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FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TEL (202) 939-7900 FAX (202) 745-0916
INTERNET www.fw-law.com

AARON I. FLEISCHMAN
FLEISCHMAN AND WALSH, P. C.
CHARLES S. WALSH
ARTHUR H. HARDING
STUART F. FELDSTEIN
JEFFRY L. HARDIN
STEPHEN A. BOUCHARD
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August 4, 2000

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FEDERAL COMMUNICATIONS COMMISSION
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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: CS Docket No. 00-96;
Reply Comments of the American Cable Association**

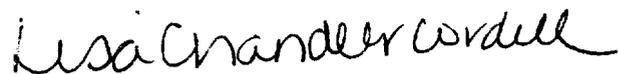
Dear Ms. Salas:

On behalf of the American Cable Association ("Association"), we enclose an original and nine (9) copies of the Association's Reply Comments in the above-referenced proceeding. We ask that each Commissioner receive a copy of these Reply Comments.

We also include a "RETURN COPY." We ask that you date-stamp and return it to the courier.

Please call with any questions.

Very truly yours,



Lisa Chandler Cordell

Enclosure

cc: American Cable Association

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Before the
Federal Communications Commission
Washington, DC 20554

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AUG 4 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN CABLE ASSOCIATION**

Of Counsel:
Matthew M. Polka
President
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Eric E. Breisach
Lisa Chandler Cordell
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, NW
Washington, DC 20036
(202) 939-7900

**Attorneys for American Cable
Association**

August 4, 2000

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SUMMARY

Competition and localism are not mutually exclusive. By carefully crafting DBS must-carry rules, the Commission can achieve both for the benefit of all.

Smaller and independent cable has historically been a provider of local content – some generated by cable businesses – some retransmitted from local broadcasters. Smaller and independent cable made the investment and continued to invest in facilities that deliver local programming. DBS now has obtained the legal ability to deliver local programming as well. DBS and localism are no longer necessarily at odds. As technology continues to rapidly advance, DBS will penetrate smaller and smaller markets with local signals. If, however, the Commission creates a DBS regulatory framework that fosters discriminatory treatment or that allows erection of artificial economic barriers to smaller market stations' must-carry rights, the Commission will harm both localism and long-term, meaningful competition.

Congress established the concept of regulatory parity in its action – the Commission must now give it meaning in the details of implementation – especially in smaller markets. Rules that prevent abuses become more critical in smaller markets. Smaller market broadcasters face higher break-even points due to smaller advertising revenue over which to spread fixed costs. Consequently, a reduction in viewers in smaller markets will more quickly cause a decrease in local programming or a station's demise altogether.

To craft rules that foster both competition and localism, the Commission must consider these key points:

- Seek sameness between DBS and cable procedures to the maximum extent possible (e.g., election, notice and exclusivity issues);
- Use the same market definitions (including modifications) for cable and DBS;

- Prevent circumvention of carry-one, carry-all requirement (e.g., establish concrete guidelines to prevent unreasonable designations of local receive facilities); and
- Require satellite carriers to package all local broadcast television stations together.

The concepts are simple. The rules must be firm. The Association explains these basic concepts in terms of policy and simple and workable proposals to allow the Commission to foster both localism and competition.

**Before the
Federal Communications Commission
Washington, DC 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

REPLY COMMENTS

I. INTRODUCTION AND BACKGROUND

The American Cable Association ("Association") files these reply comments to address issues raised by the Commission's Notice of Proposed Rule Making in the above-captioned matter and critical concerns raised by third parties' comments.¹ By authorizing DBS local service in the Satellite Home Viewer Improvement Act of 1999,² Congress sought to "place satellite carriers on an equal footing with local cable operators regarding the provision of local broadcast programming and thus give consumers more competitive options in selecting a multichannel video program distributor ("MVPD")."³ Notwithstanding Congressional and

¹ See *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Notice of Proposed Rule Making in CS Docket No. 00-96, FCC 00-195 (released June 9, 2000) ("DBS Must Carry NPRM" or "NPRM").

² See Act of Nov. 29, 1999, Pub. L. No. 106-113, 113 Stat. 1501 (enacting S. 1948, including the Satellite Home Viewer Improvement Act of 1999) ("SHVIA").

