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ASSOCIATION OF LOCAL TELEVISION STATIONS

EX PARTE COMMUNICATIONS
CS DOCKET NO. 00-96

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 7, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CS Docket No. 00-96
Ex parte communications

Dear Ms. Salas:

We herewith submit on behalf of the Association of Local Television Stations, Inc., an original and nine copies of the Reply Comments of the Association of Local Television Stations, Inc. These reply comments were due on August 4, 2000. However, we inadvertently refiled our orignal comments instead of our reply comments. Therefore, we are submitting them today as an *ex parte* communications. Copies have been provided to the office of each commissioner.

If the Commission has any questions about this matter, please, do not hesitate to contact us.

Very truly yours,

James J. Popham
Vice President, General Counsel

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Before the
Federal Comunications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Implementation of the Satellite Home Viewer Improvement Act of 1999

Broadcast Signal Carriage Issues

CS Docket No. 00-96

REPLY COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

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August 4, 2000

Summary

As expected the satellite carriers have come forward with a flurry of proposals designed to enfeeble the carry-one, carry-all provision. ALTV shows herein that none of these proposals enjoys a smidgen of support in section 338, its purposes, or expressed Congressional intent.

Channel Positioning:

- BellSouth's position that retransmission consent stations are not included in the contiguous channel requirement for local television stations conflicts with the express requirements of section 338.
- DirecTV's proposal to allow "channel neighborhoods" is consistent with the contiguous channel requirement provided that all local television stations' signals are carried in an uninterrupted series with no intervening channels.
- EchoStar's warning that the Commission avoid adopting more burdensome regulations ignores the anti-discrimination provisions – and EchoStar's support for detailed regulations in other contexts.

Delivery of a Good Quality Signal:

- DirecTV misreads section 338 in asserting that a satellite carrier may refuse to carry a station that fails to provide a good quality signal to the satellite carrier's local receive facility. It also ignores sound reasons why Congress treated satellite carriers differently and did not condition satellite carriage on the station's delivering a good quality signal to the satellite carrier.
- BellSouth's request that the Commission adopt rules requiring stations to negotiate establishment of regional receive facilities in good faith exceeds the scope of section 338 – in contrast to other provisions that expressly required good faith negotiations in other circumstances.
- BellSouth's and Local TV on Satellite's position that regional multi-DMA receive facilities are permitted if half the stations in the entire region agree conflicts with the statutory requirement that 50% of the carry-one, carry-all stations in each local market agree to a non-local receive facility.
- DirecTV's demand that the Commission require stations to deliver their signals via a TV 1-quality fiber circuit is unsupported by the statute and simply a ploy to discourage stations from requesting carriage.
- DirecTV's position that stations pay for signal strength tests is impractical.
- BellSouth's suggestion that satellite carriers provide 90 days advance notice of any change in the location of their receive facility must be subject to the condition that half the carry-one, carry-all stations agree to the new site before notice is given.

Material Degradation:

- EchoStar's proposal that the Commission apply a Grade B signal intensity standard is cute, but impertinent.

Carriage Obligations and Definitions:

- DirecTV's argument that the Commission should not require satellite carriers to notify stations of their carriage rights is falsely-premised and would leave stations groping in the dark in making carriage decisions.
- BellSouth's contention that carriage of carry-one, carry-all stations within three months of their requests for carriage collides with the Congressional condemnation of discrimination – which dictates that carriage of local stations begin simultanously.
- Local TV on Satellite's and DirecTV's stated woes about the problems of adding carriage of new stations on spot beam satellites are superficially appealing, but ignore that satellite carriers have been able to ascertain the number of operating and potential analog commercial stations in each market since well before SHVIA was enacted, as well as satellite carriers' ability to use full CONUS transponders, if necessary, to accommodate new stations.

Content to be Carried:

- DirecTV's position that the Commission exclude program-related VBI and subcarrier information other than closed captioning would deprive consumers of vital information (*e.g.*, program rating information) and neglect the use of waivers to accommodate instances of proven technical impossibility.

