Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Satellite Home Viewer Improvement Act of 1999	)	CS Docket No. 00-96
	)	
Broadcast Signal Carriage Issues	)	

To the Commission:

COMMENTS

Pepper & Corazzini, L.L.P., on behalf of its interested television clients,[1] hereby submits its Comments to the Notice of Proposed Rule Making, *In re Implementation of the Satellite Home Viewer Improvement Act of 1999 – Broadcast Signal Carriage Issues*, FCC 00-195, CS Docket No. 00-96, released June 9, 2000 ("NPRM"). In support of satellite broadcast signal carriage rules that comport with cable broadcast signal carriage rules as closely as possible, the following is respectfully submitted for the Commission's consideration:

Introduction

1. By adopting Section 338(a)(1) of the Communications Act, as part of the Satellite Home Viewer Improvement Act of 1999, Congress mandated satellite carriers to carry upon request, by January 1, 2002, the signals of all local television broadcast stations located within the local markets in which satellite carriers carry the signal of at least one television broadcast

[1] The commenting clients include Gray Communications Systems, Inc., the licensee, through subsidiary companies, of 13 television stations including full service satellite stations in Grand Island, Nebraska and Bryan, Texas; Heritage Broadcasting Company of Michigan, the licensee of two television stations including a full service satellite station in Saulte St. Marie, Michigan;

station licensed to the subject television market under the statutory compulsory copyright licensing system.[2] Upon implementation, satellite carriers will be required to provide more local and national broadcast programming to subscribers, many who had been previously prohibited from receiving such programming via satellite under the compulsory licensing provisions of the copyright law. The Commission was charged with implementing Section 338 of SHVIA. On June 9, 2000, the Commission released the NPRM seeking comments on the appropriate means to implement Section 338 of SHVIA.

Comments

2. Underlying Goals for Broadcast Carriage Rules. In the context of mandating broadcast carriage rules, there is no reason to treat satellite carriers differently than cable operators as a public policy matter because the underlying goals for mandating broadcast carriage rules for both multichannel video program distributors are the same. In enacting the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992,[3] Congress sought to protect continued free local broadcast television because "there is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming." 47 U.S.C. §521(a)-(b)(1). Congress determined that cable systems and television stations compete for local advertising revenue and that cable operators have an economic incentive to favor their affiliated programmers over broadcast stations and therefore an economic incentive to delete, reposition, or not carry local broadcast television signals. See 47

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and Mel Wheeler, Inc., the licensee, through subsidiary companies, of three television stations including a full service satellite station in Poplar Bluff, Missouri.

[2] Pub. L. 106-113, 113 Stat. 1501 ("SHVIA").

U.S.C. §521(a)(5) and (14)-(16). Congress further concluded that without a requirement that cable operators carry local broadcast television stations, the continued availability of free local broadcast television would be threatened. See 47 U.S.C. §521(a)(16). Thus, to insure that free broadcast television remains available as a source of video programming for those without cable, Congress sought to protect the Nation's broadcast television medium (while permitting continued development and expansion of cable) by enacting the must-carry provisions of the 1992 Cable Act. The must-carry provisions of the 1992 Cable Act serve three interrelated interests: (1) preserving the benefits of free, over-the-air local broadcast television service, (2) promoting the wide dissemination of information from multiple sources, and (3) promoting fair competition in the marketplace for television programming. S. Rep. No. 102-92, at page 58 (1991); H.R. Rep. No. 102-6 at pages 28 and 63 (1992); 47 U.S.C. §2(a)(8), (9), and (10). In fact, promoting "the availability to the public of a diversity of views and information through cable television and other video distribution media" is one of the stated policies of the 1992 Cable Act. 47 U.S.C. §521(b)(1).

3. The must-carry provisions of SHVIA seek similar goals. By enacting SHVIA, Congress seeks to protect free television for those not served by satellite carriers or cable systems and to provide consumers with more options in choosing a multichannel video program distributor. Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Congress, 145 Cong. Rec. at H11795 (daily ed. Nov. 9, 1999). Congress was concerned that without must-carry requirements, satellite carriers would carry major network affiliate television stations, not local broadcast television stations, and undermine the government's interest in maintaining free, over-the-air television service. Id. The must-carry provisions of SHVIA thus

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[3] Pub. L. 102-385, 106 Stat. 1460 ("1992 Cable Act").

seek to treat satellite carriers comparably to cable operators, who compete for the same customers. Id.

4. Satellite Television Stations. The Commission's interpretation that satellite carriers are within the scope of Section 338 of SHVIA is correct. Satellite carriers' obligation to carry satellite television stations can be clearly inferred by Congress' definition of a "television broadcast station." In Section 338(h)(7) of SHVIA, Congress defines "television broadcast station" to have the meaning set forth in Section 325(b)(7)(B) of the Communications Act. Section 325(b)(7)(B) defines "television broadcast station" as "an over-the air commercial or noncommercial television broadcast station licensed by the Commission under Subpart E of Part 73 of Title 47, Code of Federal Regulations, *except that such term does not include a low-power or translator television station.*" 47 U.S.C. 325(b)(7)(B)(emphasis added). While Congress explicitly excluded low-power television stations and television translator stations in its definition of a "television broadcast station," Congress did not specifically exclude satellite television stations. Accordingly, it is clear that Congress intended to include satellite television stations within the scope of television broadcast stations subject to signal carriage by satellite carriers. Section 338(h)(7) of SHVIA. Such an interpretation is correct and furthers the public interest in providing households in un-served or underserved areas of the country with access to television broadcast programming.

