

technically-based, it simply represents yet another effort to evade the carriage obligations attendant to the compulsory license conferred by Congress and voluntarily utilized by the satellite carrier.<sup>74</sup> Notably, BellSouth takes the opposite position in its comments: “With respect to the definition of ‘good quality’ signal, BellSouth supports the definition (and testing procedures) traditionally used to define the quality of signal to be delivered to a cable headend by a local television station. Since those signal quality standards have been effective in the cable environment, *there is no reason they will not work for satellite.*”<sup>75</sup> ALTV similarly observes:

No basis exists to draw any distinction because of distinctive technologies or operational features of cable systems and satellite carriers. A signal is of good quality whether it falls over a cable headend or a satellite carrier’s local receive facility. Furthermore, the standard is high, as the Commission recognized when it adopted this same standard in 1986:

The standard we are adopting requires that such signal equal or exceed a high picture quality in which interference may be just perceptible.

Years of experience have proven the validity and reliability of the standard established in the cable television rules. Therefore, the Commission should consider a signal of the strength specified as a good quality signal in the cable television rules as a good quality signal under section 338.<sup>76</sup>

The Commission should reject DIRECTV’s thinly veiled attempt to nullify the carriage provisions of SHVIA through imposition of an unreasonable and unjustified signal delivery standard.

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<sup>74</sup> As noted in Section I.A, *supra*, DIRECTV urges the Commission to make installation of a dedicated TV1 quality fiber circuit between a station’s transmitter and the local receive facility a condition that “must be satisfied for a broadcast station *to be eligible for must carry in the first instance,*” and yet would refuse to disclose the location of its local receive facility unless and until a local station had demonstrated its eligibility for carriage! *Id.* at 27-28, 31-33 (emphasis added). DIRECTV’s proposal is a blatant effort to prevent *any* local station from enjoying the carriage rights conferred by Congress.

<sup>75</sup> *BellSouth Comments* at 19 (citations omitted) (emphasis added).

<sup>76</sup> *ALTV Comments* at 25 (footnotes omitted).

The Commission similarly should reject the argument of DIRECTV and other satellite carriers that the failure to deliver a good quality signal constitutes a justification for refusing to carry a local station.<sup>77</sup> As explained in our initial comments and in those of ALTV and NAB, SHVIA, unlike the Cable Act, does not authorize satellite carriers to refuse carriage of a local station based on signal quality.<sup>78</sup> Under the Cable Act, a cable operator is required to carry “local commercial television stations,”<sup>79</sup> and the Cable Act defines the term “local commercial television station” to *exclude* any station that does not deliver or bear the costs of delivering a “good quality signal” to the principal headend of the cable system.<sup>80</sup> By contrast, SHVIA requires a satellite carrier that carries at least one local station in a market pursuant to the Section 122 compulsory license to “carry on request the signals of all television broadcast stations located within that market.”<sup>81</sup> Unlike the term “local commercial television station” in the Cable Act, the term “television broadcast station” in Section 338 *does not exclude stations that fail to provide a good quality signal.*<sup>82</sup>

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<sup>77</sup> See *DIRECTV Comments* at 28; *LTVS Comments* at 16; *BellSouth Comments* at 19.

<sup>78</sup> See *Network Affiliates Comments* at 11-12; *NAB Comments* at 5-9; *ALTV Comments* at 28-30.

<sup>79</sup> 47 U.S.C. § 534(a).

<sup>80</sup> 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>81</sup> 47 U.S.C. § 338(a)(1).

<sup>82</sup> The term “television broadcast station” in Section 338 adopts the definition from Section 325(b)(7) of the Act, which states that “‘television broadcast station’ means 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) and 338(h)(7); see also *NAB Comments* at 6.

This distinction between the two statutes cannot be ignored.<sup>83</sup> As DIRECTV itself stresses: “The Commission also must weigh heavily the specific statutory differences between cable must carry and satellite must carry. Congress placed great emphasis on this principle, by adding new sections to the Communications Act to govern satellite compulsory carriage, and by explicitly providing that the regulations should be ‘comparable’ – not identical.”<sup>84</sup> In this instance, Congress chose to distinguish SHVIA from the Cable Act, declining to make delivery of a good quality signal a prerequisite for carriage:

By untying the carriage obligation from provision of a good quality signal, Congress wisely took away from satellite carriers a device that had been abused by many cable systems: ginning up disputes about signal quality in order to postpone the time when a cable system would be required to carry a particular channel. . . . The SHVIA thus creates a sensible allocation of burdens: stations are protected from gameplaying by satellite carriers making illegitimate claims about inadequate signal quality, while carriers are protected both by the natural self-interest of stations – which want to deliver a high quality signal – and the availability of relief at the Commission against a station that fails to provide a good quality signal.<sup>85</sup>

ALTV similarly points out that Congress’s different approach in SHVIA will align the interests of satellite carriers and local stations, resulting in greater cooperation and fewer controversies requiring Commission intervention: “Because they cannot escape their obligation to carry a station by alleging poor signal quality, [satellite carriers] will have every incentive to communicate and cooperate with local stations to devise reasonable solutions to

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<sup>83</sup> If Congress had intended to make delivery of a good quality signal a prerequisite to satellite carriage rights, it certainly could have done so, as it did in the Cable Act. Congress’s different decision in SHVIA cannot be overlooked. *See, e.g., United States v. Hanousek*, 176 F.3d 1116, 1121 (9<sup>th</sup> Cir. 1999) (“Congress is presumed to have known of its former legislation and to have passed new laws in view of the provisions of the legislation already enacted”); *Dantran, Inc. v. United States Dep’t of Labor*, 171 F.3d 58, 70 (1999) (“Congress legislates with knowledge of the legal standards prevailing in administrative law”).

<sup>84</sup> *DIRECTV Comments* at 6.

signal strength problems. Indeed, both the station and the satellite carrier will share a common goal – assuring availability of a good quality signal at the carrier’s designated receive facility.”<sup>86</sup> As ALTV correctly observes, “[t]he result should be fewer complaints for the Commission and less uncertainty for stations, satellite carriers, and consumers.”<sup>87</sup> The Commission should respect this distinction between SHVIA and the Cable Act by ruling that satellite carriers may not refuse to carry local stations based on the failure to provide a good quality signal. Rather, satellite carriers may file a complaint at the Commission seeking to enforce the local station’s obligations with regard to signal delivery.<sup>88</sup>

**E. Local Stations Cannot Be Denied Carriage Based On Viewership.**

Where a satellite carrier chooses to carry one station in a local market pursuant to SHVIA’s local-into-local copyright license, it assumes the obligation to carry *all* local stations in that market, subject only to Section 325(b) (which excludes retransmission consent stations from the must-carry obligation) and to Section 338(c) (which relieves the carrier from the obligation to carry two local stations that substantially duplicate each other).<sup>89</sup> SHVIA defines a “local market” as the DMA in which a station is located and defines DMA as “the market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index

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<sup>85</sup> *NAB Comments* at 6-7.