Market Definitions:

- DirecTV's request that the Commission adopt rules permitting satellite carriers to limit carriage to a station's Grade B contour conserves no satellite capacity, would be a deficient and costly solution in cases where a spot beam failed to cover an entire DMA, mocks parity with cable, and clashes with Congress's hope of assuring nondiscriminatory treatment of all local television stations.
- Local TV on Satellite's request that the Commission not utilize updated Nielsen data overreacts to the problem of shifting DMAs and ignores the more prudent avenue of granting waivers in cases of proven technical impossibility.

Duplicating Signals:

- DirecTV's position that local stations that substantially duplicate programming on nationally distributed signals is contrary to law, offensive, and grossly insensitive to the needs and interests of local viewers.
- BellSouth's and DirecTV's quest for a broader duplication standard is a thinly-veiled effort to reduce carriage obligations at the public's expense.

Remedies:

- DirecTV's insistence that a local station denied carriage for failure to deliver a good quality signal to the satellite carrier first complain to the FCC runs afoul of the statute, which does not permit a satellite carrier to deny carriage to a station which fails to provide a good quality signal to the carrier's local receive facility.

Digital Television:

- LocalTV on Satellite's observation that additional satellites will be needed to accommodate DTV signals suggests that ALTV's tentative view that the carry-one, carry-all requirement apply separately to analog and digital signals is realistic.

When all is said and done, no lax interpretation of the Act may be countenanced. Therefore, ALTV reiterates that the rules adopted in this proceeding never become a device for effectively writing section 338 off the books.

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Before the
Federal Communications Commission
Washington, D.C.

In the matter of

Implementation of the Satellite Home Viewer Improvement Act of 1999

Broadcast Signal Carriage Issues

CS Docket No. 00-96

REPLY COMMENTS OF
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

I. Introduction

As expected the satellite carriers have come forward with a flurry of proposals designed to enfeeble the carry-one, carry-all provision. Thus, they propose that:

- The rules permit carriers to deny carriage to local television stations affiliated with the same network as or substantially duplicating a distant, nationally-carried station carried by the satellite carrier;
- The rules permit satellite carriers to restrict carriage of local television stations to their Grade B contours;
- The rules permit satellite carriers to refuse to carry the signal of a local television station that does not provide a direct microwave or fiber optic feed of its signal to the satellite carrier;
- The rules permit satellite carriers to refuse to carry new television stations; and

- The rules permit satellite carriers to retransmit local signals stripped of VBI-transmitted program ratings information, Nielsen codes, and other program-related materials.

ALTV shows herein that none of these proposals enjoys a smidgen of support in section 338, its purposes, or expressed Congressional intent. Moreover, as the satellite carriers themselves admit, the Commission has only so much discretion in implementing the statute.[1]

Also by way of introduction, ALTV is....

- ***STARTLED*** to see claims that the satellite rules are more onerous than the cable rules because, for example, they have no capacity limits on local carriage.[2] As Congress emphasized, the satellite local carriage rules are far less onerous than the cable rules. They do not apply at all unless a satellite carrier determines in its sole discretion to provide local-into-local service in a market *and* avails itself of the free statutory copyright license in section 122.[3] They do not require a satellite carrier to serve any market or markets.[4] They delay imposition of the requirement until January 1, 2002. [5] Contrast this with the cable must carry rules, which require cable systems in every market to carry virtually all local signals. Furthermore, Congress carved out the same exceptions to the rules for satellite carriers that it had for cable systems.
- ***SURPRISED*** to see satellite carriers' disavowal of any bottleneck power.[6] Satellite carriers are no less bottlenecks than cable systems. When they provide local-into-local service in a market, their subscribers would lose ready access to the signals of local television stations that are not carried.

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[1] Comments of EchoStar Satellite Corporation, CS Docket No. 00-96 (filed July 14, 2000) at 1 [hereinafter cited as "EchoStar Comments"].

[2] Comments of DirecTV, Inc., CS Docket No. 00-96 (filed July 14, 2000) at 7 [hereinafter cited as "DirecTV Comments"].

[3] 47 U.S.C. §338(a).

[4] Joint Explanatory Statement of the Committee of Conference, 145 CONG. REC. S14708 (daily ed. November 17, 1999) [hereinafter cited as "Conf. Rep."] .

[5] 47 U.S.C. §338(c).

[6] DirecTV Comments at 5.

Congress fully appreciated that satellite subscribers rarely would be inclined even to maintain the ability to view signals off-the-air if the most popular local stations were available on satellite. [7] This bottleneck power cries out just as loudly for a remedy as it did in the case of cable television.

