

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
FEB - 7 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Satellite Home ) CS Docket No. 00-2  
Viewer Improvement Act of 1999 )  
)  
Application of Network Nonduplication, )  
Syndicated Exclusivity, and Sports Blackout )  
Rules To Satellite Retransmissions )

**COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION**

The National Cable Television Association hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.

**INTRODUCTION**

The Satellite Home Viewer Improvement Act of 1999 amended the Copyright Act of 1976 and the Communications Act of 1934 to permit satellite carriers for the first time to retransmit local broadcast signals and to import certain distant signals to households that can receive local signals over the air. Newly added Section 339(b) of the Communications Act directs the Commission to apply to satellite carriers three rules that currently apply to *cable operators* when *they* retransmit broadcast signals to subscribers: the network nonduplication, syndicated exclusivity and sports blackout rules. In this proceeding, the Commission seeks comments on how to implement this directive.

The network nonduplication and syndicated exclusivity rules establish the right of national program networks and vendors of syndicated programming to enter into territorially exclusive affiliation and distribution agreements with local broadcast stations. In general, they

019

are designed to require cable operators that carry distant signals to black out programming on those signals for which a local broadcaster has the exclusive local broadcast rights.

The sports blackout rule has a different purpose. It established the right of sports teams not to permit *any* local broadcast distribution of a local sporting event, whether by local or distant television stations, in order to encourage live attendance at the event. It requires cable operators, on the request of local sports rights holders, to black out a local sporting event that is carried on a distant signal if the event is not available live on a local broadcast station.

### DISCUSSION

The Commission has correctly concluded that Congress had two reasons for directing the Commission to apply these rules to satellite carriers. The first simply recognizes and reaffirms the reason why the Commission applied the rules to cable in the first place – *i.e.*, to protect the contractual rights of broadcasters and program rights holders.<sup>1</sup> The second is “to create parity between the regulations covering satellite carriers and cable operators,” in order to ensure fair and effective competition among the multichannel video programming distributors that serve subscribers in the same area.<sup>2</sup>

The second concern was of central importance to Congress, and it is the principal concern of NCTA in this proceeding. Congress meant for the Commission to craft the rules for satellite carriers so that they would be “as similar as possible” to the cable rules.<sup>3</sup> Most consumers now have a choice of multichannel video programming distributors – at a minimum, at least one local cable operator, and two nationwide DBS providers. The Commission should apply the network

---

<sup>1</sup> Notice, ¶ 9.

<sup>2</sup> *Id.*

<sup>3</sup> *Joint Explanatory Statement of the Committee of Conference on H.R. 1554*, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess., 145 Cong. Rec. H11796 (daily ed. Nov. 9, 1999).

nonduplication, syndicated exclusivity and sports blackout rules to satellite carriers in a way that, in all respects, does not artificially and unfairly affect that choice.

In particular, the Commission's rules should ensure parity with respect to the geographic areas in which blackouts are required. Under the cable rules, the area in which programming must be blacked out is often larger than the area in which a rights holder and a broadcaster may have contracted for territorial exclusivity. A cable system is generally required to black out programming *throughout* a community unit if *any portion* of the broadcaster's area of exclusivity overlaps with *any portion* of the community unit.<sup>4</sup>

The effect of this rule is not merely to require blackouts for subscribers that are outside the broadcaster's exclusive territory but within a community unit that overlaps the broadcaster's exclusive territory. In many circumstances, it also effectively requires blackouts for subscribers that are outside *both* the broadcaster's exclusive territory *and* the community unit that overlaps that territory. This is because many cable systems serve multiple community units from a single headend and cannot economically black out a single channel of tiered programming for some subscribers but not others.

If the Commission is to make the network nonduplication, syndicated exclusivity and sports blackout rules for satellite carriers "as similar as possible" to the cable rules, in order to promote "parity" and a level playing field for fair competition, it is critically important that the blackout areas for satellite carriers be as congruent as possible with the blackout areas for competing cable systems. Even if it were possible for satellite carriers to identify and black out only those subscribers within the precise contours of a broadcaster's exclusive territory, it would unfairly skew marketplace competition to permit satellite carriers to provide distant signal

---

<sup>4</sup> See 47 C.F.R. §§ 76.92, 76.151.

programming to subscribers when cable operators are prohibited from providing the same programming to the same subscribers.

Moreover, requiring satellite carriers to black out programming on the same community unit basis that applies to cable operators is likely to be the most easily applied, easily understood and easily enforced approach. The boundaries of community units and cable franchise areas – unlike the boundaries of exclusivity established by programming contracts and broadcasters' 35-mile zones – are clear not only to cable operators and satellite carriers but also to residents. Customers would surely be confused and bewildered by a regulatory scheme that resulted in blackouts in one neighborhood in a community – or on one side of a street – but not on the other. And they would be confused by a regulatory scheme under which a program might be blacked out if a household subscribed to cable but not if the same household subscribed to DBS. With a common blackout area, a particular program either would or would not be available to a household, regardless of whether they subscribed to cable or DBS – a “single map” approach that cable operators, satellite carriers and the Commission could readily implement on the basis of established community units.

## CONCLUSION

Congress directed the Commission to apply the network nonduplication, syndicated exclusivity and sports blackout protections of the existing cable rules to satellite carriers and intended that the rules, as applied to satellite carriers, be as similar as possible to the cable rules. The Commission should ensure, in crafting its rules, a regulatory parity that does not interfere with marketplace competition among distributors of multichannel video programming.

Respectfully submitted,



Daniel L. Brenner

Diane B. Burstein

Michael S. Schooler

National Cable Television Association

1724 Massachusetts Ave., N.W.

Washington, DC 20036

(202) 775-3664

February 7, 2000