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Original

Lisa Chandler Cordell

June 1, 1999

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VIA COURIER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

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JUN 01 1999

**Re: MM Docket No. 93-25
American Cable Association Response to Oppositions**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

On behalf of the American Cable Association ("ACA") (formerly the Small Cable Business Association), we enclose twelve (12) copies of the above-referenced Response to Oppositions. We ask that each Commissioner receive a copy.

In addition, we provide a "FILE COPY." We ask that you date-stamp and return it to the courier.

If you have any questions, please call us.

Very truly yours,

Lisa Chandler Cordell

Lisa Chandler Cordell

Attachment

cc: American Cable Association

cc: Roderick Porter, Chief, International Bureau
Rosalee Chiara, Deputy Chief, Satellite Policy Branch

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JUN 01 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

**In the Matter of)
)
Implementation of Section 25)
of the Cable Television Consumer)
Protection and Competition Act of 1992)
)
Direct Broadcast Satellite Public)
Interest Obligations)**

MM Docket No. 93-25

RESPONSE TO OPPOSITIONS

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**Attorneys for American Cable
Association**

June 1, 1999

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992)	MM Docket No. 93-25
)	
Direct Broadcast Satellite Public Interest Obligations)	
)	

RESPONSE TO OPPOSITIONS

I. INTRODUCTION

The American Cable Association (formerly the Small Cable Business Association) ("ACA") timely files this response¹ to highlight for the Commission the failure of any opposition² to address ACA's substantive concerns raised in its Petition for

¹ See *In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992: Direct Broadcast Satellite Public Interest Obligations*, Report and Order in MM Docket 93-25, FCC 98-307 (released November 25, 1998) ("*DBS Public Interest Order*"). The Commission extended the deadline for filing responses to oppositions until June 1, 1999. See *In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992: Direct Broadcast Satellite Public Interest Obligations*, Order in MM Docket No. 93-25, DA 99-907 (released May 14, 1999).

² Specifically, ACA files its response to address arguments raised by the Satellite Broadcasting and Communications Association ("SBCA") and DirecTV, Inc. See Opposition and Comments of the Satellite Broadcasting and Communications Association in MM Docket No. 93-25 (filed May 20, 1999) ("*SBCA Opposition*"); see also Opposition and Comments of DirecTV, Inc. in MM Docket No. 93-25 (filed May 6, 1999) ("*DirecTV Opposition*").

Reconsideration.³ ACA also brings to the Commission's attention pertinent information not previously available.

ACA filed its Petition on behalf of its nearly 300 member smaller cable businesses and their small cable systems (collectively "small cable") that serve more than 2.3 million subscribers nationwide. The majority of ACA's members have fewer than 1,000 subscribers in total. ACA was formed in 1993 by smaller, independent cable businesses to represent the collective interests of its members and to speak with a unified voice regarding issues affecting their businesses.

II. BACKGROUND

ACA filed its Petition to address the Commission's failure to meet its statutory obligation under 47 U.S.C.S. § 335(a) to consider "opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under [the Communications] Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service."⁴ Rather than give serious consideration to ways DBS could foster the principles of localism, the Commission skirted any meaningful analysis.⁵ In 1992, when Congress directed the Commission to consider how the direct broadcast satellite service serves or could serve localism, DBS was

³ See Petition for Reconsideration of the Small Cable Business Association (now American Cable Association) in MM Docket No. 93-25 (filed March 10, 1999)("ACA Petition").

⁴ See 47 U.S.C.S. § 335(a)(emphasis added).

⁵ See *DBS Public Interest Order* at ¶¶ 49-54.

in its infancy. In 1992, technological and legal impediments to DBS local service existed. Congress undoubtedly knew this. Yet, Congress, unlike the Commission, did not find that those impediments prevented consideration of how DBS could serve localism. Had it, Congress would not have specifically directed the Commission to consider "opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under [the Communications] Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service."⁶

III. OPPOSITIONS TO ACA'S PETITION

Two parties, SBCA and DirecTV, purportedly oppose ACA's Petition. Both tout the continued dominance of the cable industry and an alleged interest to avoid effective competition as the underlying motivation for ACA's action. Neither opposition, however, addresses the substance of ACA's arguments -- the Commission's failure to address how DBS could serve localism. The Commission's obligation arises from a statutory mandate. This coupled with the absence of any substantive opposition mandates Commission reconsideration of its cursory and incomplete analysis.

IV. RECENT DEVELOPMENTS MAKE COMMISSION ACTION MORE IMPERATIVE.

Several recent developments also support reconsideration of the Commission's decision not to address the opportunities that exist, or soon may exist, for DBS to serve the principles of localism. ACA addresses these developments below.

⁶ See 47 U.S.C.S. § 335(a)(emphasis added).

A. Widespread DBS local-into-local service becomes even more imminent.

ACA raised in its Petition the recent flurry of legislative activity relating to DBS local-into-local service.⁷ Authorization for DBS providers to offer local signals is now two steps closer to reality. Since the filing of ACA's Petition, the U.S. House of Representatives passed, by an overwhelming majority, H.R. 1554, which authorizes DBS carriers to transmit local broadcast signals into local markets.⁸ Not long after, the Senate passed a similar measure.⁹ Final congressional action is expected this summer.