<sup>86</sup> *ALTV Comments* at 29.

<sup>87</sup> *Id.*

<sup>88</sup> In its comments, NAB states that “[i]f the Commission were to conclude, incorrectly, that delivery of a good quality signal is a prerequisite to a satellite carrier’s carriage obligations, it should adopt strong and reliable safeguards to protect against abuse by satellite carriers.” *NAB Comments* at 7-9. In the event that the Commission adopts rules that do not reflect the statutory difference between the Cable Act and SHVIA, Network Affiliates endorse use of the safeguards proposed by NAB.

<sup>89</sup> *See* 47 U.S.C. § 325(b); 47 U.S.C. § 338(c)(1). Section 338(c)(2) addresses carriage of multiple local noncommercial television stations. *See* 47 U.S.C. § 338(c)(2).

Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.”<sup>90</sup> Thus, the statute is quite explicit that where one station is carried in a DMA using the local-into-local compulsory license, *all stations in that same DMA* are entitled to carriage (except for those electing retransmission consent or substantially duplicating another local station that is carried).

Notwithstanding this clear statutory mandate, DIRECTV urges the Commission to permit *ad hoc* market modifications “for satellite carriers to remove television broadcast stations that do not serve or that are not substantially viewed in the local market in which they are carried.”<sup>91</sup> Such *ad hoc* modifications to remove local stations from a market would violate the express mandate of SHVIA, which does not authorize the Commission to strip local stations of their carriage rights based on viewership levels – or for any other reason not explicitly set forth in the statute. Indeed, DIRECTV’s proposal directly contradicts *its own reading of SHVIA*. On the one hand, DIRECTV asserts that “the text of the SHVIA specifically relies on Nielsen as the exclusive mechanism to define and modify market boundaries for purposes of defining the carriage obligations of satellite carriers” and that “the Commission lacks the statutory authority to expand television markets on an *ad hoc* basis.”<sup>92</sup> In virtually the next breath, however, DIRECTV boldly asserts that “the market modifications initiated by satellite carriers to remove a station from a market are not precluded by the statute.”<sup>93</sup> DIRECTV’s “heads I win, tails you lose” approach to market modifications again illustrates that its proposals are geared not towards

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<sup>90</sup> 17 U.S.C. § 122(j); *see also* 47 U.S.C. § 338(h)(3).

<sup>91</sup> *DIRECTV Comments* at 17.

<sup>92</sup> *Id.* at 15, 20.

<sup>93</sup> *Id.* at 21.

establishing carriage rules that reflect the language and intent of SHVIA, but towards eliminating the ability of local stations to exercise the carriage rights conferred by Congress on local stations in markets where satellite carriers enjoy the benefits of the royalty-free compulsory local-into-local license. SHVIA does not authorize the Commission to delete stations from “local markets” under any circumstances. Indeed, the failure to carry a local station based on its viewership level, as proposed by DIRECTV, would constitute an actionable violation under Section 501(f) of the Copyright Act.<sup>94</sup>

As explained in our initial comments, the Nielsen data used for defining local markets should be updated triennially, as in the cable context, on years that correspond with the satellite retransmission consent/must-carry election cycles (which will be offset from the cable election cycles).<sup>95</sup> Some satellite interests oppose this simple, three-year cycle for updating the Nielsen data, making a variety of divergent proposals for defining local markets. DIRECTV argues that SHVIA’s definition of “local market” for purposes of the compulsory license is “cumulative,” so that the license includes the 1999-2000 Nielsen DMA boundaries and any subsequent *additive* changes made by Nielsen to those boundaries.<sup>96</sup> At the same time, DIRECTV suggests that its carriage *obligations* under SHVIA should be based solely on the 1999-2000 Nielsen DMA markets.<sup>97</sup> BellSouth argues that “the Commission, along with the Copyright Office, [has] the discretion to choose, for any one or more DMAs, the Nielsen 1999-

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<sup>94</sup> See 17 U.S.C. § 501(f) (providing, in relevant part, that “[a] television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station’s rights under section 338(a) of the Communications Act of 1934”).

<sup>95</sup> See *Network Affiliates Comments* at 6-8.

<sup>96</sup> *DIRECTV Comments* at 19.

<sup>97</sup> *Id.* at 20-23.

2000 DMA definition of any subsequently published definition of the DMA.”<sup>98</sup> Under this approach, different DMAs would rely on different Nielsen publications, based on a market-by-market determination by the Commission and the Copyright Office. BellSouth asserts that the Nielsen publication used in each market should be updated every five years.<sup>99</sup>

Network Affiliates urge the Commission to reject these proposals and adopt the proposal set forth in our initial comments – the Nielsen publications used to define local markets for purposes of SHVIA should be updated triennially, so that each triennial retransmission consent/must-carry election will be made based on the most accurate and up-to-date market information.<sup>100</sup> BellSouth’s proposal to establish the controlling Nielsen publication on a market-by-market basis should be rejected as overly-complicated and unworkable. Because counties may shift from one DMA to another from year to year, the only way to ensure that all counties are included in a DMA for local-into-local purposes is to use a common Nielsen publication countrywide in defining “local markets” for SHVIA purposes.

DIRECTV argues that its proposal is appropriate because spot beams will be designed based on the existing Nielsen market data and only minor modifications can be made once the spot beam satellites are in orbit.<sup>101</sup> This argument is unpersuasive for several reasons. First, the argument inappropriately assumes that all local stations will be carried using spot beam

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<sup>98</sup> *BellSouth Comments* at 12-14.

<sup>99</sup> *See BellSouth Comments* at 14.

<sup>100</sup> *See Network Affiliates Comments* at 6-8. The three-year period for updating Nielsen data is consistent with the cable approach, although the satellite market updates should be synchronized with the triennial satellite elections, which fall on different years than the cable elections. Thus, different Nielsen publications will be used for satellite and cable.