- ***CHAGRINED*** to find satellite carriers bemoaning how the carry-one, carry-all requirement frustrates consumer preference. They act as if no one watched anything but the major networks. They act as if the cable networks they carry invariably were more popular than the local affiliates of emerging networks. They are dead wrong on both counts.[8] When all is said and done, their attempt to wrap themselves in the mantle of consumer advocates fails miserably – just as it did for cable operators.[9]
- ***GRATIFED*** to see satellite carriers acknowledge implicitly that providing local-into-local service always will be problematic and that the real constraints on serving any but the largest markets are economic. As observed by the NRTC, the potential subscriber base is too small in "lower population, lower profit markets." [10] Therefore, satellite carriers may not lay the blame on section 338 for preventing service to more moderately-sized markets. The real problems are the inherent inefficiency of providing a localized service with a national distribution mechanism and the small population bases outside the largest markets. As the Satellite Broadcasting

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[7] Conf. Rep. at S14711.

[8] *Turner Broadcasting Company v. Federal Communications Commission* , 1997 LEXIS 2078, 46 (1997)[hereinafter cited as *Turner II*] ("Even aside from that, the evidence overlooks that the broadcasters added by must-carry had ratings greater than or equal to the cable programs they replaced.").

[9] *Id.*, 1997 LEXIS 2078, 61 ("Significant evidence indicates the vast majority of cable operators have not been affected in a significant manner by must-carry. Cable operators have been able to satisfy their must-carry obligations 87 percent of the time using previously unused channel capacity (Declaration of Harry Shooshan III, P14 (App. 692)); 94.5 percent of the 11,628 cable systems nationwide have not had to drop any programming in order to fulfill their must-carry obligations; the remaining 5.5 percent have had to drop an average of only 1.22 services from their programming, id., P15 (App. 692); and cable operators nationwide carry 99.8 percent of the programming they carried before enactment of must-carry.").

[10] Comments of the National Rural Telecommunications Cooperative, CS Docket No. 00-96 (filed July 14, 2000) at 5.

and Communications Association itself observes, DBS is a "national distribution platform."[11]

In any event, whether placed in the proper perspective or viewed in their own light, satellite carriers' various efforts to water down section 338, as shown below, must be rejected.

II. Channel Positioning

BellSouth (at 24): "The Commission should not require contiguous channel location for retransmission consent stations."

The statute does not permit this. Section 338(d) requires carriage of *all* local television stations on contiguous channels. No distinction is made between local stations that have elected retransmission consent and local stations that have requested carriage under the carry-one, carry-all requirement.[12] Major network affiliates agree.[13]

DirecTV (at 40): The Commission should "interpret the term 'contiguous' as allowing satellite carriers to form channel 'neighborhoods' of local television broadcast stations which consist of contiguous channels, but are not necessarily fully employed."

ALTV understands this to mean that local television stations in Washington would be carried on channels 4, 5, 7, 9, 14, 20, 26, 32, and 50 (or 704, 705, 709, *etc.*), but with

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[11] Comments of the Satellite Broadcasting and Communications Association, CS Docket No. 00-96 (filed July 14, 2000) at 5.

[12] Comments of the Association of Local Television Stations, Inc., CS Docket No. 00-96 (filed July 14, 2000) at 11-16 [hereinafter cited as "ALTV Comments"].

[13] Joint Comments of the ABC, CBS, Fox, and NBC Television Network Affiliate Associations, CS Docket No. 00-96 (filed July 14, 2000) at 15 [hereinafter cited as "Affiliate Comments"].

no programming on intervening channels. Thus, channels 2, 3, 6, 8, 10-13, 15-19, 21-25, 27-31, 33-49, and 50-69 (or 702, 703, 706, *etc.*) would be vacant and would not even show up in any menu, program guide, or tuning or navigational device. So understood, channel neighborhoods are consistent with the contiguous channel requirement as long as all local television stations' signals are carried in an uninterrupted series with no intervening channels. The designation of the stations' channel numbers based on their off-air channel numbers would remain consistent with the contiguous channel requirement because no programming appears on intervening channels or is associated with an intervening channel number on any program guide, menu, or tuning or navigational device.