³ See DBS Must Carry NPRM at ¶ 2.

Commission enthusiasm for DBS local service, the Association cautions against developing a lop-sided regulatory framework that elevates DBS at the expense of smaller, independent cable businesses and their customers and one that harms rather than fosters localism. Instead, the Commission must develop a technology-neutral, industry-neutral broadcast signal carriage framework -- one that Congress mandates must be "equal." By doing this, it will foster both competition and localism.

The Association files these Reply Comments on behalf of its more than 250 member smaller, independent cable businesses and their smaller cable systems that serve more than 2.7 million customers nationwide. Many of the Association's members have fewer than 1,000 total customers. Then known as the Small Cable Business Association, smaller, independent cable businesses formed the Association in 1993 to represent the collective interests of its members and to speak with a unified voice regarding issues affecting their businesses. The Association regularly represents its members' interests in Commission proceedings to inform the Commission of characteristics and concerns of smaller and independently owned cable businesses and to ensure that Commission decisions do not unfairly and adversely impact the Association's members' businesses.

II. ONLY REGULATORY PARITY WILL ENSURE LONG-TERM, MEANINGFUL COMPETITION BETWEEN CABLE AND DBS.

Only regulatory parity will ensure long-term, meaningful competition between cable and DBS. This rulemaking comes on the heels of Congress' aggressive efforts to further DBS competition to cable and thus improve consumer choice in MVPDs. Intense pressure from DBS

carriers led Congress to authorize DBS local service.⁴ While promoting competition in the MVPD market remains an important objective, it remains equally important that the Commission promote meaningful and long-term competition among all MVPDs.

III. ONLY STRICT ADHERENCE TO THE CARRY-ONE, CARRY-ALL REQUIREMENT WILL SERVE LOCALISM.

A. Localism Remains an Integral Part of Smaller Cable's Public Service And Competitive Strategy.

Localism remains an integral part of smaller cable's public service and competitive strategy. Smaller cable businesses rely on local programming and remain ardent supporters of localism. The Association has repeatedly demonstrated its commitment to the preservation and promotion of localism, both before the Commission and other federal agencies.⁵

⁴ The 1999 SHVIA largely responds to issues raised by several suits involving DBS carriers' illegal actions relating to retransmission of broadcast signals. *See, e.g.*, CBS Broadcasting Inc. v. PrimeTime 24 Joint Venture, 48 F. Supp. 2d 1342; 1998 U.S. Dist. LEXIS 20442 (S.D. Fla. 1998), *judgment entered in* 1998 U.S. Dist. LEXIS 20488 (S.D. Fla.). As a result of those court decisions, millions of DBS subscribers faced losing satellite-delivered broadcast signals.

⁵ *See, e.g.*, Comments of the Small Cable Business Association in MM Docket No. 93-25 (filed April 28, 1997) ("SCBA DBS Public Interest Comments"); *see also* Comments of the Small Cable Business Association in Docket No. RM 98-1 (Copyright Office, filed February 24, 1998); *see also In re Application of MCI Telecommunications Corporation and EchoStar 110 Corporation*, File No. SAT-ASG-19981202-00093, Petition to Deny of the Small Cable Business Association (January 14, 1999) at 6-12 ("SCBA MCI/EchoStar Petition to Deny").

Smaller cable serves localism.⁶ Generating local programming and offering local broadcast signals remain integral components of smaller cable's competitive strategy. Any Commission decision that negatively impacts the continued availability of local broadcast signals, and thus abandons the principle of localism, similarly harms smaller cable, its customers and off-air viewers. As DBS and smaller cable remain each other's primary competitor in smaller communities and rural America, the Commission, in fashioning a DBS must-carry framework, must strive to continue to support localism.

B. The DBS Must-Carry Rules Impact Localism.

DBS has an expressed intention of only carrying signals of the major networks. Local broadcast signals omitted from a satellite carrier's line-up of local stations will suffer harm. The Commission's decision with respect to DBS must-carry must serve to protect all broadcast television stations.