<sup>101</sup> *See DIRECTV Comments* at 22 (explaining that spot beams cannot be altered once the satellite manufacturing process has begun).

technology. This clearly is not the case. While spot beam technology certainly will expand the spectrum available to provide local-into-local service, it is not the exclusive mechanism by which satellite carriers may deliver local service. Today, in the absence of mandatory carriage requirements, satellite carriers such as DIRECTV use national satellites to provide local service in markets across the country. And, as Public Television sets forth in detail, by 2002 satellite carriers will have greatly expanded capacity and resources available for delivering local-into-local service.<sup>102</sup> Second, DIRECTV overstates the likely constraints that may be imposed by spot beam technology. As DIRECTV points out, “[i]n many cases, a single spot beam will encompass several DMA markets.”<sup>103</sup> Thus, changes in the borders *between* these markets would not necessitate any change in the area served by the spot beam. Third, the satellite industry is not unanimous in the position that satellite carriers cannot accommodate periodic changes. BellSouth suggests that Nielsen market data be updated at five-year intervals.<sup>104</sup> Indeed, as mentioned above, DIRECTV strongly urges the Commission to incorporate “additive changes” in Nielsen markets in the compulsory license granted pursuant to Section 122 – a position that demonstrates DIRECTV’s intent to adjust its offerings based on Nielsen market changes that occur after deployment of spot beam satellites.<sup>105</sup>

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<sup>102</sup> See *Public Television Comments* at 19-22 (discussing in detail increasing satellite capacity and various means by which satellite carriers can meet their local carriage obligations).

<sup>103</sup> *DIRECTV Comments* at 22.

<sup>104</sup> *BellSouth Comments* at 14.

<sup>105</sup> *DIRECTV Comments* at 18-19.

**F. Local Stations Are Entitled To Carriage Throughout Their DMAs.**

In its comments, DIRECTV takes the startling position that a local station's carriage rights do not extend throughout the local market (*i.e.*, the entire DMA).<sup>106</sup> DIRECTV correctly notes that the Commission did not address "the scope of a broadcaster's carriage rights within a local market" in the *Notice*.<sup>107</sup> The reason for this is obvious – there is no question that local stations are entitled to carriage throughout their local markets. SHVIA was constructed based on this principle, and neither satellite providers nor the Commission has the authority to limit the geographic scope of the carriage rights conferred by the statute.

All of SHVIA's carriage provisions are built around the "local market." Thus, "all television broadcast stations located within that local market" are entitled to assert carriage rights once a satellite carrier avails itself of the Section 122 local-into-local copyright license to retransmit any station in that market.<sup>108</sup> Similarly, Section 122 of the Copyright Act confers a compulsory license that extends throughout the DMA, allowing a satellite carrier to retransmit a local station "into the station's local market."<sup>109</sup> Likewise, Section 338 (b)(1) of the Act references "the right to carriage in the local market"<sup>110</sup> and Section 338(d) discusses the obligation of satellite carriers to "retransmit the signal of the local television station broadcast

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<sup>106</sup> *Id.* at 23-24.

<sup>107</sup> *Id.* at 23.

<sup>108</sup> 47 U.S.C. § 338(a)(1).

<sup>109</sup> 17 U.S.C. § 122(a). In the *Conference Report* accompanying SHVIA, Congress explained that "[t]he section 122 license allows satellite carriers for the first time to provide their subscribers with the television signals they want most: their local stations. A carrier may retransmit the signal of a network station (or superstation) to all subscribers within the local market of that station without regard to whether the subscriber resides in an 'unserved household.' The term 'local market' is defined in Section 119(j)(2), and generally refers to a station's Designated Market Area as defined by Nielsen." *Conference Report* at H11793.

<sup>110</sup> 47 U.S.C. § 338(b)(1).

stations to subscribers in the stations' local market.”<sup>111</sup> As reflected over and over in the text of the statute, Congress made a legislative decision to define the local market for SHVIA purposes to include the entire DMA specifically to ensure that all satellite subscribers in the DMA would have access to local-into-local service, particularly rural viewers on the outer edges of the DMA.

Indeed, SHVIA's provisions regarding substantial duplication would make no sense if carriage were not required throughout the relevant DMA. Section 338(c) provides that a

satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier *within the same local market*, or to carry upon request the signals of more than one local commercial television broadcast station *in a single local market*.<sup>112</sup>

Thus, a satellite carrier will not be required to carry two stations in the same market if such stations are “substantially duplicative.” The purpose of this requirement, carried over from the cable regime, is to relieve a satellite carrier from the obligation to deliver to subscribers in a DMA two local stations that substantially duplicate each other, so that local subscribers will have access to *at least one* – but not both – of the duplicative local signals. In first enacting this rule in the cable context, Congress “intended to ‘preserve the cable operator’s discretion *while ensuring access by the public to diverse local signals*’ by permitting the system to carry only one of the substantially duplicating signals.”<sup>113</sup> SHVIA's provisions regarding duplicative signals rest on the same objectives, and these objectives should guide the Commission's interpretation of the satellite carriage obligations.

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<sup>111</sup> 47 U.S.C. § 338(d).

<sup>112</sup> 47 U.S.C. § 338(c)(1) (emphasis added).

<sup>113</sup> *Cable Carriage Report and Order*, 8 FCC Rcd. at 2980 (quoting H. Rep. No. 102-623, at 94 (emphasis added)).

DIRECTV's proposal contravenes the key premise behind the substantial duplication provision – namely, that all signals carried pursuant to Section 338 of the Act and Section 122 of the Copyright Act must be carried throughout the entire local market; thus, a satellite carrier's decision not to carry a local station that substantially duplicates another local station carried on its system will not significantly disenfranchise any local subscribers. Specifically, DIRECTV proposes that “the Commission adopt a rule expressly allowing satellite carriers, at their discretion, to limit the must carry coverage area to the broadcaster's predicted Grade B service contour within the DMA in which the broadcaster is licensed.”<sup>114</sup> Under this proposal, a satellite carrier could, for example, refuse to carry the CBS stations in Walker, Minnesota and Alexandria, Minnesota based on its carriage of the CBS station in Minneapolis, Minnesota but at the same time refuse to deliver the signal of the Minneapolis CBS station to Walker and Alexandria subscribers! Thus, satellite subscribers within the service areas of the Walker and Alexandria CBS stations would get *no in-market CBS service at all*.<sup>115</sup> This result clearly runs contrary to the goals of SHVIA by allowing satellite carriers to use the substantial duplication provision to deprive certain subscribers of local stations within their market. The substantial duplication provision makes sense only if the Section 338 carriage obligation requires

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<sup>114</sup> *DIRECTV Comments* at 23.

<sup>115</sup> Similar situations would arise in markets across the country. For example, under DIRECTV's proposal, significant portions of the Grand Rapids-Kalamazoo-Battle Creek, Michigan market would be deprived of in-market ABC service (*see* WOTV (ABC, Battle Creek) and WZZM-TV (ABC, Grand Rapids)). Similarly, viewers served over-the-air by KNAZ-TV, the NBC affiliate in Flagstaff, Arizona, could be deprived of in-market NBC service if a satellite carrier chose to carry KPNX (NBC, Mesa) only within KPNX's Grade B contour. Similar situations would arise in the Huntsville-Decatur-Florence, Alabama DMA (with two NBC affiliates, WAFF (Huntsville) and WHDF (Florence)) and in the Lincoln-Hastings-Kearney, Nebraska DMA (with three ABC affiliates, KLKE (Albion), KWNB (Hayes Center) and KLKN (Lincoln); two CBS affiliates, KGIN (Grand Island) and KOLN (Lincoln); and two NBC affiliates, KHAS-TV (Hastings) and KSNK (MCCook-Oberlin)).

satellite carriers to retransmit local stations throughout the entire local market – the DMA in which the station is located. SHVIA cannot reasonably be interpreted any other way.