EchoStar (at 6): The Commission should avoid "promulgation of yet another burdensome set of regulatory specifications."

EchoStar ignores the anti-discrimination provisions in section 338(d). They are general prohibitions that cry out for a bit of regulatory gloss.[14] Furthermore, EchoStar should appreciate this. It favored very specific regulatory provisions to flesh out the

[14] ALTV Comments at 16-23.

general obligation of local television stations to negotiate in good faith regarding retransmission consent.[15]

III. Broadcast station delivery of a good quality signal.

BellSouth (at 19); DirecTV (at 31): Stations that fail to deliver a good quality signal may be denied carriage.

DirecTV misreads the statute in asserting that

> The requirement that stations provide a good quality signal in order to be eligible for cable carriage is derived from the Commission's cable must carry order. In contrast, in the satellite carriage context, the requirement is statutory and must be satisfied in order for a broadcast station to be eligible for must carry in the first instance.[16]

The statute – in marked contrast to the Cable Act – does not contemplate outright denial of carriage. Local television stations may be liable for costs of signal delivery if a satellite carrier cannot receive a good quality signal off-air at its local receive facility, but the obligation to carry is not conditioned on the station's providing a good quality signal.[17]

That Congress chose a different approach for satellite carriers hardly is surprising. First, if a satellite carrier were to use a station's alleged failure to provide a good quality signal as an excuse to deny carriage, the station would suffer considerably more damage than it would if a cable system denied carriage. The station denied carriage would be

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[15] Comments of EchoStar Satellite Corporation, CS Docket No. 99-363 (filed January 12, 2000).

[16] DirecTV at 31.

[17] ALTV Comments at 28-30.

unavailable throughout its local market because satellite carriers serve entire markets. Cable systems, in contrast, typically serve only a portion of a market. Second, cable systems often hid behind allegations that stations failed to deliver a good quality signal in order to delay or deny carriage. Many stations were forced to litigate complaints at the Commission to secure carriage, delaying their carriage by many months. Third, Congress envisioned the same behavior by satellite carriers. For years, the unserved household limitation on retransmission of network signals was observed more in the breach. Congress was fully aware of these scofflaw tendencies. Therefore, it had every reason to write section 338 to discourage similar indifference to the requirements of section 338. As ALTV observed:

> Because they cannot escape their obligation to carry a station by alleging poor signal quality, they will have every incentive to communicate and cooperate with local stations to devise reasonable solutions to 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. The result should be fewer complaints for the Commission and less uncertainty for stations, satellite carriers, and consumers.[18]

Therefore, DirecTV and BellSouth find justification for their position in the statute or its underlying purposes.

BellSouth (at 16): "Clearly, it should be the expectation that the parties negotiate in good faith [regarding regional receive facilities], and rules and policies to that effect should be adopted."

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[18] ALTV Comments at 29.

Section 338 imposes no such requirement. A satellite carrier may propose a non-local receive facility to local stations. And they may accept or reject it. If half the carry-one, carry-all stations accept the location, then all local carry-one, carry-all stations may be assessed the costs of delivering a good quality signal to that site. However, nothing in the statute even begins to suggest that stations have any obligation to negotiate with satellite carriers on the location of their receive facility. This contrasts with the specific provision requiring local stations to negotiate in good faith with satellite carriers over retransmission consent.[19] Congress easily might have imposed a similar requirement in section 338, but it did not. Thus, whereas nothing precludes negotiations if *both sides* are willing, nothing in the statute *requires* that stations do anymore than accept or reject a proposed local receive facility site.

BellSouth (at 16): "[A] satellite operator may establish regional receive facilities encompassing several DMAs."

LTVS (at 15): "The satellite carrier should be allowed to designate a regional rather than local receive facility in its carriage agreements if at least 50% of stations asserting the right to carriage in that region sign a carriage agreement that specifies the location of the regional receive facility."

Regional receive facilities comply with the statute if, and only if, 50% of the stations requesting carriage as a carry-one, carry-all station *in each market* in the region

[19] 47 U.S.C. §325(b).

agrees to the site. The language of the statute is plain and unambiguous in that respect.[20] Moreover, the whole point of section 338 is to prevent discrimination between stations *in the same market* and the provision is so written. It expressly requires the concurrence of "at least one-half the stations asserting the right to carriage in the local market."[21] Therefore, region-wide votes fail to comply with the statute.

