, 8 FCC Rcd at 1595.

⁴² Id.; see also DIRECTV at 16; PRIMESTAR at 13.

⁴³ NPRM, 8 FCC Rcd at 1595. As a preliminary matter, TEMPO agrees that “the Cable Act does not mandate that the Commission impose local video programming requirements on DBS providers.” Reply Comments of United States Satellite Broadcasting Company, Inc., MM Docket No. 93-25, at 5 (filed Jul. 14, 1993).

⁴⁴ NPRM, 8 FCC Rcd at 1593 (citing Direct Broadcasting Satellites, Report and Order, 90 FCC 2d 676, 685-86 (1982)); National Ass’n of Broadcasters v. FCC, 740 F.2d 1190, 1197-99 (D.D.C. 1984).

designed to provide service to individual communities, existing DBS providers do not have the vast channel capacity or resources that would be necessary to delivery local services to markets throughout the country. In addition, the economic benefits of DBS service lie in its ability to provide national coverage. A requirement that existing systems dedicate full-CONUS resources to deliver local service would result in extremely inefficient spectrum utilization. Thus, TEMPO agrees with the Commission's view that "other regulations should not be considered in this area given that DBS is a fledgling industry and that there is an abundance of local broadcast stations and cable television systems that are already serving local needs."⁴⁵

V. CONCLUSION

The recent launch of new DBS services vindicates the Commission's traditional regulatory approach of imposing on DBS only the minimal burdens necessary to achieve statutory objectives. Consumers receive the benefits of new and expanding services while the industry maintains the flexibility to adapt to rapidly changing demands. TEMPO submits that the Commission should maintain this model in implementing Section 25. By minimizing the regulatory burdens on new and emerging providers, especially on systems with limited capacity, the Commission will encourage DBS competitors to develop new and valuable public interest services. Broad construction of the statutory provisions of Section 25 regarding the provision of noncommercial educational and informational programming will prompt the creative community to compete to provide a wide variety of high quality products. Finally,

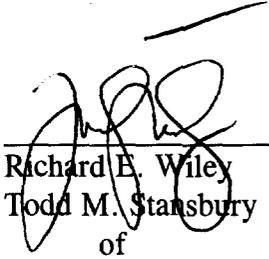
⁴⁵ NPRM, 8 FCC Rcd at 1596.

the public interest would be furthered by avoiding any additional regulatory obligations on DBS, either through implementation of political advertising rules or the potential imposition of local requirements, that are inconsistent with the unique national multichannel nature of the service. In this way, the Commission can best further its policies of promoting competition in the MVPD marketplace and enhancing public service benefits to consumers.

Respectfully submitted,

TEMPO Satellite, Inc.

By:



Richard E. Wiley
Todd M. Stansbury
of

Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006
(202) 429-7000

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