**G. The Substantial Duplication Provisions Must Be Construed In Accordance With The Spirit Of SHVIA.**

In initial comments, Network Affiliates urged that the standard for determining whether the signal of one local station substantially duplicates that of another station in its local market should be determined as in the cable context – that is, two stations are substantially duplicative if they simultaneously broadcast the identical episode of the same program series in the same time slot 50 percent of the time.<sup>116</sup> In their comments, satellite carriers argue that practical differences between cable and satellite, such as coverage of larger geographic areas with a single spot beam and limited capacity, justify adoption of a broader definition of substantial duplication in the satellite context.<sup>117</sup> To that end, DIRECTV urges the Commission to adopt a two-part test for substantial duplication in the satellite context: One station’s signal substantially duplicates another if, regardless of whether programs are broadcast simultaneously, (i) at least 50 percent of their weekly programming or (ii) 50 percent of their prime time programming is identical.<sup>118</sup> BellSouth believes the Commission should adopt a 30 percent test for determining substantial duplication for satellite, rather than the 50 percent test used for cable.<sup>119</sup>

There is no justification for adopting a different standard for substantial duplication in the satellite carriage regime than is used for the cable regime, and Network

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<sup>116</sup> See *Network Affiliates Comments* at 13.

<sup>117</sup> See *BellSouth Comments* at 20; *DIRECTV Comments* at 34.

<sup>118</sup> See *DIRECTV Comments* at 35.

<sup>119</sup> See *BellSouth Comments* at 21.

Affiliates urge the Commission to reject the alternatives proposed by DIRECTV and BellSouth. By using the term “substantial duplication” in SHVIA, Congress clearly expressed its intent to import the standard it initially developed in the cable context. When the Commission adopted the definition of substantial duplication for cable carriage, it was guided by Congress’s mandate as explicit in the legislative history of the Cable Act. The Commission explained that it was “us[ing] the guidance provided in the legislative history that indicates that this term is intended to refer to the ‘simultaneous transmission of identical programming on two stations’ and which ‘constitutes a majority of the programming on each station.’”<sup>120</sup> There is no difference between cable and satellite technologies that would justify applying a different definition of substantial duplication to DBS operators and nothing in the legislative history of SHVIA to support such an approach. In addition, adopting different definitions of substantial duplication in the satellite and cable contexts is contrary to SHVIA’s twin goals of promoting localism<sup>121</sup> and creating parity between regulation of cable and DBS providers.<sup>122</sup> The Commission should follow Congress’s

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<sup>120</sup> See, e.g., *Cable Carriage Report and Order*, 8 FCC Rcd. at 2981 (quoting H. Rep. No. 102-623, at 94 (1992)).

<sup>121</sup> See Conference Report at H11792 (“[T]he Conference Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities.”).

<sup>122</sup> See, e.g., Conference Report at H11792 (“[T]he Conference Committee believes that promotion of competition in the marketplace for delivery of multichannel video programming is an effective policy to reduce costs to consumers. To that end, it is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry.”); *id.* at H11795 (“The procedural provisions applicable to [satellite must-carry] (concerning costs, avoidance of duplication, channel positioning, compensation for carriage, and complaints by broadcast stations) are generally parallel to those applicable to cable systems.”).

intent in enacting SHVIA by applying the same definition of substantial duplication to local stations carried by both cable and satellite operators.

DIRECTV also proposes that a satellite carrier should be permitted to drop a local station from its line-up if, after carriage has begun, its programming begins to substantially duplicate that of another station. While Network Affiliates agree that the emergence of substantial duplication may provide grounds for dropping carriage of a local station, a carrier should only be allowed to take this step after Commission adjudication of the matter. To that end, Network Affiliates propose the following procedure.

If a satellite carrier believes substantial duplication has arisen, it should send the duplicating station a letter stating its belief that the station is no longer entitled to satellite carriage and explaining why. The station should then have at least 30 days to refute the carrier's claim. If, after receiving the station's response, the carrier still believes substantial duplication exists, it may within 60 days of such receipt file a complaint with the Commission seeking a declaratory ruling that the station is not entitled to carriage; however, the carrier must continue to retransmit the station's signal until the Commission issues its declaratory ruling resolving the matter.<sup>123</sup> This process will ensure that no station is unjustly denied carriage of its signal by a satellite carrier and will avoid unwarranted disruptions in service based on unproven allegations.

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<sup>123</sup> Although, as explained above, SHVIA does not authorize satellite carriers to deny a local station carriage based on signal quality, if the Commission nevertheless were to decide that a station's failure to transmit a good quality signal to a satellite carrier's local receive facility is grounds for the carrier's declining to carry that station's signal, it should adopt a similar procedure for resolution of disputes about whether the signal is of sufficient quality. This means that a carrier should be prohibited from dropping a signal it believes is of poor quality until the Commission issues a final ruling.

In the *Notice*, the Commission also asks how it should define a television network.<sup>124</sup> DIRECTV argues that a network should include local stations affiliated with or owned by one of the traditional television networks, as well as national satellite stations.<sup>125</sup> The Commission should reject outright this outlandish approach – an approach that was not endorsed by any other commenters in this proceeding. SHVIA clearly defines a network station with reference to Section 119(d) of the Copyright Act,<sup>126</sup> which explains that a network station is one “that rebroadcasts all or substantially all programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more states.”<sup>127</sup> Adopting the expansive definition of a network proposed by DIRECTV not only would violate the express language of SHVIA, but also would nullify the carriage rights of hundreds of local stations across the country, thus defeating the core SHVIA concept of localism. Allowing carriers to substitute non-local programming for local-into-local coverage is clearly contrary to Congress’s intent in enacting SHVIA. Congress explicitly addressed this concept in the *SHVIA Conference Report*, stating that “[n]ational feeds would also be counterproductive because they siphon potential viewers from local over-the-air affiliates.”<sup>128</sup>

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<sup>124</sup> See *Notice* ¶ 25.

<sup>125</sup> See *DIRECTV Comments* at 35.

<sup>126</sup> See 17 U.S.C. § 3122(j)(3).

<sup>127</sup> 17 U.S.C. § 119(d)(2).

<sup>128</sup> Conference Report at H11795.