DirecTV (at 33): "[T]o fulfill the prerequisite for compulsory carriage, the requesting station must install and maintain a link from its master control to the local receive facility...."

This is fanciful. Nowhere does the statute impose this requirement on local television stations. Indeed, Congress directly imported language from the 1992 Cable Act – language that was well-understood in terms of meaning, application, and effect. Moreover, Congress was well-aware of the differences between cable systems and satellite carriers and imported the language into SHVIA without material change. Therefore, limiting the concept of "delivering a good quality signal" to a very specific form of signal delivery does not square with the statute. In short, this is just another device by which satellite carriers could browbeat stations out of their carriage rights. As such, it must be rejected.

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[20] ALTV Comments at 2-7.

[21] 47 U.S.C. §338(b)(1).

DirecTV (at 28, 32): "The Commission should therefore require a television broadcast station to contract with a local telecommunications common carrier to lease a dedicated TV 1-quality fiber circuit from the broadcast station to the satellite carrier's local receive facility....[T]he signal must meet the requirements of GR-338 CORE, TV1 for <20 route miles."

Again, nothing in the statute supports this level of specificity. Again, Congress imported a regulatory framework from cable television with no material modification, despite its awareness of the differences between cable and satellite transmission. Again, DirecTV simply wants to rewrite the statute and impose even more of a burden on stations, raising the cost of carriage, and discouraging stations from requesting carriage in the first place.

That said, local television stations share DirecTV's interest in delivering a signal that will look as good as other signals to consumers. Much of the point of securing satellite carriage would be lost if a station's picture quality on the satellite was inferior to that of other stations. However, overly stringent regulations leave the parties little room to find and implement the best solution for their particular situations.

DirecTV (at 28): "Congress placed the burden on television broadcast stations to pay for the delivery of a good quality signal to the local receive facility. This

encompasses both transmission of the signal, as well as testing to ensure that the signal meets the quality standards that are a prerequisite for mandatory carriage rights."

The satellite carrier undertakes initial testing at its own cost. [22] This is essential because the satellite carrier must advise any stations that they fail to deliver a good quality signal at the site.[23] Furthermore, as noted above, delivery of the signal is not a prerequisite for mandatory carriage rights.

BellSouth (at 18): "BellSouth suggests a 90-day notice period before a satellite provider moves a collection point."

ALTV only would remind the Commission that a change in the site of the receive facility may occur only if the new location is in the local market or if one-half the carry-one, carry-all stations agree to the new site. The 90-day notice, therefore, must come *after* the satellite carrier has secured the agreement of one-half the stations.

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[22] ALTV Comments at 27.

[23] *See* ALTV Comments at 33-34 .

IV. Material degradation

EchoStar (at 8): "[T]he Commission should adopt the same standard of Grade B intensity that applies to determine whether a consumer receives an adequate signal over the air, as that signal changes from time to time."

Cute, but impertinent. The actual standard involves a comparison of the local stations' signal with the signal quality of other program services offered by the satellite carrier.[24]

V. Carriage obligations and definitions

DirecTV (at 11): "[T]he Commission should not require satellite carriers to notify television broadcast stations of their carriage rights in any instance."

This position is falsely premised. First, drawing on the 1993 cable rules, which required no request for carriage by local stations, for guidance is incorrect. The "upon request" regime in section 338 is analogous to the Commission's 1972 cable rules, which did require stations to request carriage. In that instance, cable systems in the first instance were required to serve local television stations with copies of signal carriage information also provided to the Commission.[25] This requirement applied for existing systems, new

[24] ALTV Comments at 36-37.

[25] *Cable Television Report and Order*, Appendix A, 36 FCC 2d 143, 217-219 (1972).

systems, and systems adding or deleting broadcast television station signals.[26] Second, only satellite carriers – not local television stations – will have knowledge of critical information, including:

- whether signals are carried pursuant to the statutory copyright license, thereby invoking the carry-one, carry-all requirement;
- the location of the satellite carrier's local receive facility;
- whether half of the local carry-one, carry-all stations have agreed to an out-of-market receive facility; and
- which stations place a good quality signal over the receive facility.

