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January 22, 1999

Ms. Magalie Roman-Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte**
CS Docket No. 98-201 ✓
RM No. 9335
RM No. 9345

Dear Ms. Salas:

Ben Ivins with the National Association of Broadcasters, Tom Olson with the law firm of Wilmer, Cutler, and Pickering and the undersigned met January 20, 1999 with Chairman Bill Kennard and Mary Beth Murphy. The topic of discussion was the above-captioned proceeding.

We discussed points raised in the original, reply and supplemental comments filed by NAB concerning (1) the importance of localism and protection of free, over-the-air broadcasting, (2) the fact that the SHVA is a narrow exception to the exclusive rights generally enjoyed by copyright owners, (3) the need for the FCC to avoid rewarding satellite industry lawbreaking, (4) the fact that Congress designed and intended the SHVA compulsory license to be narrow, and to apply only to about a million homes, almost all in remote, rural areas, and (5) the available solutions to the problem of delivering broadcast networks to satellite customers (local to local, over-the-air antennas, and basic or lifeline cable subscriptions).

We also discussed the permanent injunction issued by the Federal District Court for the Southern District of Florida on December 22, 1998 which enjoins PrimeTime 24 from providing CBS or Fox network programming to any customer living in an unserved household. We discussed the negative impact the SBCA proposal would have to localism and over-the-air broadcasting. We illustrated what running Longley-Rice with a higher

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confidence input (such as 90%) would do to various markets. (See Attachment A which was filed in the above-referenced proceeding Friday, January 15, 1999.) We concluded that doing so would create predictive errors because many locations that are actually served now would be classified as unserved. We left behind an Associated Press article which reports satellite companies giving the cable industry head-to-head competition. (See Attachment B.)

Sincerely,



Karen Fullum

Cc: Chairman Bill Kennard
Mary Beth Murphy

Attachments

IMPACT OF USING 90% CONFIDENCE FACTOR

		<u>LR 50/50/50 Grade B</u>	<u>LR 50/50/90 Grade B</u>	<u>Difference</u>	<u>Percent Loss</u>
<u>KAAL - ABC - Austin MN</u>	1997 Pop	698,435	457,618	240,817	34.5%
<u>KGAN - CBS - Cedar Rapids IA</u>	1997 Pop	1,012,907	748,905	264,002	26.1%
<u>KHQA - CBS - Hannibal MO</u>	1997 Pop	386,991	267,503	119,487	30.9%
<u>KTVO - ABC - Ottumwa IO</u>	1997 Pop	490,857	311,886	178,971	36.5%
<u>KXJB - CBS - Fargo ND</u>	1997 Pop	498,554	382,498	116,055	23.3%
<u>WBKB - CBS - Alpena MI</u>	1997 Pop	131,902	92,052	39,850	30.2%
<u>WCAX - CBS - Burlington VT</u>	1997 Pop	811,874	638,976	172,899	21.3%
<u>WCSH - NBC - Portland ME</u>	1997 Pop	1,688,683	1,130,616	558,066	33.0%
<u>WLOS - ABC - Greenville SC</u>	1997 Pop	4,074,195	2,364,540	1,709,655	42.0%
<u>WSAZ - NBC - Charleston WV</u>	1997 Pop	1,284,792	1,020,012	264,780	20.6%

TV customers are tuning in to satellite

Direct broadcasters going head-to-head with cable industry

Michael White - Associated Press

LOS ANGELES _ Jeffrey Washington got really mad at his cable company when a technical glitch turned his television dark just before the Memorial Day weekend.

"If I'm going into a three-day weekend and I've got children at home that are 8 and 4 and I can't get Nickelodeon, I've got a problem," said Washington, 40, of Mitchellville, Md., a Washington D.C., suburb. "We would call to find out what was happening and just get a recording."

A few months later, when Bell Atlantic began packaging satellite-based DirecTV with local telephone service, Washington signed up.

He pays about the same price, around \$60 a month for basic service with premium channels, and said he is happier with the service and gets a sharper picture.

Satellite companies have set out to snare more customers like Washington by joining forces with local phone companies and using some decidedly low-level technology that lets satellite customers watch local channels.

Cable companies are responding to the new threat by upgrading their systems with technology that will allow sharper pictures, more channels and additional services like telephone and the Internet.

Whether the new strategies will give satellite companies such as DirecTV a bigger chunk of cable's customer base remains to be seen. What is clear is that the new approach has infused the industry with new energy and optimism about the future of direct broadcasting.

"We see it as a very big deal in terms of it driving subscribers, building the subscriber base and getting the word-of-mouth out there in terms of what satellite TV can do," said Jimmy Schaeffler, chairman of the Carmel Group, a market analysis company that monitors the direct broadcast industry.

In recent months Hughes Electronic Corp.'s DirecTV and U.S. Satellite Broadcasting each have entered into marketing agreements with big local telephone providers including Bell Atlantic, Southwestern Bell and GTE. The deals are expected to give the satellite companies a longer marketing reach.

The phone companies have been offering the service on a limited basis for several months, but plan to expand during 1999.

The new satellite campaign includes a new wrinkle: customers get a satellite dish on their roof, but they also get a small antenna that built in local channels. In some cases, depending on the location of the home, the antenna can be mounted in the attic, or integrated as part of the satellite dish.

By picking the right antenna for local conditions, the phone companies say they can match or exceed the picture quality of cable television.

This admittedly low-tech application overcomes a big marketing hurdle for direct broadcasters. Under federal law designed to protect cable operators, they are not allowed to offer local stations via satellite. That has persuaded many potential customers to stick with cable.

"We provide a local signal solution," said Richard Beville, president of Bell Atlantic Video, the subsidiary that is executing Bell Atlantic's foray into television service. "We're the home team in all these markets we serve."

Cable now has 67.4 percent of the nation's TV market, a share that's worth \$33.8 billion, according to the National Cable Television Association. Direct broadcasters claim about 10 percent of the market share.

Recent acquisitions might also make satellite companies more appealing to American viewers.

Earlier this month, DirecTV announced it would buy U.S. Satellite for \$1.3 billion in a deal that will allow DirecTV to offer subscribers more than 100 channels, far more than the number now available through cable.

Denver-based EchoStar Communications plans to buy the last U.S. satellite license, and two satellites under construction, from MCI Worldcom and Rupert Murdoch's News Corp. The sale gives EchoStar, which has about 2 million subscribers, the potential to offer up to 500 channels and Internet access to its customers. As part of the deal, MCI's marketing department will sell subscriptions to EchoStar's satellite TV service, although the plan does not include antenna installation.

Companies also are offering sharp discounts on the cost of dish installation.

Cable companies are countering with upgraded service.

"We will win," said Bill Rosendani, senior vice president of operations at Century Communications of Southern California, a subsidiary of Connecticut-based Century Communications Inc., which serves about 1.3 million households nationwide.

The company is set to gain another 400,000 California subscribers as part of a pending merger of local services with TCI Communications.