SHVIA includes an exception to the substantial duplication restriction when two affiliates in the same DMA are licensed to communities in different states.<sup>129</sup> The *Conference Report* explains this provision by offering examples of these situations.<sup>130</sup> DIRECTV would have the Commission believe that the two examples Congress gives in the *Conference Report* are an exhaustive list and that no other similarly situated stations qualify for this exception.<sup>131</sup> The Commission should reject DIRECTV's untenable position outright. The *Conference Report* states that the "provision[] address[es] unique and limited cases, including [the two examples]."<sup>132</sup> This clearly indicates that the list is not an exclusive one. Therefore, the Commission should dismiss DIRECTV's outlandish interpretation of SHVIA.

**II. SHVIA REQUIRES THE SATELLITE CARRIAGE REQUIREMENTS ON CONTENT-TO-BE-CARRIED AND MATERIAL DEGRADATION TO BE COMPARABLE TO THE CABLE REQUIREMENTS.**

In the first round of comments, Network Affiliates urged the Commission to adopt content carriage and material degradation requirements for satellite carriers that are comparable to those that apply to cable operators. SHVIA is clear, as many commenters point out, that the standards for content-to-be-carried and material degradation should be equivalent in the cable and satellite carriage regimes.

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<sup>129</sup> See 47 U.S.C. § 338(c)(1).

<sup>130</sup> See *Conference Report* at H 11795.

<sup>131</sup> See *DIRECTV Comments* at 37-38.

<sup>132</sup> *Conference Report* at H11795.

**A. Satellite Carriers Must Carry The Primary Video, Accompanying Audio, And Line 21 Closed Captioning Transmissions Of Local Stations, And Any Other Program-Related Material That It Is Technically Feasible To Carry.**

In initial comments, Network Affiliates and broadcasters urged the Commission to require satellite carriers to transmit the same content as cable operators – that is, primary video, accompanying audio, line 21 closed captioning, and all program-related material to the extent technically feasible, as determined by applying the factors set forth in *WGN Continental Broadcasting Co. v. United Video, Inc* (“WGN”).<sup>133</sup> LTVS agreed that satellite carriers are obligated to transmit the same material as are cable operators, explaining that DBS has the capability to retransmit both VBI and subcarriers.<sup>134</sup> Because satellite carriers have this capability, the same standard should apply in the cable and satellite contexts, and a satellite carrier should be required to demonstrate that carriage of material in the VBI is not technically feasible before it may refuse to transmit this matter.<sup>135</sup>

In its comments, DIRECTV states that its “system does not support, and was not designed to support, any portion of a broadcast signal other than the primary video, audio, and line 21 of the Vertical Blanking Interval” and that it would cost billions of dollars to modify its system to enable it to deliver additional material in the VBI.<sup>136</sup> DIRECTV therefore implies that the Commission should assume it is not technically feasible for a DBS operator to carry

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<sup>133</sup> 693 F.2d 622 (7<sup>th</sup> Cir. 1982); see *ALTV Comments* at 43; *Public Television Comments* at 23-24; *NAB Comments* at 18-19; *NCTA Comments* at 6-7.

<sup>134</sup> See *LTVS Comments* at 25-26 (“Satellite systems have the capability of retransmitting the VBI and subcarriers of broadcast channels. FCC policies should ensure that satellite operators take into account the obligation to carry all program-related material in developing new systems.”).

<sup>135</sup> Information in the VBI commonly includes closed captioning, parental advisory, and Transmission Signal Identifier information on line 21 and Automated Measurements of Lineups data on line 22.

program-related material in the VBI.<sup>137</sup> The Commission should reject DIRECTV's approach which, contrary to SHVIA, would not require a satellite carrier to transmit any material in the VBI. As an initial matter, DIRECTV's assertion is squarely contradicted by LTVS's explanation of how it is technically feasible for DBS operators to transmit material in the VBI and subcarriers. Therefore, Network Affiliates propose the following: If it is not technically feasible or is prohibitively expensive to retrofit existing equipment to accommodate new types of content, then any newly-manufactured equipment must be capable of transmitting and receiving program-related material in the VBI and subcarriers. This would ensure that neither satellite carriers nor their subscribers bear unreasonable expense and that subscribers will not indefinitely be deprived of the program-related material they would receive if they obtained their television signal over the air.

EchoStar argues that "broadcasters electing mandatory carriage should not demand more in terms of content than what is acceptable to broadcasters that obtain carriage through retransmission consent"<sup>138</sup> because stations that choose to negotiate with carriers have more leverage than those that do not. This is an unworkable proposal that the Commission should dismiss out of hand. Because local-into-local must-carry rights do not take effect until 2002 and the Commission has yet to issue carriage rules, local stations bargaining with satellite carriers for retransmission consent rights have been negotiating without the benefit of an established framework for local-into-local satellite carriage. Because their choices are carriage by retransmission consent or no carriage at all, they have only limited leverage, and the content

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<sup>136</sup> *DIRECTV Comments* at 41.

<sup>137</sup> *See id.*

<sup>138</sup> *EchoStar Comments* at 7.

for which they negotiate carriage should not be a model for content-to-be-carried for stations who, after 2002, choose to exercise their must-carry option. As explained above, the Commission should instead require satellite carriers to transmit the same content as cable operators, to the extent technically feasible, pursuant to the *WGN* test.

**B. At A Minimum, Satellite Carriers Must Ensure That The Technical Quality Of Retransmitted Local Broadcast Stations Is At Least As High As That Of Other Satellite Offerings.**

SHVIA requires satellite carriers to transmit broadcasters' signals without material degradation.<sup>139</sup> In the cable context, Congress required the Commission to "adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal."<sup>140</sup> As explained in initial comments, Network Affiliates urge the Commission to apply a self-defined standard consistent with the rule for material degradation cable operators must follow while taking into account the unique features of satellite technology.<sup>141</sup> ALTV, NAB, and Public Television endorse the same approach, arguing that local stations' signals "should be delivered with at least as high technical quality as any other channel delivered by the satellite carrier."<sup>142</sup> To effectuate this standard, Network Affiliates support NBA's suggestion that the Commission rely on three objective criteria: (i) carrier-to-noise ratio, (ii) bit error rates, and (iii) bit rate allocation to evaluate whether a local station's signal is materially degraded as compared

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<sup>139</sup> See 47 U.S.C. § 338(g).

<sup>140</sup> 47 U.S.C. § 534(b)(4)(A).

<sup>141</sup> See *Network Affiliates Comments* at 21-22.

<sup>142</sup> *NAB Comments* at 19; see also *ALTV Comments* at 35; *Public Television Comments* at 23.

to other channels.<sup>143</sup> This approach, which is not dependent on a predetermined absolute signal quality standard, requires satellite carriers to maintain a signal quality for broadcast signals that is the same as the carrier uses for non-broadcast signals. If the Commission later decides to adopt an absolute signal quality standard, then it can apply that standard to satellite carriers across the board, with respect to broadcast and non-broadcast signals alike.