Without access to such information, uniquely in the possession of the satellite carriers, local stations will be unable to make informed elections and carriage decisions. Third, the costs of signal strength testing at a satellite carrier's receive facility hardly appears prohibitive. All tests would be conducted in an identical fashion at the same location. Satellite carriers today are not providing local-into-local service in "hundreds of markets."[27] They are expanding slowly from the largest markets to some medium markets. Therefore, no overwhelming surge of signal measurement costs will occur. Fourth, satellite carriers do have a local presence. DirecTV has established 27 local receive facilities.[28] Moreover, they complain with ill grace about the costs of entering the local-into-local business after having pressed Congress so diligently for the right to do so. That they might incur some costs in the process should be no surprise. They lack

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[26] *Id.*

[27] DirecTV Comments at 11.

[28] *Id.* at 26. If this local presence offers no opportunity to learn the addresses of local televiison stations in a market, ALTV recommends the Commission's database, which is easily accessible on the Internet.

credibility now in asking the Commission to insulate them from those costs. Fifth, DirecTV bases its position on the Commission's adoption of a new, more stringent signal strength standard. Beyond the above-stated infirmities of the proposed standard, this position summarily discards the earlier analogy to the cable television rules. Therefore, the Commission should not leave stations groping in the dark in making carriage decisions. It must place the burden where it belongs – on the satellite carriers who possess the pertinent information and who have made the decision to enter the local market in the first place.

BellSouth (at 9): "Carriage of stations that have elected, or deemed to have elected, must-carry in a market should generally begin within three months of the time that a DTH provider carries the first local signal into that market. If the election or deemed election is within the three-month period, the time for carriage should begin within three months of that time."

This approach collides with the Congressional mandate against discrimination among local television stations. To the greatest practicable extent, carriage of local stations ought to begin simultaneously. Thus, in markets where a satellite carrier already provides local-into-local service, carriage of additional stations that have requested carriage as carry-one, carry-all stations, should begin simultaneously no later than January 1, 2002. In markets where satellite carriers initiate local-into-local service after January 1, 2002, carriage of all local stations should begin simultaneously no more than

90 days after the satellite carrier first notifies the station of its plans to commence local-into-local service.[29] This schedule would acknowledge the need for lead time, while preventing the discrimination Congress prohibited.

Local TV on Satellite (at 10): "[T]he number of new television stations under must-carry should be limited during the life cycle of satellite systems."

DirecTV (at 12): "New broadcast stations pose a significant problem for satellite carriers.... The configuration of the system to provide local channels has...already been fixed with respect to the spot beam satellite planned for in-orbit operation in [*sic*] January 1, 2002."

The Commission must resist these superficially appealing arguments. Satellite carriers have and have had the ability to anticipate and incorporate carriage of all potential new analog stations. The number of analog signals in every market essentially has been frozen since 1996, when the Commission stopped accepting applications for new NTSC (analog) stations and petitions for new NTSC channel allotments.[30] In the transition to digital, vacant analog channels have been used for new digital stations.[31] All other analog channels now are occupied by operating stations, construction permits, or active applications. Anyone, including satellite carriers, easily may and could have

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[29] *See* ALTV Comments at 38-42.

[30] *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 10992 (1996).

[31] *Id.*, 11 FCC Rcd at 10993 ("The DTV Table proposed herein was developed on the assumption that the existing vacant NTSC allotments for which no construction permit application is pending will be deleted.")

ascertained prior to the enactment of SHVIA the ultimate need for transponder capacity to accommodate carriage of all local television stations in any and every market. They have no excuse now if they elected to turn a conveniently blind eye to readily ascertainable information before completing plans for their local-into-local service. Furthermore, even if their spot beams are at full capacity, neither satellite carrier has hesitated to employ full CONUS transponders to provide local-into-local service. Indeed, as they transition their local-into-local service to spot beams, many full CONUS transponders will have capacity for new local television stations. In any event, the Commission hardly may permit discrimination against new local stations. Again, that is the primary evil Congress sought to halt in the local carriage provisions.

VI. Content to be carried

DirecTV (at 41): "The Commission must limit compulsory carriage to broadcasters' primary video, audio, and closed captioning."

