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Handwritten notes: "Re: CS Docket No. 97-80" and "FCC 97-53"

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CS Docket No. 97-80
FCC 97-53

Dear Mr. Caton:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), are an original and four copies of its Comments in the above-referenced docket.

Should there be any questions, please contact the undersigned.

Cordially,

Marvin Rosenberg
Marvin Rosenberg

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Enclosures

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SUMMARY

USSB believes that inter-operable DBS navigation devices capable of receiving all DBS signals from a common orbital location are necessary to enhance consumer choices, to provide DBS service to remote areas and to assure competition among DBS providers and between cable and DBS services. USSB believes that DBS providers should be required to make available proprietary technology upon fair and reasonable terms to co-located DBS providers so that consumers will have the ability to receive DBS services from all DBS providers at a common orbital location. Further, DBS providers that market navigational devices to their subscribers (or potential subscribers) should not be permitted to market such devices if they are not inter-operable with other DBS providers at the orbital locations for which the devices are marketed. In no case should such devices be marketed if they are designed to restrict or prevent the addition of other equipment that would permit the devices to receive DBS signals from other DBS providers at the same orbital location.

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Commercial Availability)	CS Docket No. 97-80
of)	FCC 97-53
Navigation Devices)	

**COMMENTS
of
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

United States Satellite Broadcasting Company, Inc. ("USSB") submits these comments in response to the Commission's Notice of Proposed Rule Making, CS Docket No. 97-80, adopted February 11, 1997 and released February 20, 1997 ("NPRM"). See 62 Fed. Reg. 10011 (No.42, March 5, 1997).

The NPRM seeks comment on implementing Section 629 of the Communications Act of 1934, as amended. Section 629 was added to the Communications Act as part of the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996).

Section 629 requires the Commission to promote the commercial availability to consumers of navigational devices for accessing multichannel video programming and other services offered over multichannel video programming systems. The Commission has tentatively concluded that the coverage of Section 629 is "broad in terms of the type of equipment covered, including not just equipment used to receive video programming, but also equipment used to access other services offered by MVPDs over their systems." 62 Fed. Reg. 10012. Direct broadcast satellite ("DBS") providers are included within the covered multichannel video programming distributors ("MVPD"). Id.

In these comments, USSB focuses primarily upon the issue of inter-operable DBS navigation devices and proprietary technology. USSB does not presently view security as a significant issue affecting whether DBS navigational devices should be interoperable in the manner addressed herein.

BACKGROUND

USSB, the smallest DBS provider, presently provides DBS service from 101° W.L. and has authority to construct and launch satellites with three transponders at 110° W.L. and eight transponders at 148° W.L. USSB has attempted to make certain that DBS consumers can receive the maximum service from any one orbital location and that DBS consumers need not choose DBS providers at an orbital location on the basis of equipment pricing or technological barriers. With regard to any one orbital location, USSB believes that DBS navigational devices should be technologically compatible (interoperable) such that they are capable of receiving all DBS signals from that common orbital location.

The Commission has correctly observed that retail purchase and customer ownership of navigational equipment is the norm of most DBS service providers. NPRM, para. 7. In most cases this equipment only functions with a single service provider.

USSB and DIRECTV, however, have demonstrated that this norm need not prevail.¹ Thus, at 101° W.L., USSB has the right to five DBS channels (presently offering approximately 20 video programming channels) and DIRECTV has a license for 27 DBS channels (offering 175 video programming channels). The DBS-1 satellite at 101° W.L. provides for both DIRECTV's channels and for USSB's channels. By agreement between USSB and DIRECTV, the two firms use the same 18-inch receiving dish (the "DSS™") and supporting technology. Third Annual Report: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, DS Docket No. 96-133, para. 41 (FCC, rel. January 2, 1997) ("Third Annual Report"). DIRECTV and USSB offer complementary programming and jointly promote the DSS. Each firm is separately responsible for promoting its system, activating its signal for consumers who wish to subscribe to that firm's DBS service, servicing its subscribers, and collecting fees from its subscribers. Subscribers who purchase the DSS can use the DSS to obtain service from either USSB or DIRECTV or both.

A limited survey of purchasers of the DSS indicated that one-third of consumers who selected the DSS system over competing systems at other orbital locations did so, in part, because there are two competing service providers. These consumers considered that the availability of two service providers at 101° W.L. would assure

¹ Indeed, Dominion Video Satellite, Inc.'s pending applications on file at the Commission show that it intends to share the Dish Network DBS system at 61.5° W.L. with EchoStar Satellite Corporation.

competition and avoid the possibility of abuses that were experienced in cable where there was only a single provider.

At orbital location 110° W.L., USSB has a license for only three DBS channels while MCI has the right to 28 channels. Thus, MCI is the dominant firm in terms of channels at this location. Although no agreement has been negotiated, USSB believes that making available to consumers a common system which is capable of receiving the signals of both USSB and MCI from 110° W.L. would be in the best interests of consumers and would promote competition between MCI and USSB as well as between DBS and cable providers.

The Final Rule Should Facilitate Consumer Reception With a Minimal of Cost and Inconvenience

The primary goals in the Commission's initiating DBS service are to "provide additional competition to existing program providers such as cable television, to provide improved service to remote areas of the country, and to encourage innovative new programming and services." *Advanced Communications Corp.*, FCC 95-428, 11 FCC Rcd 3399 (rel. Oct. 18, 1995), *aff'd*, No. 95-1551 (D.C. Cir. 1996), *pet. for reh. den.* (D.C. Cir. June 27, 1996).