1. The DBS must-carry rules must prevent cherry-picking.

The DBS must-carry rules must not allow satellite carriers to engage in cherry-picking stations. SHVIA unequivocally requires satellite carriers to offer all local stations within a

⁶ 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*, MM Docket No. 93-25, Petition for Reconsideration of the Small Cable Business Association (filed March 10, 1999) at 17 (“[The Association’s] members largely rely on local programming that they retransmit and that they create as integral services to their customers. In fact, small cable represents a significant and often the only multi-channel outlet for the distribution of local programming, especially in rural America. The loss of local broadcast signals as a component of small cable’s product line-up would threaten small cable’s financial viability.”)

market that a particular satellite carrier chooses to serve.⁷ To date, satellite carriers typically provide the big four networks and a national PBS feed in each market they serve,⁸ and have vehemently argued that capacity limitations and the "carry-one, carry all" obligation of SHVIA's must carry requirements will prevent them from offering local service to all markets.⁹ The carry-one, carry-all requirement remains a statutory obligation; the Commission, however, must ensure that the rules it crafts implementing DBS must-carry do not allow circumvention of that requirement. In addition to violating the spirit of the law, rules that would allow circumvention

⁷ See 47 U.S.C. § 338(a)(1) (“[E]ach satellite carrier providing, under Section 122 of Title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to Section 325(b).”).

⁸ See Local Channels from DIRECTV: Questions & Answers, located at <<http://www.directv.com/howtoget/hotogetpages/0,1076,236,00.html>> (last visited August 2, 2000). (“We don’t currently plan to offer more channels [than the local feeds of ABC, CBS, NBC and FOX] in your area, but we’ll let you know if other channels become available.”). DIRECTV provides a local WB or UPN in some but not all markets presently served, for example, to subscribers living in parts of New York. See DIRECTV home page, located at www.directv.com (last visited August 2, 2000).

⁹ See Testimony of Steven J. Cox, Senior Vice President, DIRECTV, Inc. before the Committee on Banking, Housing and Urban Affairs, United States Senate (February 1, 2000). Mr. Cox testified before this Committee as part of a hearing on federal loan guarantees to bring satellite delivered local television signals to rural communities. Mr. Cox stated, “Our ability to broaden the delivery of local channels will not be limited by access to capital. So while the availability of loan guarantees may create incentives for some entities to explore expanded local channel offerings, the ultimate deployment of a widespread, satellite-based local channel solution requires the reexamination of much more fundamental legislative and regulatory objectives....Specifically, the biggest impediment to serving additional communities is the ‘must carry’ requirement imposed by the Satellite Home Viewer Improvement Act (SHVIA). Even absent that constraint, we are ultimately limited by the spectrum allocated to us by the Federal Communications Commission.”) *Id.* at 2.

of the carry-one, carry-all requirement would result in tremendous harm to the Commission's bedrock principle of localism.

Satellite carriers, if permitted, would maintain a local-into-local deployment strategy that would include carriage of the more popular big four networks (ABC, CBS, FOX and NBC), largely to the exclusion of independent broadcast stations.¹⁰ If the DBS must-carry rules would allow DIRECTV and EchoStar to continue to provide only the four major networks and a national PBS feed, it would threaten the financial viability of over 1,200 broadcast stations — more than 70% of the nation's total.¹¹

The lack of carriage by MVPDs with any significant market penetration, such as DBS,¹² will, according to the public interest determinations established by Congress, harm important governmental interests. Congress found that the harm and the risk of the financial collapse of even a few broadcasters mandated the imposition of significant signal carriage requirements on cable:

¹⁰ DIRECTV offers WB and/or UPN in some but not all markets. This represents the strategy in larger markets. Maximizing coverage in the remaining smaller markets could mean that the satellite carriers would provide even fewer channels in the smaller markets.

¹¹ Currently, 1,619 broadcast commercial and noncommercial stations hold licenses. See Warren Publishing, *Television and Cable Factbook*, Vol. 68 (2000 Ed) at I-45. Of those, if satellite carriers were to carry only four networks and one national PBS feed in 100 markets, they would carry only 401 signals, leaving 1,218 without carriage.

