

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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JAN 17 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of  
Implementation of the Satellite  
Home Viewer Improvement Act  
of 1999:**

**Application of Network Non-  
Duplication, Syndication  
Exclusivity, and Sports Blackout  
Rules to Satellite Transmissions.**

**CS Docket No. 00-2**

**Opposition to Petitions for Reconsideration  
filed by  
Association of Local Television Stations, Inc.**

Pursuant to Section 1.429(f) of the Commission's Rules, the Association of Local Television Stations, Inc., (ALTV), hereby files its Opposition to Petitions for Reconsideration filed in the above captioned matter. Three reconsideration petitions have been filed by EchoStar Satellite Corporation (Echostar); a joint petition by DirecTV and Echostar (Joint Satellite Petition); and the Office of Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division 1-A Athletics Directors Association (Baseball, *et al.*). This opposition is filed in response to all of these petitions.

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## **1. The FCC Should Reject EchoStar's Request to Delay Implementation of the Statutory Syndicated Exclusivity and Network Non-duplication Requirements.**

Echostar objects to the Commission's 120 day phase-in period for implementing the syndicated exclusivity and network non-duplication rules as applied to satellite services.

According to Echostar,

The 120 days initially allowed by the Commission to comply with deletion requests will likely be insufficient to permit Echostar to adequately assess the burden from the rules, evaluate whether to continue providing its superstation package in light of that burden, and if so, to consider how best to comply with deletion requests.<sup>1</sup>

The FCC should view this request for precisely what it is -- an unsubstantiated attempt to delay implementation of a statutory mandate. The syndicated exclusivity and network non-duplication rules were part of a comprehensive package of satellite rules enacted by Congress in 1999. The statutory language was prescriptive, requiring the rules to be put in place within a year. There was no doubt that the FCC would extend these rules to satellite systems. Indeed, in its initial Notice the FCC stated bluntly:

Section 339(b) directs the Commission to apply these three rules (*i.e.*, network non duplication, syndicated exclusivity, and sports blackout), previously applicable only to cable television systems, to satellite carriers retransmission of nationally distributed superstations to subscribers.

The SHVIA's directive to apply the network non-duplication, syndicated exclusivity, and sports blackout rules to satellite transmission of nationally distributed superstations appears to apply without any limitation based upon a satellite carrier's technical ability to comply.<sup>2</sup>

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<sup>1</sup>Echostar Petition for Reconsideration at 4.

<sup>2</sup>Notice at 2, 27.

EchoStar has had more than enough time to “adequately assess the burden” of satellite rules; to “evaluate” whether to continue carrying superstations, and to figure out “how best to comply” with deletion requests. These are threshold considerations which would have been part of any prudent corporate planning once the statute was passed. None of this should have come as a surprise.<sup>3</sup>

EchoStar’s petition for reconsideration simply restates facts and issues which the FCC considered in its Report and Order. No new evidence is presented to explain why EchoStar, and EchoStar alone, needs more time to comply with the 120 day phase-in rule. The FCC has already rejected the specific request that serves as the basis for its reconsideration petition.<sup>4</sup>

While acknowledging that new equipment is not an issue, EchoStar urges the FCC to reconsider its 120 day transition period because “satellite carriers simply need time to develop the means to implement the myriad deletion requests that will result from the blackout rules, if the means can be developed at all.”<sup>5</sup> This simply restates EchoStar’s previous assertions that were rejected by the FCC.

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<sup>3</sup>Apparently only EchoStar seeks additional time to implement the syndicated exclusivity and network non-duplication rules. No other satellite provider has filed reconsideration on this issue.

<sup>4</sup>*Report and Order* at 26.

<sup>5</sup>*Id.*

According to Echostar, additional time is needed because the FCC refused to adopt its “national standard” for deletion. The FCC should reject Echostar’s attempt to resurrect this failed proposal. As the *Report and Order* observed:

Echostar’s proposal ignores the exclusivity rights of individual broadcasters and undermines the regulatory objectives, contrary to congressional intent, and, in our view, defeats the purpose of the statutory mandate to protect the exclusivity rights of local broadcast stations.<sup>6</sup>

Moreover, the local protection zone established by the FCC will not be unduly burdensome on satellite providers, and does not warrant additional delay in implementing the statute’s requirements.

[W]hile EchoStar claims that it would have to develop a huge database to determine whether a subscriber is within the specified zone, we observe that satellite carriers already maintain such databases of subscribers for determining eligibility for local-into-local and network signals for information on the particular services which a household subscribes, and for billing purposes. In addition, even though satellite carriers use a nationwide or multi-state foot print to deliver programming, they provide signals on a household-by-household basis that enable them to deliver different programming to different households based upon which programming package the subscriber selects. Satellite carriers currently delete programming when it is required by contracts negotiated in the marketplace.<sup>7</sup>

Echostar complains further that the zone of protection (35 or 55) miles creates a problem because it appears to require EchoStar to “establish an elaborate system of protection zones to determine eligibility of a particular household for certain superstation programming, side by side

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<sup>6</sup>*Report and Order* at 14.

<sup>7</sup>*Report and Order* at 14-15

with the completely different but equally elaborate ‘unserved household’ method for determining eligibility for network stations.”<sup>8</sup> The complaint lacks merit.

First, the differences in protection zones were established by statute. For more than a year EchoStar has known that syndicated exclusivity and network non-duplication would be applied to superstations carried on satellite services. These statutory mandates were necessary because unlike distant network signals, the existing superstations could be transmitted into both the served and unserved areas of distant markets. Permitting superstations to reach served areas in distant markets clearly benefits the satellite services.

Second, as the FCC observed, the regulations only apply to programming on five of the six existing superstations. The universe of programming that could be deleted is limited to these stations and easily manageable.