In enacting Section 629, the Conference Committee emphasized the interests of consumers. "One purpose of this section is to help ensure that consumers are not forced to purchase or lease a specific, proprietary converter box, interactive device or other equipment from the cable system or network operator." *Telecommunications Act of 1996*, Conference Report, 181, Report 104-458, 104th Cong. 2d Sess. (January 31,

1996). Similarly, consumers should not be required to buy or lease two or more devices in order to receive DBS signals from the same orbital location. Such a situation not only increases consumer costs but inhibits competition among DBS providers and undermines competition between cable and DBS. Thus, the final rule should provide that "commercial availability" includes DBS receiving equipment that is interoperable to function with all DBS signals from a common orbital location.

Such inter-operability might be accomplished by a rule requiring DBS providers to co-ordinate the development of a common dish and supporting equipment and technology capable of receiving all DBS signals from an orbital location as USSB and DIRECTV have done at 101° W.L. Such a requirement would be conditioned on each DBS provider paying its proportionate share of the cost of development and access to the technology, etc. of the other DBS providers at the same orbital location in order to achieve such interoperable receiving equipment for signals from a common orbital location. In the event that such technology sharing is not practicable at particular locations, DBS providers at a common orbital location could be required to authorize equipment manufacturers to manufacture and market systems that have the capacity to receive and decode DBS signals from all DBS providers at a common orbital location.

1. DBS Should be Easy, Cheap and Ubiquitously Available.

Section 629 requires the Commission to "assure the commercial availability" of navigation devices. The House emphasized that "competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher

quality. Clearly, consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources." NPRM, para. 3 quoting House Report.

In the context of DBS, interoperable DBS navigational systems for common orbital locations will assure that DBS is readily available to consumers at the most competitive prices. This will also assure wide availability of DBS and will help accomplish the goal of making DBS available in remote areas. Thus, as the Commission recognizes, "the more fully interoperable and portable that navigation devices become, the more the commercial availability of the devices would be enhanced because of the broadening of the market for the devices." NPRM, para. 65.

USSB believes that DBS providers working together at other common locations, as USSB and DIRECTV have at 101° W.L., to provide interoperable DBS navigation devices will promote the development and marketing of navigational devices and will decrease consumer costs. See NPRM, para. 65.

2. Interoperable DBS Dishes Will Facilitate Competition Among DBS Providers and Between DBS and Cable Television.

As noted above, one of the primary Commission goals in initiating DBS service was to provide meaningful competition to cable television providers. In fact, DBS providers are beginning to create an alternative to cable. See Third Report, paras. 127 & 128. Chairman Hundt has cautioned, however, that "it remains to be seen...whether DBS will become a mainstream competitor to cable or will remain a niche market service. This depends on the long-run future of program access and the success of

digital cable boxes." Reed E. Hundt, "The Hard Road Ahead--An Agenda for the FCC in 1997." 2 (December 26, 1996). One of the ways to assure that DBS service will be a viable competitor for cable is to maximize the inter-operability of DBS receiving equipment at common orbital locations.

Without such inter-operability, dominant DBS providers may have greater opportunity to refrain from price competition. This is because subscribers will likely purchase or lease receiving dishes from the larger DBS providers and will be unwilling to invest in a second dish to receive the signal of other DBS providers. Moreover, dominant DBS providers will be in a better position to impede competition of smaller DBS rivals and/or raise their costs.

USSB believes that in encouraging intra-DBS competition, the Commission will strengthen the competition between cable and DBS services.

3. Proprietary Technologies.

USSB appreciates the Commission's concern that the "commercial availability" requirements of Section 629 could conflict with intellectual property rights. See NPRM, paras. 69-70. USSB, however, believes that the need for the type of interoperable navigation equipment discussed herein is of paramount importance. Moreover, the Commission has the power to revise a permit or license and could make the sharing of proprietary technology for DBS navigation devices to receive all signals from a common orbital location upon fair and reasonable terms a condition of a firm's continuing to hold its DBS permit or license. In this connection, it is important to emphasize that

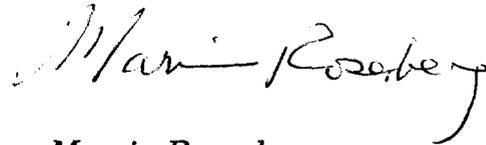
USSB does not suggest that proprietary technology of DBS providers be made available without fair and reasonable compensation to intellectual property owners. Plainly, the public interest will be enhanced by increased competition between cable and DBS and by the diversity of consumer choice this will provide.

CONCLUSION

USSB believes that interoperable DBS navigation devices capable of receiving all DBS signals from a common orbital location are necessary to enhance consumer choices, to provide DBS service to remote areas and to assure competition among DBS providers and between cable and DBS services. USSB believes that DBS providers should be required to make available proprietary technology upon fair and reasonable terms to co-located DBS providers so that consumers will have the ability to receive DBS services from all DBS providers at a common orbital location. Further, DBS providers that market navigational devices to their subscribers (or potential subscribers) should not be permitted to market such devices if they are not interoperable with other DBS providers at the orbital locations for which the devices are marketed. In no case should such devices be marketed if they are designed to restrict or prevent the addition of other equipment that would permit the devices to receive DBS signals from other DBS providers at the same orbital location.

The foregoing represent USSB's current thinking on the issue of interoperable DBS navigational devices.

Respectfully submitted,



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