¹² As of the end of June 2000, DIRECTV (including its Primestar subscribers) and EchoStar served a combined total of 13 million customers. See *Dish Reports Strong 2Q Sub Growth*, MULTICHANNEL NEWS ONLINE (August 1, 2000), located at <<http://www.multichannelnews.com>> (last visited August 3, 2000); see also *DIRECTV Announces Record June Growth With 142,000 Customers*, located at <<http://www.directv.com/press/pressdel/0,1112,338,00.html>> (last visited August 3, 2000).

A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.¹³

Congress also reiterated the critical importance of maintaining the viability of "free TV" and its ability to create local programming. Congress found that if not carried by cable "the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized."¹⁴

In defending the must-carry statute against the First Amendment challenge, the government "downplay[ed] the importance of showing a risk to the broadcast industry as a whole and suggest[ed] the loss of even a few broadcast stations 'is a matter of critical importance.'"¹⁵ In upholding the must-carry statute, the United States Supreme Court validated the government's two key considerations:

The Government's assertion that "the economic health of local broadcasting is in genuine jeopardy and in need of the protections afforded by must-carry," rests on two component propositions: First, "significant numbers of broadcast stations will be refused carriage on cable systems" absent must-carry. Second, "the

¹³Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, §§ 2(a)(10), (11).

¹⁴ *Id.* at § 2(a)(16).

¹⁵ *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369, 388 (1997) ("*Turner II*").

broadcast stations denied carriage will either deteriorate to a substantial degree or fail altogether."¹⁶

Similar concerns will arise in the DBS context absent Commission regulations that closely parallel cable's must-carry rules.

2. Cherry-picking would have the greatest impact on smaller markets.

The need to prevent cherry-picking becomes most evident in smaller markets where cherry-picking would pose the greatest detriment to localism. As the Association has explained in other proceedings and above,¹⁷ to the extent DBS operators provide some but not all local broadcast signals, the excluded broadcast stations will inevitably suffer. The diminished audiences of those stations will result in diminished revenues, which, in turn, will lead to decreased local programming and may lead to the demise of the broadcast station.¹⁸

All television stations will be adversely impacted if not carried on an MVPD that captures even a few percent of a local market's viewers. As noted by the United States Supreme Court, a five percent reduction in viewers would result in an almost \$1.5 million reduction in gross revenue of a large market station.¹⁹ The amount of revenue loss for a small market station would be less; however, non-carriage would still have the same proportionate impact on a smaller station's smaller budget.

¹⁶ *Turner II*, 137 L. Ed. 2d at 391 (internal citations omitted).

¹⁷ See, e.g., *In re Application of MCI Telecommunications Corporation and EchoStar 110 Corporation in File No. SAT-ASG-19981202-00093*, The Small Cable Business Association Consolidated Reply to Oppositions (February 3, 1999) at 8.

¹⁸ See SCBA MCI/EchoStar Petition to Deny at 11 (discussing the financial impact of diminished viewership and the resulting inability to provide community-oriented programming).

¹⁹ *Turner II* at 400.

The United States Supreme Court detailed the impact financial deterioration would have on localism.²⁰ As described in *Turner II*:

[A] television station's audience size directly translates into revenue — large audiences attract larger revenues, through the sale of advertising time. If a station is not carried on cable, and thereby loses a substantial portion of its audience, it will lose revenue. With less revenue, the station can not [sic] serve its community as well. The station will have less money to invest in equipment and programming. The attractiveness of its programming will lessen, as will its audience. Revenues will continue to decline, and the cycle will repeat.²¹

Broadcasters not carried on satellite will experience a similar deterioration in revenues and difficulty in providing local programming, if they can survive at all. As smaller market stations have higher break-even points, *i.e.*, they have higher per-viewer costs because they have fewer viewers over which to spread their costs and their audience size that governs advertising revenues is smaller, cherry-picking would take the greatest toll on these stations.

The loss of local programming would not only harm smaller market off-air viewers, it would harm smaller cable businesses, which rely heavily on that same local programming as an integral part of their services. The loss of such programming, resulting from local broadcasters' diminished ability to provide extensive local programming, therefore directly impacts smaller cable.

²⁰ See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 14 S. Ct. 2445 (1994) ("*Turner I*"), *Turner II*, 520 U.S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997).