As explained in our initial comments, Network Affiliates' proposal does not prevent a satellite carrier from using compression or other technologies when retransmitting local broadcast signals – as a general matter, it merely requires a carrier to treat local stations the same as it treats other satellite channels.<sup>144</sup> Thus, satellite carriers should not be permitted to employ compression, reformatting, or other technologies that will defeat the purpose of the satellite carriage regime by significantly degrading broadcast signals so that they appear materially deficient when compared to non-broadcast satellite signals. Similarly, non-broadcast signals should be subject to the same capacity-saving techniques as broadcast stations. Finally, as explained in our initial comments, impermissible material degradation should be found *whenever* a broadcast television station freezes, “tiles,” or looks “dirty” due to a satellite carrier’s choice of encoding techniques, and satellite carriers should not be permitted to use compression or other similar techniques that cause *any* degradation of the local broadcast signal where such techniques are not necessary to meet a satellite carrier’s carriage obligations.<sup>145</sup>

In their comments, DIRECTV and BellSouth suggest that the Commission decline to establish a material degradation standard until certain advisory committees provide absolute

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<sup>143</sup> See *NAB Comments* at 19.

<sup>144</sup> See *Network Affiliates Comments* at 21-22.

<sup>145</sup> See *id.*

standards to define material degradation.<sup>146</sup> Such an approach violates SHVIA's mandate that the Commission establish material degradation rules comparable to the cable rules.<sup>147</sup> Moreover, such absolute standards are not necessary if the Commission adopts the above-described proposal using the three criteria suggested by NAB, because this suggested nondiscrimination standard works equally well now and in the future, when technology improves. The Commission should similarly dismiss EchoStar's argument that it impose a standard no more exacting than the Grade B standard used to determine whether a consumer receives an adequate over-the-air signal.<sup>148</sup> The material degradation standard the Commission adopts for satellite should rest on the same concepts as the cable standard and should focus on ensuring that local stations delivered via satellite appear, at a minimum, at the same level of clarity as other satellite stations. EchoStar's proposal is inappropriate because the Commission has long recognized that signals a viewer pays for (*i.e.*, cable or satellite) are expected to be of higher quality than over-the-air signals.<sup>149</sup> Therefore, the Commission should require that the technical quality of local stations be at least as high as that of any other signal carried on the DBS system.

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<sup>146</sup> See *BellSouth Comments* at 25-26; *DIRECTV Comments* at 44-45; see also *HBO Comments* at 2-3.

<sup>147</sup> See 47 U.S.C. § 338(g).

<sup>148</sup> See *EchoStar Comments* at 8.

<sup>149</sup> See, *e.g.*, *In re Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to the Satellite Home Viewer Improvement Act, Notice of Inquiry*, ET Docket No. 00-90 (adopted May 22, 2000), at ¶ 14 (stating that picture quality tests that use cable viewers are invalid for determining what is an "acceptable" over-the-air television signal because viewers that pay for television service expect higher quality pictures).

**III. LOCAL STATIONS MUST BE OFFERED TO SATELLITE SUBSCRIBERS IN A NONDISCRIMINATORY MANNER IN ACCORDANCE WITH SHVIA'S MANDATE.**

SHVIA requires DBS operators to offer local stations at a nondiscriminatory price and to present them in a nondiscriminatory manner. To effectuate these requirements, the Commission should require carriers to fulfill SHVIA's directives by placing all local stations on contiguous channels and offering them as part of a single package and by adopting regulations to prevent discrimination in the presentation of local stations in channel line-ups or navigational guides.

**A. All Local Stations Must Be Positioned On Contiguous Channels And Offered In A Single Package.**

Network Affiliates urge the Commission to follow SHVIA's mandate by requiring satellite carriers to place all local stations, whether carried pursuant to must-carry or retransmission consent, on contiguous channels. Under no circumstances should a satellite carrier be allowed to bargain around this requirement. This position is supported by all broadcasters, as well as satellite carriers EchoStar and LTVS.<sup>150</sup> In order to effectuate the objectives of SHVIA, Network Affiliates also support NAB's proposal that all local stations should be positioned on such contiguous channels based on their over-the-air channel order.<sup>151</sup>

DIRECTV asserts that "[t]here are technical limits on [its] ability to ensure that channels are 'contiguous'"<sup>152</sup> and urges the Commission to allow it instead to form channel "neighborhoods" of local stations, "which consist of contiguous channels, but are not necessarily

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<sup>150</sup> See *Network Affiliates Comments* at 15; *NAB Comments* at 15-16; *LTVS Comments* at 23; *EchoStar Comments* at 6.

<sup>151</sup> See *NAB Comments* at 15 n.13.

<sup>152</sup> *DIRECTV Comments* at 40.

fully employed.”<sup>153</sup> Network Affiliates believe the Commission could decide to interpret the term “contiguous” this way, provided that the satellite carrier desiring to use such an approach satisfies two conditions. First, any spaces between the channels on which local stations’ signals are placed must be invisible to the viewer, such that a subscriber surfing channels would go directly from one local station to another, without experiencing blank screens or other intermittent images between stations. This means that a satellite carrier could not place other programming in the spaces between local channels or otherwise interrupt the subscriber’s seamless transition from one local station to another as the subscriber moves through the channel line-up. Second, all affected stations must consent to use of the channel neighborhood approach. Network Affiliates do not object to the channel neighborhood approach if these two conditions are satisfied.

In its comments, BellSouth advances the position that the contiguous channel requirement applies to stations carried pursuant to SHVIA’s must-carry provisions only.<sup>154</sup> This approach is directly contrary to the language of the statute, which states clearly that a satellite carrier must “retransmit the signal of the local television broadcast stations to subscribers in the stations’ local markets on contiguous channels.”<sup>155</sup> The statute makes no distinction between local stations exercising their must-carry rights and those carried pursuant to retransmission consent agreements, and neither should the Commission. To do otherwise flies in the face of the express language of the statute.

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<sup>153</sup> *Id.*

<sup>154</sup> *See BellSouth Comments* at 24.

<sup>155</sup> 47 U.S.C. § 338(d). In fact, EchoStar observed in its comments that this directive is so straightforward that the Commission need do nothing to implement it. *See EchoStar Comments* at 6.

SHVIA mandates that local signals be provided “at a nondiscriminatory price.”<sup>156</sup>

To carry out this congressional directive, the Commission should look to the analogous statutory requirement that a cable system carry the signals of local broadcast stations on its basic service

tier, which is the “tier to which subscription is required for access to any other tier of service,”<sup>157</sup>

Cable providers must carry local signals on the basic tier at no additional cost to subscribers.