To comply with Congress's directive that the Commission consider "methods by which [localism] may be served through . . . other developments in, or regulation of, [DBS] service, the Commission should have, at a minimum, contemplated ways to protect localism in the event Congress removes the legal impediments to widespread local-into-local DBS transmissions. To accomplish this, ACA urged in its Petition,¹⁰ and reiterates now, the necessity for the Commission to issue a further notice of proposed rulemaking specific to the issue of opportunities for DBS to serve localism.¹¹

⁷ See ACA Petition at 12-14.

⁸ See *House okays legislation allowing local stations on satellite*, PUBLIC BROADCASTING REPORT (Warren Publishing, May 7, 1999).

⁹ See *Capitol Hill*, COMMUNICATIONS DAILY (Warren Publishing, May 24, 1999).

¹⁰ See ACA Petition at 14-15.

B. FCC approval of recent mergers results in a dramatically different DBS market.

Within weeks following its *DBS Public Interest Order*, announcements of several major DBS mergers raised the prospect of a significantly restructured DBS industry. Now, FCC approval of these mergers makes concentration of the DBS market a reality. In its Petition, ACA explained that positive Commission action on three assignment applications will result in two DBS providers controlling all of the full-CONUS DBS spectrum, which would provide the additional capacity needed for widespread DBS local-into-local service.¹² In the months since ACA filed its petition, the Commission has acted to make that a reality. First, on April 1, 1999, it approved the transfer of control of five channels at the 101° W.L. orbital location and three channels at the 110° W.L. orbital location to DirecTV Enterprises, Inc.¹³ More recently, the Commission approved the assignment of 28 frequency channels at the 110° W.L. orbital location to EchoStar 110 Corporation.¹⁴ On May 28, 1999, the Commission approved the third transaction, authorizing the assignment of 11 frequencies at the 119° W.L. orbital location to DirecTV Enterprises, Inc.¹⁵ Consolidation of the full-CONUS spectrum between two DBS providers is now complete. These transactions

¹² See ACA Petition at 15.

¹³ See *In the Matter of United States Satellite Broadcasting Co., Inc. and DirecTV Enterprises, Inc.*, Order and Authorization, DA 99-633 (Acting Chief, International Bureau, April 1, 1999).

¹⁴ See *In re Application of MCI Telecommunications Corporation and EchoStar 110 Corporation*, Order and Authorization, FCC 99-109 (released May 19, 1999).

¹⁵ See *In re Application of Tempo Satellite, Inc. and DirecTV Enterprises, Inc.*, Order and Authorization, DA 99-1043 (Acting Chief, International Bureau, May 28, 1999).

provide DBS providers with the additional capacity they need to provide widespread local-into-local service.

C. EchoStar no longer stands alone in its plans to offer local signals.

At the time of ACA's Petition, EchoStar stood alone in its vision to offer widespread local-into-local service. Until recently, DirecTV did not support EchoStar's exhaustive efforts to deliver local-into-local signals. It, however, did an about-face in early May, announcing that it too would deliver local signals pending favorable legislation.¹⁶

D. DBS providers have the capacity, the intent and, soon, the authority to offer local signals.

DBS providers now have the additional capacity needed to offer widespread local-into-local service. The two largest DBS providers plan to offer widespread local-into-local service. The last link, congressional authorization, appears imminent and, by the time the Commission acts on ACA's Petition, will likely exist. The technological and legal impediments upon which the Commission relied in refusing to fulfill its statutory obligation to consider ways DBS can serve localism will no longer exist. The Commission therefore must grant ACA's Petition for Reconsideration and issue a further notice of proposed rulemaking seeking comment on ways that DBS can serve localism.

¹⁶ See Lee Hall, *DirecTV to offer local signals*, ELECTRONIC MEDIA (May 10, 1999), at 3; see also *DirecTV plans to provide local signals to 50 million TV homes*, SATELLITE WEEK (May 10, 1999).

V. CONCLUSION

While stating that they oppose ACA's Petition, neither SBCA nor DirecTV offer any evidence refuting that the Commission failed to meet its statutory obligation by refusing to consider ways for DBS to serve localism. More importantly, the basis for the Commission's refusal — technological and legal impediments to DBS local service — has crumbled. ACA therefore urges the Commission to grant its unopposed Petition for Reconsideration and to comprehensively consider the ways that DBS can serve the principles of localism.

Respectfully submitted,

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June 1, 1999

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CERTIFICATE OF SERVICE

I, Tina M. Werner, of Bienstock & Clark, certify that on this 1st day of June 1999, I sent copies of the foregoing RESPONSE TO OPPOSITIONS via first class mail to the following:

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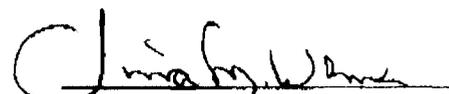
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