²¹ *Turner II*, 137 L. Ed. 2d at 399 (citing Hearing on Competitive Issues, at 526-527 (statement of Gary Chapman)).

IV. THE FCC'S DBS MUST-CARRY RULES MUST REMAIN IDENTICAL TO THE CABLE MUST-CARRY RULES TO THE GREATEST EXTENT POSSIBLE.

The Commission must exercise caution to ensure that its DBS must-carry regime does not undermine the carry-one, carry-all framework of Section 338 or create regulatory disparity to the detriment of cable. The Association details below the specific measures the Commission should implement to guard against abuses:

A. Applying the Same Notice and Election Procedures to Cable and DBS Alike Will Foster Meaningful Competition.

The Commission should apply the same notice and election procedures to cable and DBS mandatory carriage to foster meaningful competition. Congress has established a largely parallel framework between cable and DBS with respect to local signal carriage obligations. To the extent that Congress has imposed similar must-carry and retransmission consent requirements, the Commission must also impose as near as uniform procedural and substantive requirements as possible.

As the Association has previously explained, uniform policies remain essential to long-term, meaningful competition between cable and DBS.²² To create uniformity and foster meaningful competition, the Commission must (1) bring the timing of the DBS election cycle into alignment with cable's as quickly as possible; (2) require broadcasters to make consistent

²² See Comments of the American Cable Association in CS Docket No. 99-363 (Jan. 12, 2000) at 3-7 ("ACA DBS Retransmission Consent Comments").

elections for cable and DBS;²³ (3) require almost identical notice provisions;²⁴ and (4) require notice provisions that encourage a timely notification from the broadcaster exercising its must-carry rights. This will ensure that one MVPD does not gain a competitive advantage over another.²⁵ In addition to promoting meaningful competition, requiring consistent elections will also ward against unlawful exclusive agreements.²⁶

The Commission's rules prohibit exclusive retransmission consent agreements between broadcasters and MVPDs.²⁷ In addition to the obvious concern that a broadcaster does not enter an exclusive agreement with one cable system to the exclusion of another cable system, or one satellite carrier to the exclusion of another satellite carrier, a further concern involves *de facto* exclusive agreements. A *de facto* exclusive agreement exists where a broadcaster's unreasonable retransmission consent demands force a smaller cable business to forego consent, giving a competitor's cable system an exclusive right to carriage.²⁸

²³ Broadcasters would have to make the same election for all cable systems and satellite carriers that serve the same or partially overlapping areas.

²⁴ The Association agrees with the suggestion of the National Cable Television Association that satellite carriers have an obligation to give notice to "all local broadcasters of their rights when the carrier decides to carry any local broadcast station." Comments of the National Cable Television Association in CS Docket No. 00-96 (July 14, 2000) at 3 ("NCTA Comments"). Satellite carriers should also have to give notice to broadcast stations and satellite customers of channel line-up changes or deletions, and be prohibited from dropping stations during "sweeps" periods. See NCTA Comments at 4.

²⁵ See Comments of the National Cable Television Association on Section III of the NPRM in CS Docket No. 99-363 (Feb. 1, 2000) at 2-4.

²⁶ See 47 U.S.C.S. § 325(b)(3)(C); 47 C.F.R. 76.64(m).

²⁷ See 47 C.F.R. § 76.64(m).

²⁸ See ACA DBS Retransmission Consent Comments at 14-15.

Permitting a broadcaster to make inconsistent elections could similarly result in exclusive agreements. For example, the broadcaster could elect must-carry for DBS but retransmission consent for cable, effectively withholding consent from the smaller cable business and leaving the DBS operator with an exclusive agreement to cable's disadvantage. Allowing broadcasters to make inconsistent elections would facilitate exclusive agreements in violation of the Commission's rules. The Commission therefore should make the rule changes the Association previously submitted to avoid this possibility.²⁹

B. The Commission Should Strive to Have Local Market Definitions for Cable and DBS Must-Carry Mirror Each Other.

The local markets for cable and DBS must-carry should mirror one another to the greatest extent possible. This means that (1) beginning with the October 1, 2005 election cycle, DBS and cable must-carry rules will refer to the same Nielsen publication, updating both for each subsequent election cycle; and (2) existing market modifications and the market modification process should apply to DBS.