Thus, the basic service tier is in effect the lowest-priced service package offered by a cable

provider. Thus, in the satellite context, the Commission should ensure that all local stations are

available on the satellite carrier’s lowest priced tier or package of services. All local stations

should be included in the same package, and the Commission should require satellite carriers to

offer the package that includes local signals at a price that is no more than what they charge for

any other package they offer to subscribers.<sup>158</sup> In addition, the Commission should require that

the per channel cost of local signals does not exceed the per channel cost of any other station

carried on the satellite system. Finally, the Commission should prohibit satellite carriers from

thwarting the objectives of SHVIA by requiring subscribers to purchase additional equipment as

a condition of receiving local-into-local service. Just as local signals are available to all viewers

that subscribe to cable, the Commission’s satellite carriage rules should ensure that *all* satellite

subscribers in the markets that have local-into-local service have access to local signals. This

would fulfill SHVIA’s goal of promoting localism by making local signals easily accessible to

satellite customers, in addition to being similar to the requirement that local stations be carried

on a cable system’s basic tier.

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<sup>156</sup> 47 U.S.C. § 338(d).

<sup>157</sup> 47 U.S.C. § 543(b)(7)(A).

**B. The Commission Must Ensure That Local Stations Are Not Subject To Discrimination.**

Network Affiliates' unopposed position in its comments was that the Commission's open video system ("OVS") regulations can provide a tried and true model for the rules the Commission adopts regarding nondiscrimination with respect to the presentation of local stations in navigational devices, electronic program guides, or menus.<sup>159</sup> Public Television expressed a similar view, while satellite carriers did not comment at all on the issue.<sup>160</sup> Network Affiliates reiterate support for these standards, which are comparable to the requirements for other multichannel video programming distributors and will ensure that local stations are not given disfavored placement in program guides on DBS systems.

In addition, Network Affiliates endorse several other examples of nondiscrimination advanced by other commenters, particularly ALTV and NAB, that will help implement the principles described above and ensure that local stations are not subject to discrimination. For example, ALTV and NAB suggest that a satellite carrier cannot require more steps on a navigational guide (*i.e.*, remote control or mouse clicks) to reach a local station than are required to reach any other station.<sup>161</sup> Similarly, carriers should not be allowed to present local stations in a different manner than other channels on a program guide,<sup>162</sup> make it more difficult for certain local stations to be accessed on a second television set,<sup>163</sup> or exclude local

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<sup>158</sup> See *Network Affiliates Comments* at 16-17; see also *ALTV Comments* at 16-19; *NAB Comments* at 16.

<sup>159</sup> See *Network Affiliates Comments* at 15-18.

<sup>160</sup> See *Public Television Comments* at 29-31.

<sup>161</sup> See *ALTV Comments* at 22; *NAB Comments* at 17.

<sup>162</sup> See *NAB Comments* at 17.

<sup>163</sup> See *ALTV Comments* at 22; *NAB Comments* at 17.

channels from special access or search features of the program guide.<sup>164</sup> In addition, satellite carriers should be required to list a station's network affiliation prominently as part of its station identification.<sup>165</sup> Such regulations will allow the Commission to fulfill its congressional mandate to avoid discrimination in placement and treatment of local signals on satellite carriers' program guides.

**IV. THE COMMISSION'S COMPLAINT PROCEDURES MUST ENSURE THAT SATELLITE CARRIERS CANNOT USE UNPROVEN ALLEGATIONS TO DENY LOCAL STATIONS THEIR CARRIAGE RIGHTS.**

As set forth in our initial comments, SHVIA grants the Commission broad authority to hear satellite carriage complaints, including complaints regarding signal quality, substantial duplication, channel positioning, compensation, material degradation, and failure to carry the entire content of a local station's signal.<sup>166</sup> The Commission also has the authority to enforce SHVIA's carriage obligations by ordering compliance, issuing forfeitures, or providing other appropriate remedies.<sup>167</sup> While Section 338(a)(2) confers exclusive jurisdiction to the federal courts to resolve a narrow subset of carriage disputes – namely, those that hinge solely on (1) whether the satellite carrier is providing local broadcast signals to its subscribers in accordance with the compulsory copyright license established by Section 122 of the Copyright Act and (2) whether the local broadcast station in question is located within the local market at issue – the Commission retains broad authority to resolve complaints that involve “unique

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<sup>164</sup> See *ALTV Comments* at 22; *NAB Comments* at 17.

<sup>165</sup> See *NAB Comments* at 17.

<sup>166</sup> See *Network Affiliates Comments* at 23-28. See also *ALTV Comments* at 47-48; *Public Television Comments* at 33-40; *NAB Comments* at 22.

<sup>167</sup> See *Network Affiliates Comments* at 28. See also *Public Television Comments* at 37-40; *NAB Comments* at 22.

carriage disputes” (*i.e.*, disputes involving signal quality, substantial duplication, channel positioning, compensation, material degradation, or content carried) *even where such disputes also involve a carrier’s refusal to carry a station’s signal.*<sup>168</sup>

In cases involving both a unique carriage violation and a refusal to carry a local station, that local station should be free to seek relief both through judicial enforcement of the Copyright Act and through the Commission’s complaint procedures.<sup>169</sup> Neither venue should be foreclosed, and stations should not be required to suffer non-carriage while the matter is under consideration at the Commission. LTVS suggests that stations facing such situations should be required to seek Commission resolution of the unique carriage dispute before pursuing their copyright claims in court.<sup>170</sup> Network Affiliates agree that stations should be free to pursue their rights in this manner, but they should not be denied their judicial remedy for non-carriage while they await a Commission determination on the unique carriage dispute.

Public Television points out that “[t]here is a danger that a carrier could simply refuse carriage of a requesting local station without explanation in order to seek a judicial venue for any ensuing dispute.”<sup>171</sup> Network Affiliates agree that the Commission should take steps to prevent such abuses by satellite carriers. Specifically, we endorse Public Television’s proposal: “The Commission should prevent this by requiring any DBS carrier that refuses carriage to

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<sup>168</sup> See *Network Affiliates Comments* at 24-28. See also *Public Television Comments* at 33-40.

<sup>169</sup> See *Network Affiliates Comments* at 25-26; see also *Christian Television Network Comments* at 8-10 (explaining that a broadcaster’s remedy for copyright infringement is to file suit against a satellite carrier in federal court, but this is not the exclusive remedy; for example, if a carrier refused to carry a station for signal quality reasons, the station could file a complaint at the FCC or file a copyright infringement action in federal court).

<sup>170</sup> See *LTVS Comments* at 32-33; see also *DIRECTV Comments* at 50.