No such limited general rule is appropriate. First, if DirecTV can prove its claim of technical unfeasibility, then it might escape the obligation to carry other program-related material in the VBI. In this regard, contrast the statement of Local TV on Satellite that, "Satellite systems have the capability of retransmitting the VBI and subcarriers of

broadcast channels."[32] Second, much vital information could be lost to consumers if satellite carriers always were permitted to strip information other than closed captions from the VBI. Examples include Nielsen program codes, program content ratings, and copy protection information (for digital television). Any deletion of such information should be justified by technical showings on a case-by-case basis, not by a general rule.

VII. Market definitions

DirecTV (at 23): "[T]he Commission [should] adopt a rule expressly allowing satellite carriers, at their discretion, to limit the must carry coverage area to the broadcaster's Grade B service contour within the DMA in which the broadcaster is licensed."

DirecTV apparently wishes to limit the scope of carriage of stations to "preserve precious satellite capacity so that satellite carriers can offer a broader range of programming in more markets."[33] This rationale is facially ludicrous – unless this position is a subterfuge for completely deleting a station's signal. Only then would the carrier "preserve precious satellite capacity." However, carrying the station within its Grade B contour would use just as much capacity as carrying it throughout the DMA. Therefore, limiting a station's signal to its DMA offers no material benefit to a satellite carrier in terms of capacity.

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[32] Comments of Local TV on Satellite, LLC, CS Docket No. 00-96 (filed July 14, 2000) at 25 [hereinafter cited as "LTVS Comments"].

[33] DirecTV Comments at 24.

Lurking behind this argument, one might suspect, is a concern about the presumably rare instances where a spot beam fails to cover an entire DMA.[34] This possible rationale also is deficient and costly to consumers. First, satellite carriers have been provided time to design and launch new satellites to expand their local-into-local service. They easily may take into account the geographical scope of each DMA in designing their spot beam satellites. Second, in cases where spot beams fail to cover an entire DMA, a satellite carrier could use a nationwide transponder, as they do now to provide their local-into-local service in that particular market. Third, few DMAs are dramatically larger than a fair-sized spot beam or even the Grade B coverage areas of the stations in the DMA. Fourth, DirecTV's approach would deny consumers the local stations they are accustomed to viewing. A county is placed in a specific DMA precisely because most viewing in the county goes to stations with communities of license in the DMA. In some instances, the failure to provide a station from within the DMA would deny consumers not only a local station, but any nearby station. For example, if a large market had an extensive DMA that extended into areas adjacent to smaller market DMAs, odds are the local stations in the adjacent smaller markets will fall outside the array of markets in which the satellite carrier provided local-into-local service. Thus, many viewers in the large market DMA would be relegated to watching New York or Los Angeles affiliates in lieu of a full complement of local stations. Congress has stated

[34] DirecTV Comments at 22.

its disdain for this sort of service.[35] Fifth, satellite carriers then would be offering a service inferior to that of competitive cable systems. Many cable systems beyond stations' Grade B contours still carry them because consumers demand their carriage. Signals are transported via microwave facilities or obtained off-air from translators, which often are used to extend stations' signals across expansive DMAs. Sixth, grade B carriage would magnify the disadvantage already suffered by UHF stations with their typically smaller Grade B coverage. This clashes headlong with Congress's hope of assuring nondiscriminatory treatment of all local television stations. Finally, if all else fails in any given set of circumstances, the Commission always could handle the exceptional situation via a demanding waiver process, rather than a general loophole.

Furthermore, regulatory parity with cable dictates DMA-wide carriage by satellite carriers. Local television stations generally are entitled to carriage by cable systems throughout their DMAs. Nothing could assure both operational and competitve parity more assuredly than conterminous carriage areas for cable and satellite. And, as noted above, no sound reason exists to write the satellite rule differently.

Local TV on Satellite (at 13): "The FCC should not require satellite providers to utilize updated Nielsen publications...."

[35] Conf. Rep. at 14711 ("National fees also would be counterproductive because they siphon potential viewers from local affiliates.").

Assuming that "only minor adjustments can be made in the area to be covered by a particular spot beam once the satellite is in orbit,"[36] the shifting of counties from one DMA to another as DMAs are updated would pose no widespread difficulty. Almost invariably, counties that shift from one DMA to another are located on the fringes of their DMAs. Only minor adjustments, if any, would be required. In many instances, ALTV suspects that the spot beam footprints for each market would cover at least the adjoining fringe of the other. A satellite carrier then could switch a viewer from one DMA's signal complement to the others through re-addressing the local signals. No change in the satellite or spot beam would be required. Again, in cases of true technical impossibility, a satellite carrier could seek a waiver.