Satellite interests argue that technology limitations advocate against using updated Nielsen data or allowing market modifications.³⁰ Satellite technology, however, continues to rapidly evolve. The Commission's rules should therefore contemplate satellite's future ability to

²⁹ See ACA DBS Retransmission Consent Comments at 20.

³⁰ See Comments of Local TV on Satellite, LLC in CS Docket No. 00-96 (July 14, 2000) at 13 ("LTVS Comments"). LTVS argues that "[o]nce a satellite is launched, it is difficult to make any adjustments in the DMA coverage due to the use of the spot beam technology in a satellite designed to provide local-into-local service. . . It is necessary, when utilizing satellite spot-beam technology, to ascertain the DMAs at the early stages of satellite construction because only minor adjustments can be made in the area to be covered by a particular spot beam once the satellite is in orbit." See *id.*

accommodate the minor changes that may result from shifting DMAs or market modifications. In the interim, the Commission should establish a procedure where a satellite carrier could petition the Commission for relief in the event it finds that an updated Nielsen DMA or market modification results in changes that a particular satellite cannot accommodate.

C. All Local Broadcast Television Stations Offered by DBS Must Appear on Contiguous Channels.

To create regulatory parity between cable and DBS, the Commission must require all local broadcast television stations to appear on contiguous channels, regardless of whether the satellite carrier carries them pursuant to must-carry or retransmission consent. Cable systems must carry all broadcast signals in their basic tier.³¹ Satellite carriers need not have a basic tier, so the requirement that all broadcast signals appear on contiguous channels will most closely parallel the cable requirement.

D. The Commission Must Ensure That Its Signal Quality Requirements Do Not Allow DBS Abuses of the Carry-One, Carry-All Requirement.

The Commission must ensure that its regulations relating to signal quality requirements do not establish a breeding ground for DBS abuses. Absent clear Commission rules, signal quality issues will provide satellite carriers with the greatest ability to thwart the carry-one, carry-all requirement of Section 338.

Section 338(b) of Title 47 states that

[a] television broadcast station asserting its right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or the another facility that is

³¹ See 47 C.F.R. § 76.901(a).

acceptable to at least one-half of the stations asserting the right to carriage in the local market.³²

Congress defined "local receive facility" as "the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission."³³

Congress has also directed the Commission to "issue regulations implementing [Section 338] The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under Sections 614(b)(3) and (4) and 615(g)(1) and (2) [of the Communications Act, as amended]."³⁴ To meet that directive, the Commission must implement regulations that will not permit satellite carriers to thwart stations' rights by designating unreasonably located "local receive facilities."

The location of the "local receive facility" will often determine a broadcaster's ability to seek carriage. This particularly would be the case where the principal headend or local receive facility is located so the cable system or satellite carrier could not receive the broadcaster's signal off-air.³⁵

Satellite carriers seeking to avoid carriage obligations for many local stations within a market will have an incentive to designate unreasonably located local receive facilities. The

³² 47 U.S.C. § 338(b).

³³ *See* 47 U.S.C. § 338(h)(2).

³⁴ *See* 47 U.S.C. § 338(g).

³⁵ In the cable context, many smaller cable operators, desirous of carrying broadcasters that cannot provide a good quality signal off-air, incur the costs of building and maintaining a cable antenna relay services (CARS) facility under Part 78 of the Commission's rules to microwave the signal to the cable system's headend.

Commission must establish concrete guidelines to prevent such unreasonable designations. Such concrete guidelines could include criteria to ensure the fair placement of local receive facilities.

The Commission's regulations should also clarify its expectations regarding the designation of "another facility that is acceptable to at least one-half of the stations asserting the right to carriage in the local market."³⁶ The Commission must establish that in markets where only two local broadcast television stations exist,³⁷ both stations must agree to "another facility."

Contrary to DIRECTV's assertions,³⁸ the Commission's rules must require that the satellite carrier include as part of its notice of intent to provide service to a particular DMA the location of its proposed local receive facility. As explained above, the location of that facility will largely determine a broadcaster's ability to seek carriage and therefore remains a crucial element to the broadcaster's decision making process. Only once broadcasters make their elections should discussion of alternative facility sites become possible.³⁹

E. The Commission's Rules Should Require Satellite Carriers to Package All Local Broadcast Television Signals Together.

To create regulatory parity, the Commission's DBS must-carry rules should require satellite carriers to offer all local broadcast television signals as a single package at

³⁶ See 47 U.S.C. § 338(b)(1).