<sup>171</sup> See *Public Television Comments* at 36.

notify the local station in writing of the reason for such refusal within 30 days of such refusal. The refused station should also be able to seek from the Commission a declaratory ruling, within 60 days of the carrier's refusal, that the carrier lacks a valid reason to refuse carriage."<sup>172</sup> A similar procedure should apply where a satellite carrier seeks to drop a station it already carries based on a unique carriage dispute.<sup>173</sup> In that case, a Commission determination that carriage no longer is required should be a prerequisite to dropping the station. A station found ineligible for carriage for a curable reason should be provided a reasonable opportunity to reassert its carriage rights after taking remedial action.<sup>174</sup>

Without any substantive analysis, DIRECTV in a footnote claims that the Commission lacks authority to resolve broadcaster complaints against a satellite carrier for non-compliance with provisions concerning content-to-be-carried or material degradation.<sup>175</sup> Network Affiliates and every other commenter that has addressed this issue have come to the opposite conclusion – the Commission has authority to resolve complaints relating to content-to-be-carried and material degradation disputes.<sup>176</sup> As set forth in our initial comments, such disputes rest squarely within the Commission's expertise.<sup>177</sup> Congress's failure to explicitly reference Section 338(g) of the Act (requiring material degradation and content-to-be-carried provisions comparable to cable) in Section 338(f) (regarding complaints) likely is a function of Congress's having drafted Section 338(g) simply to cross-reference the cable provisions; it does

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<sup>172</sup> *Id.*

<sup>173</sup> See the procedures set forth in Section I.G, *supra*.

<sup>174</sup> See *Christian Television Network Comments* at 4-5.

<sup>175</sup> See *DIRECTV Comments* at 50 n.96.

<sup>176</sup> See, e.g., *Network Affiliates Comments* at 23-28; *Public Television Comments* at 38-40; *ALTV Comments* at 47-48; *LTVS Comments* at 32; *NAB Comments* at 22.

not reflect any intent to exclude these provisions from the complaint process.<sup>178</sup> As Public Television explains:

It would be anomalous indeed for Congress to create rights without remedies or to imply that the Commission could not enforce its regulations in the absence of a legislative command. Although Congress may not have ordered the Commission to create administrative remedies for violations of these rights, the Commission has the power to do so. Under accepted principles of administrative law, the Commission has the power to remedy ills that lie directly within its purview.<sup>179</sup>

In any event, as several commenters point out, the Commission has ample ancillary authority to adopt complaint procedures addressing material degradation and content-related carriage disputes.<sup>180</sup>

**V. THE COMMISSION SHOULD PROMPTLY INITIATE A NEW PROCEEDING TO EXPLORE SATELLITE CARRIERS' OBLIGATION TO CARRY THE DIGITAL TELEVISION SIGNALS OF LOCAL STATIONS.**

In the *Notice*, the Commission sought comment on the scope of satellite carriers' obligations to carry digital television ("DTV") signals.<sup>181</sup> A variety of proposals were advanced in response to this inquiry, ranging from dual carriage of analog and digital television signals,<sup>182</sup> to carriage of digital signals on a carry-one, carry-all basis in markets where any local DTV signal is carried;<sup>183</sup> to phased-in carriage of digital signals during the DTV transition;<sup>184</sup> to carriage of local DTV signals only after the transition.<sup>185</sup>

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<sup>177</sup> See *Network Affiliates Comments* at 27.

<sup>178</sup> See *id.*

<sup>179</sup> *Public Television Comments* at 38-39.

<sup>180</sup> See, e.g., *Network Affiliates Comments* at 27-28; *NAB Comments* at 22; *ALTV Comments* at 47.

<sup>181</sup> See *Notice* ¶ 48.

<sup>182</sup> See, e.g., *NAB Comments* at 21-22.

<sup>183</sup> See, e.g., *ALTV Comments* at 50-51.

There is no question that SHVIA mandates the carriage of local DTV signals by satellite carriers that avail themselves of the local-into-local compulsory copyright license. Section 338(g) of the Act requires the Commission to adopt regulations that “include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(3) and (4) . . . .”<sup>186</sup> Section 614(b)(4)(B) of the Act requires the Commission to “establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of [digital] broadcast signals of local commercial television stations which have been changed to conform with such modified [DTV] standards.”<sup>187</sup> Thus, SHVIA on its face explicitly requires the Commission to ensure carriage of DTV signals on satellite systems.

While digital carriage obligations clearly apply to satellite carriers, Network Affiliates agree that the contours of these obligations deserve more attention than can be afforded in the instant proceeding.<sup>188</sup> Thus, the Commission should in this proceeding issue satellite carriage requirements for local analog signals, and should immediately institute a separate

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<sup>184</sup> See, e.g., *LTVS Comments* at 33-39; *Paxson Comments* at 8-12.

<sup>185</sup> See, e.g., *DIRECTV Comments* at 45-49; *EchoStar Comments* at 8-11.

<sup>186</sup> 47 U.S.C. § 338(g).

<sup>187</sup> 47 U.S.C. § 534(b)(4)(B).

<sup>188</sup> See, e.g., *ALTV Comments* at 51 (“[T]he Commission should not delay adopting of the analog carriage rules in order to finalize the full panoply of rules necessary to implement digital carriage requirements.”); *NAB Comments* at 22 (“[T]he FCC should postpone action on the satellite digital signal issue at this time, and plan to address it a year from now, looking towards implementing the rules by January 1, 2002.”); *Public Television Comments* at 32-33 (urging the Commission to immediately issue an NPRM on satellite carriage of local digital signals so that provisions for the transition to digital are in place by 2002); *DIRECTV Comments* at 45 (“[T]o the extent that the Commission considers imposing such a [digital must-carry] requirement, DIRECTV urges the agency to commence a proceeding that will allow for more meaningful comment on these issues.”).

proceeding to consider the satellite carriers' digital carriage obligations. In that proceeding, the Commission will be able to consider fully satellite carriers' statutory obligations in light of the specific technical challenges and potential solutions particular to the satellite industry. The Commission should not view this separate proceeding as an excuse for delay, however. It is essential that the Commission move expeditiously to issue a Notice of Proposed Rule Making on satellite digital carriage, establishing timely comment and reply comment deadlines and adopting rules well before the satellite must-carry obligations take effect on January 1, 2002. The digital transition already has been jeopardized by the Commission's continued delay in issuing digital cable carriage rules. The Commission should move quickly to reach a decision in the digital cable carriage context and should ensure that similar delays do not hobble the delivery of local digital service to satellite subscribers.

**VI. CONCLUSION**

The Commission must enact satellite carriage requirements for local signals that carry out Congress's intent to protect the public's access to local service. Network Affiliates respectfully submit that the Commission's congressional mandate will best be served by adopting satellite carriage rules consistent with the above and rejecting those proposals that would frustrate the delivery of local service to satellite subscribers who are entitled to receive it.

Respectfully submitted,



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