

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment to the Commission's Rules	)	<b>MB Docket No. 15-71</b>
Concerning Market Modification	)	
	)	
Implementation of Section 102 of the STELA	)	
Reauthorization Act of 2014	)	

*Filed Electronically via ECFS*

To: The Commission

**REPLY COMMENTS OF VIRGINIA BROADCASTING CORPORATION**

1. Virginia Broadcasting Corporation (“WVIR-TV”), licensee of Station WVIR-TV, Charlottesville, VA, Facility ID 70309, hereby submits its Reply Comments in the above-captioned proceeding. WVIR-TV submitted initial Comments noting that there are situations other than delivery of physically distant in-DMA signals where the local needs of DBS subscribers are not being met, including where DBS operators carry distant signals that are both out-of-state and out-of-DMA while refusing to carry signals from in-state physically adjacent DMAs that are of more local interest to the subscriber. These Reply Comments urge the Commission to reject suggestions by DBS operators that would impose heavy burdens on broadcasters seeking market modifications -- burdens that would be particularly onerous for small market television stations -- by withholding information that is uniquely in their possession regarding technical and economic infeasibility or by requiring broadcasters to provide support for market modification requests that goes well beyond what is required in the cable television context.

2. WVIR-TV urged in its initial Comments that to the extent that the Commission allows an escape for DBS operators based on technical or economic feasibility, it should apply that escape sparingly. DISH Network L.L.C. (“DISH”) proposed in its comments that DBS operators be permitted to self-certify that carriage of a station is technically or economically infeasible, without providing supporting information. That approach is unreasonable and should be rejected. Since information about feasibility is entirely within the possession of the DBS operator,<sup>1</sup> the DBS operator should bear the burden of proving the validity of an assertion of infeasibility.<sup>2</sup> Otherwise, broadcasters will be completely at the mercy of DBS operators who oppose market modifications, largely defeating the purpose of the STELAR statute, if not rendering it a nullity.<sup>3</sup>

3. DISH expresses concern about the possibility of having to pay retransmission fees to two affiliates of the same network, but that concern is misplaced. When a TV station is added to a market, it must elect between must-carry and retransmission consent status. If the station elects must-carry, the DBS operator pays nothing for carriage rights, but it must carry the station. If the station elects retransmission consent, then a private negotiation over fees ensues; and if no agreement is reached, the DBS operator is not required to carry the station at all and again pays no fees. Moreover, if the Commission adopts the cable television regulatory model, then a DBS

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<sup>1</sup> DIRECTV, LLC (“DIRECTV”) more reasonably states that it would be willing to answer questions by broadcasters about feasibility before a market modification petition is filed, although it does not state how much detail it would provide.

<sup>2</sup> As noted by WVIR-TV in its initial Comments, since Harrisonburg, where WVIR-TV is not carried, is only 36 miles from Charlottesville, where WVIR-TV is carried, it is difficult to believe that carriage of WVIR-TV in Harrisonburg would be infeasible.

<sup>3</sup> WVIR-TV agrees with the National Association of Broadcasters that in appropriate circumstances, the Commission may issue a protective order to ensure confidentiality of information that is proprietary to DBS operators.

operator could choose not to carry two affiliates of the same network and could carry (and pay fees, if any, to) only the affiliate whose community of license is closest to its subscribers.<sup>4</sup> Finally, WVIR-TV assumes that network and syndicated exclusivity rules would apply, which might in some cases result in deletion of so much programming from a distant station that the DBS operator would choose to discontinue carriage.

4. DISH's suggestion that a broadcaster seeking to be added to a market provide evidence of popular demand by viewers goes far beyond what is required in the cable context and should not be adopted. That concept would only introduce new legal disputes over how many consumers must demand the service, what their demand must say, and the extent to which consumers' privacy must be respected and their names not used. Moreover, it is intellectually inconsistent for DISH to oppose allowing consumers to initiate market modification petitions and then to require direct consumer participation in a broadcaster's petition.

5. Finally, the position of both DISH and DIRECTV that they should not be required to update information about technical and economic feasibility again would deprive the Commission of information it needs and that broadcasters are unable to provide. Circumstances do change, particularly as new satellites are launched and existing service offerings are reconfigured. Even if DBS operators do not have to inform the Commission immediately any time there is a change in circumstances, they should have to do so on some kind of regular timetable. Otherwise, a market modification request that is denied based on infeasibility would never be able to be re-opened or re-filed based on changed circumstances.

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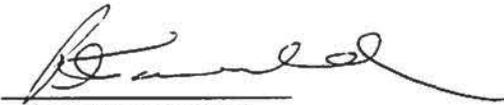
<sup>4</sup> See 47 CFR § 76.56(b)(5). In the cable context, the system must carry the station whose community of license is closest to the cable head-end. Since DBS systems have no local head-end, proximity to subscribers, grouped by county or ZIP Code, would be an appropriate standard.

6. There is wide support for using the cable model for satellite market modifications. The Commission should proceed promptly to adopt new satellite rules that are workable for both large and small broadcasters. Those rules should not enable DBS operators to withhold information within their control that is relevant to the decision-making process or to place burdens on broadcasters that go beyond the precedents established for cable.

Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> St., 11<sup>th</sup> Floor  
Arlington, VA 22209-3801  
Tel. 703-812-0404/0426  
Fax 703-812-0486  
E-mail: [tannenwald@fhhlaw.com](mailto:tannenwald@fhhlaw.com)  
[crump@fhhlaw.com](mailto:crump@fhhlaw.com)

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Respectfully submitted,

  
Peter Tannenwald  
Anne Goodwin Crump

Counsel for Virginia Broadcasting  
Corporation

### CERTIFICATE OF SERVICE

I, Evelyn M. Ojea, do hereby certify that I have, this 28<sup>th</sup> day of May, 2015, caused copies of the foregoing "Reply Comments of Virginia Broadcasting Corporation" to be sent by first-class United States mail, postage pre-paid, to the following:

Jeffrey H. Blum, Esq.  
Senior Vice President and Deputy General Counsel  
DISH Network L.L.C.  
1110 Vermont Ave., N.W., Suite 750  
Washington, DC 20005

Erin L. Dozier, Esq.  
Legal Department  
National Assn. of Broadcasters  
1771 N St., N.W.  
Washington, DC 20036

Stacey R. Fuller, Esq.  
Vice-President, Regulatory Affairs  
DIRECT TV, LLC  
901 F St., N.W., Suite 600  
Washington, DC 20004

Michael Nilsson, Esq.  
Harris, Wiltshire and Grannis, LLP  
1919 M St., N.W., 8<sup>th</sup> Floor  
Washington, DC 20036

  
Evelyn M. Ojea