³⁷ See Warren Publishing, *Television and Cable Factbook*, Vol. 68 (2000 Ed) at A-1 through A-5.

³⁸ See Comments of DIRECTV, Inc. in CS Docket No. 00-96 (July 14, 2000) at 27.

³⁹ This will ensure that the universe of broadcasters asserting carriage has been identified and can vote whether an alternate facility remains acceptable.

nondiscriminatory prices.⁴⁰ The Commission must consider that cable operators must package all local broadcast stations together in a single package – the basic tier.⁴¹ That basic tier remains subject to price constraints in the form of rate regulation,⁴² and cable operators must sell that tier as a precondition to selling any other service.⁴³

V. THE COMMISSION SHOULD NOT REQUIRE DIGITAL MUST-CARRY, EXCEPT WERE IT TO IMPOSE SUCH OBLIGATIONS ON CABLE.

The Commission should not impose digital must-carry on satellite carriers during the transition to digital television, except were it to impose such obligations on cable operators. At present, cable operators do not have an affirmative obligation to carry broadcasters' digital signals; the Commission, however, has an open rulemaking regarding this particular issue.⁴⁴ Regulatory parity advocates against imposing a digital must-carry obligation on satellite carriers absent an affirmative obligation for cable operators to accord broadcasters' digital must-carry rights. Should the Commission decide to require cable operators to carry broadcasters' digital signals during the transition period, it should similarly require satellite carriers to do the same.

⁴⁰ See Comments of the National Association of Broadcasters in CS Docket No. 00-96 (July 14, 2000) at 16.

⁴¹ See 47 C.F.R. § 76.910(a).

⁴² See 47 C.F.R. § 76.922 *et seq.*

⁴³ See 47 U.S.C. § 623(b)(7).

⁴⁴ See *In the Matter of Carriage of the Transmission of Digital Television Broadcast Stations*, CS Docket No. 98-120, FCC 98-153 (released July 10, 1998).

VI. CONCLUSION

Regulatory parity with respect to cable and DBS must-carry remains critical to bringing long-term, meaningful competition between the two industries. The Commission's implementation of the DBS must-carry requirements must protect against creating a regulatory imbalance to cable's disadvantage. The Commission must therefore create a DBS mandatory carriage scheme that mirrors cable's requirements to the greatest extent possible. It must also carefully consider whether any individual requirement could lead to DBS abuses. The measures recommended above will help avoid such pitfalls.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: *Lisa Chandler Cordell*

**Of Counsel:
Matthew M. Polka
President
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300**

**Eric E. Breisach
Lisa Chandler Cordell
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, NW
Washington, DC 20036
(202) 939-7900**

**Attorneys for American Cable
Association**

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CERTIFICATE OF SERVICE

I, Wanda R. Brunson, certify that copies of the foregoing REPLY COMMENTS were sent, via hand delivery or first class mail, on this 4th day of August, 2000 to the following:

*Deborah Lathen

Chief
Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Daniel L. Brenner
Michael S. Schooler
Diane B. Burstein
National Cable Television Association
1724 Massachusetts Avenue, NW
Washington, DC 20036

*William H. Johnson

Deputy Bureau Chief
Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Henry L. Baumann
Benjamin F.P. Ivins
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

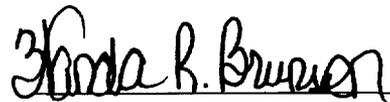
*Ben Golant

Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Pantelis Michalopoulos
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036
Counsel for EchoStar Satellite
Corporation

International Transcription Service
1231 20th Street, NW
Washington, DC 20036

Gary M. Epstein
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004-2505
Counsel for DIRECTV, Inc.


Wanda R. Brunson

James F. Goodman
President/CEO
Local TV on Satellite, LLC
2501 Blue Ridge Road
Suite 370
Raleigh, North Carolina 27607

* hand delivery