VIII. Duplicating Signals

DirecTV (at 36): "It would make no sense for the Commission to mandate carriage of local affiliates if they substantially duplicate the programming provided by the same channel which is carried nationally."

Allowing satellite carriers to refuse to carry local signals that substantially duplicate or are affiliated with the same network as a distant, nationally distributed signal would violate the statute, offend Congressional intent, and jeopardize the interests of the viewing public. First, section 338 permits noncarriage of local stations only if they substantially duplicate or are affiliated with the same network as another *local* station. It

[36] LTVS Comments at 13.

offers no basis for permitting a satellite carrier to refuse carriage to any local station because a distant station on the satellite also is available locally. For example, a satellite carrier will be obliged to carry the local affiliate of the WB or Paramount networks even if it carries superstation affiliates of those networks. Second, Congress expressly rejected carriage of distant affiliates as an adequate substitute for carriage of a local affiliate.[37] Third, for the reasons noted by Congress, the public is shortchanged – even imperiled – by substitution of a distant affiliate for a local affiliate. Furthermore, network and syndicated programming on distant superstation signals will be subject to deletion under the provisions of section 339. Therefore, as a legal and practical matter, a nationally-carried affiliate is no substitute for a local station.

Finally, ALTV regards this as the most pernicious attempt to insulate satellite carriers from the obligation to carry stations affiliated with the emerging networks. As recognized by Congress, the cable must carry rules gave life to the emerging networks and their affiliates.[38] If the Commission adopted satellite carriage rules that opened loopholes for noncarriage of emerging network affiliates, it would pull the rug out from under the emerging networks and their affiliates.

BellSouth (at 21); "BellSouth proposes that the Commission adopt a 30 percent standard in lieu of the 50 percent standard used for cable." **DirecTV (at 34):** "Practical

[37] Conf. Rep. At S14711.

[38] Conf. Rep. at S14711 ("The Congress's preference for must-carry obligations has already been proven effective, as attested by the appearance of several emerging networks, which often serve underserved market segments.")

differences between cable and satellite delivery systems provide compelling reasons to apply a broader definition of 'substantial duplication' in the satellite context."

No basis exists for adopting a more expansive definition of substantial duplication. Again, it only would be an excuse for noncarriage of stations and an insult to the viewing public. For example, a 30% duplication standard would deprive the public of diverse programming equivalent to 70% of the noncarried local station's schedule, to say nothing of the unique local programming provided by the local station. Furthermore, the Commission's current 50% standard is generous to a fault, and no distinctions between satellite carriers and cable systems justify any different treatment of satellite carriers under the substantial duplication provision.

IX. Remedies

DirecTV (at 50): "The broadcaster, in the first instance, must bring a signal quality complaint before the Commission under Section 338(f)."

This approach runs afoul of the statutory requirements. A station's failure to provide a good quality signal is not a proper basis for refusing carriage.[39] Consequently, the remedy for a satellite carrier's failure to carry a station is a copyright infringement

[39] ALTV Comments at 28.

suit, even if the carrier alleges the station has failed to deliver a good quality signal to its receive facility.

X. Digital television

Local TV on Satellite (at 34): "[A]dditional satellites will need to be launched to accommodate all DTV signals."

ALTV concurs that retransmission of digital signals likely will await another generation of satellites. This suggests that ALTV's tentative view that the carry-one, carry-all provision apply separately to analog and digital signals is realistic. When the satellite carriers gear up to provide digital signals, as they claim they wish to do, they then will be in a position to offer digital local-into-local service – and comply with the same requirements as apply to analog.

XI. Conclusion

ALTV reiterates that the rules adopted in this proceeding must not become the device by which Section 338 is written out of existence. Whereas the satellite carriers admit that the Commission has little wiggle room in implementing section 338, they still press adoption of numerous rules designed primarily to circumscribe local television stations' carriage rights. Neither the statute nor its clearly-expressed intent would tolerate such a result. Therefore, ALTV urges the Commission to implement the law faithfully and effectively.

Respectfully submitted,

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