Third, satellite providers are already providing different programming packages to different households. Given this fact, EchoStar offers no explanation why the “different” protection zones will cause an undue burden, thereby warranting further delay in implementing the statutory provisions. To the extent that the direct to home satellite business is based on individual subscribers, then providing exclusivity protection will not cause any additional burdens.

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<sup>8</sup>EchoStar Petition for Reconsideration at 5.

Finally, it is clear EchoStar has no evidence to support a further delay in implementing the rules. The FCC is presented with nothing more than a hollow excuse. After waiting more than a year, EchoStar apparently has just undertaken an assessment of the rule's impact, "[B]ut cannot complete this assessment in the short period of time that has elapsed since the release of the blackout rules. EchoStar will report to the Commission once the results of the assessment are complete."<sup>9</sup> In other words, EchoStar wants the FCC to delay implementation, and then it will "get back" to the FCC at some time in the future with evidence to support its position. EchoStar's request must be rejected out of hand. It is nothing more than a continuation of EchoStar's longstanding plan to delay implementation of the Satellite Home Viewers Improvement Act.

## **2. The Sports Blackout Rules Should be Extended to Satellite Services**

ALTV opposes both EchoStar's and Joint Petitioner's challenges to extending the sports blackout provisions to the retransmission of network stations. Once again the satellite providers offer no new evidence to counter the FCC's decision. They merely repeat arguments that have been rejected previously. The Commission should not be persuaded by the satellite industry's unsubstantiated assertions regarding the "alleged" burden of applying these rules to satellite operators.

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<sup>9</sup>*Id.*

All petitioners raise issues pertaining to the notification provisions contained in the *Report and Order*. On this issue, ALTV would simply remind the FCC of its duty to craft satellite rules that closely resemble the rules currently applicable to cable systems.

The petition filed by *Baseball, et al*, raises additional issues relating to the sports blackout rules. Canadian based NBA and NHL teams would like the ability to assert sports blackout protection against U.S. subscribers. According to the petition, such protection is needed for both the cable and satellite sports blackout rules. The requested relief goes beyond the immediate objective of the instant proceeding, which is to extend the current cable sports blackout rules to satellite services. *Baseball* seeks to amend the existing cable sports black out rules as well as the rules that will be applied to satellite services. This appears to be well beyond the scope of the instant proceeding.

In any event, the request needs to be more precisely defined. For example, does *Baseball, et al*, contemplate an exclusion that will apply to US subscribers regardless of where they live? If not, what would be the geographic zone of blackout protection? Would the proposed rule change apply only to US citizens living within a 35 mile zone of a stadium where the Canadian team plays? Would the effect of this blackout be limited to US subscribers, or would this apply to Canadian subscribers as well? If so, how many U.S. citizens would be affected by this proposal. Additional information is necessary before the Commission takes any action on this proposal. The issues raised here may be more properly resolved in a separate proceeding.

Finally, *Baseball et al*, raises a “technical” drafting issue in the new rules. According to the petition, the new rules may have the unintended consequence of limiting blackout protection in some contiguous markets. Under the existing rules, if a home game was not being televised on a must-carry “local” signal, it could not be imported on a non-must-carry signal. According to *Baseball, et al*, the FCC’s new regulation changes this rule by redefining a local signal to include an area within a station’s Predicted Grade B contour. As a result, stations that place over-the-air, predicted Grade B contours into adjacent markets may be able to import games into adjacent markets even though the games are subject to blackout restrictions in the adjacent market.

The Commission’s new interpretation restricts the scope of the sports rule protection, For example, the community of Racine WI is within the Specified zone of Milwaukee, but is also covered by the Predicted Grade B contour of WGN, Chicago. Under the new rule a question could be raised about a Racine cable system blacking out a non-televised home game of the Milwaukee Bucks or the Milwaukee Brewers against the Chicago Bulls or Chicago Cubs carried on WGN.<sup>10</sup>

While ALTV recognizes the problem raised in the petition, there is insufficient evidence in the record to assess the impact of *Baseball’s* request. Apparently, the problem is not isolated to Racine, but occurs in other markets as well. Nonetheless, before the FCC revises the rule as drafted in its Report and Order, it should examine the impact of any such revision. Accordingly, ALTV must, at this time, oppose *Baseball’s* request pending further information.

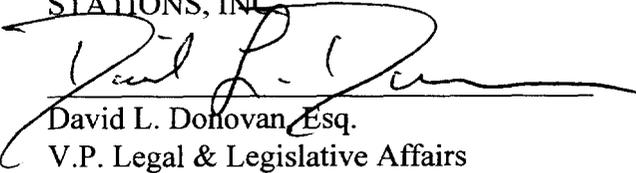
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<sup>10</sup>*Baseball, et al*, Petition at 7.

### 3. Conclusion

For the above stated reasons, ALTV urges the Commission to deny the Petitions for Reconsideration filed by *EchoStar, Joint Satellite Operators and Baseball, et. al.* There is no reason for the FCC to revise its original decision in this proceeding.

Respectfully submitted,  
ASSOCIATION OF LOCAL TELEVISION  
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January 17, 2001

**Certificate of Service**

I, David L. Donovan, hereby certify that on January 17, 2001, the above captioned "Opposition to Petitions for Reconsideration" was sent to the Petitioners' counsel(s) listed below by delivery in hand and/or US first class mail.

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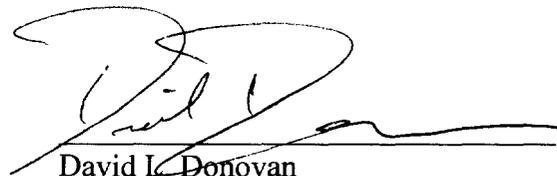
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