5. From a public interest perspective, there is no difference between cable and satellite service. In fact, it may be more crucial that satellite carriers, as compared to cable operators for discussion purposes, carry satellite television stations because satellite carriers are uniquely qualified to serve un-served or underserved areas of the country. The Commission is in agreement. In its NPRM, the Commission stated that "[i]t is the clear intent of both Congress

and the Commission to provide satellite subscribers with local television service in as many markets as possible." NPRM, at Para. 2. Because satellite carriers would deliver the signal of a satellite television station via existing satellite services, there is no additional cost factor for serving un-served or underserved areas of the country. Cable operators, on the other hand, must connect such un-served or underserved areas with cable lines, the cost of which in rural areas is prohibitive. As such, requiring satellite carriers to carry satellite television stations in some cases may be the only way to serve many rural areas of the country. This requirement will preserve the local television station for the home viewer who then may also enjoy the expanded programming of the multichannel program distributor. The Commission should therefore mandate satellite carriers to carry satellite televisions stations.

6. Modification of Local Television Market for Broadcast Signal Carriage Purposes. As a general principal, satellite carriers and broadcasters should have a mechanism, similar to the existing mechanism for cable operators and broadcasters, to seek modifications of local television markets for signal carriage purposes. Since the intent of Congress in enacting the must-carry provisions of SHVIA was to place satellite carriers on an equal footing with cable operators in the broadcast signal carriage context, the Commission should harmonize the obligations of cable operators and satellite carriers by amending its existing mechanism for expanding or contracting the size of a local television market to be applicable to both cable operators and satellite carriers, in addition to broadcasters. The Commission should also apply previously granted market modifications [in the cable context] to satellite carriers in the affected market areas. If the mechanism for changing the size of a local television market is not synchronized for cable operators and satellite carriers, there may be local television markets where a particular station is deemed a must-carry station for the cable operator in the market but

not for the satellite carrier in the market. This will result in consumer confusion and will likely prejudice fair competition among the cable operator, the satellite carrier, and the affected television station. Such a result is contrary to the public interest.

7. Digital Television Carriage Requirements. Satellite carriers should be required to carry digital broadcast television signals in addition to analog broadcast signals until the time that television stations are required to return their analog spectrum to the government.[4] During the DTV transition period, television stations will program with phased in simulcast requirements on both analog and digital channels. At the end of the transition period, which is currently scheduled for 2006 with certain statutory exceptions, including consumer acceptance of digital technology (85% threshold) and other market-based conditions, television stations must cease analog broadcasting and return its analog channel to the government. In July 1998, the Commission commenced a proceeding to determine the carriage obligations of cable operators to carry a television station's digital signal during the DTV transition period. See Notice of Proposed Rule Making, *In re Carriage of the Transmission of Digital Television Broadcast Stations, Amendments to Part 76 of the Commission's Rules* , 13 FCC Rcd 15092, CS Docket No. 98-120, released July 10, 1998. When adopting rules for digital carriage requirements for cable operators, the Commission should keep in mind that satellite carriers' digital carriage requirements should be consistent with those for cable operators. Furthermore, the Commission's digital carriage requirements for both cable operators and satellite carriers should mandate carriage of satellite television stations regardless of whether the satellite television

[4] The transitional process for converting television broadcast transmissions from an analog to a digital format has commenced. See Fifth Report and Order, *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, MM Docket No. 87-268, released April 21, 1997; 47 C.F.R. §§73.622-624. The Commission's rules permit

station's mother television station is being carried by the cable operator or satellite carrier. This is necessary if the conversion of television broadcast transmissions from analog to a digital format is to be successful. Cable and satellite carriage of digital television will provide additional incentives for consumers to purchase digital television sets (to view digital programming provided by cable systems, satellite carriers, and digital television stations). Without mandating digital carriage requirements for both cable operators and satellite carriers, television broadcasters will be unable to reach the 85% threshold of digital households necessary for full DTV conversion. The National Association of Broadcasters has repeatedly stated that for a successful DTV transition, the Commission must confer digital must carry and retransmission consent rights to television broadcasters. See e.g., Letter from the Television Board of the NAB to The Honorable William E. Kennard, Chairman of the FCC, dated June 19, 2000; Letter from the Presidents of MSTV, NAB, and ALTV to The Honorable William E. Kennard, Chairman of the FCC, dated February 22, 2000.

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each existing television licensee (or eligible permittee) to construct and operate digital facilities with a comparable service area to that of the existing analog service area.

WHEREFORE, for the foregoing reasons, the Commission should broadcast signal carriage rules that harmonize the obligation of satellite carriers and cable operators.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Lisa A. Skoritoski, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 5th day of July, 2000, copies of the foregoing Comments were hand delivered to the following:

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