

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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

Application of Network Nonduplication
Syndicated Exclusivity, and Sports Blackout
Rules To Satellite Retransmissions

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) CS Docket No. 00-2 /
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**OPPOSITION OF DIRECTV, INC.
TO PETITION FOR RECONSIDERATION**

DIRECTV, Inc. ("DIRECTV")¹ hereby opposes the Petition for Reconsideration of the Commission's *Report and Order*² filed by Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division 1-A Athletic Director's Association ("Sports Leagues") in the above-captioned proceeding.

In its *Report and Order*, the Commission adopted sports blackout rules for satellite retransmissions of nationally distributed superstations and all distant network stations. For regularly scheduled events, the Commission imposed a rule that notifications by parties seeking program deletions must be received by the satellite carrier "within forty-eight (48) hours after the time of the telecast to be deleted is known, and no later than the Monday preceding the calendar

¹ DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

² *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999; Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals, Report and Order*, CS Docket No 00-2, FCC No. 00-338 (rel. Nov. 2, 2000) ("Report and Order").

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week (Sunday-Saturday) during which the program deletion is to be made.”³ For events that are not regularly scheduled, the Commission requires that satellite carriers be notified “within twenty-four (24) hours after the time of the telecast to be deleted is known,” and in no event later than 24 hours from the time the subject telecast is to take place.⁴

As they did in the pleading rounds leading up to the Commission’s adoption of *the Report and Order*, the Sports Leagues continue to object to any deviation from the cable sports blackout rules in crafting rules that apply to satellite carriers. In particular, the Sports Leagues seek reconsideration of the “48 hour” notification feature of the satellite rule that applies to regularly scheduled events – a modification of the traditional cable formulation – because the requirement will result in “unnecessary work” by the Sports Leagues in generating additional notifications.⁵ Thus, the Sports Leagues continue to urge that Commission “simply adopt[] the cable model.”⁶

The Sports Leagues’ petition should be rejected. Nowhere in their petition do the Sports Leagues even address (let alone proffer a basis for reconsidering) the Commission’s express finding that there are fundamental “differences in the structure and operation of the satellite and cable industries”⁷ that warrant the creation of a different notification regime for satellite carriers relative to cable operators. Although the Sports Leagues provide speculative examples of how they may be incrementally burdened by a rule that is tailored to the operational realities and nationwide scope of satellite systems, any such burden pales in relation to the challenges

³ *Id.* at Appendix B (text of new § 76.128(c)).

⁴ *Id.*

⁵ Sport Leagues Petition for Reconsideration at 3.

⁶ *Id.*

⁷ *Report and Order* at ¶ 69.

involved for satellite carriers in implementing multiple, simultaneous blackouts and in identifying and arranging substitute programming – challenges that the Commission expressly recognizes are “greater for satellite carriers than for cable operators.”⁸

Ironically, DIRECTV agrees in principle with the Sports Leagues that the Commission should revisit the satellite carrier notification regime adopted in the *Report and Order*. But in so doing, the Commission should give *heightened* consideration to the costs that blackout rules will impose on satellite carriers.

As DIRECTV explained in its original Comments, and as the Commission has acknowledged,⁹ blacking out small areas or groups of subscribers in the satellite context is much more complex than doing so in the cable context. Cable operators control programming at the head-end in their local franchise area, which makes it very easy to black out a targeted area. In contrast, after receiving notification of a blackout by a programmer, a satellite carrier must proceed through several different steps, including encoding information provided by the programmer into the satellite system for compatibility purposes; building the blackout by entering the data into the system; scheduling the blackout and processing all data concerning the blackout; and triggering each individual blackout manually, by actually watching the signal of the event.

These steps certainly raise a question of whether the Commission was justified in concluding that the application of sports blackout rules to satellite carrier retransmission of

⁸ *Id.* at ¶ 66.

⁹ *Id.* at ¶ 65.

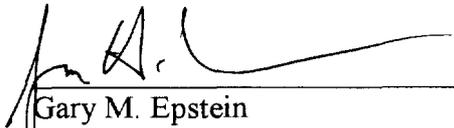
network stations is “technically feasible and not economically prohibitive.”¹⁰ And in any event, the burdens of implementing simultaneous sports blackout requirements on a market-by-market basis certainly argue for the requisite notification periods to be *lengthened* rather than curtailed.

The Commission’s reexamination of the sports blackout requirements applicable to satellite carriers should recognize that the unique technological characteristics of DBS systems will make it extraordinarily difficult for satellite carriers to comply with sports blackout requirements even under the newly-adopted “48-hour” rule. For this reason, DIRECTV urges the Commission to lengthen the notification periods as set forth in the petitions for reconsideration that have been filed by DIRECTV and EchoStar.¹¹ The petition of the Sports Leagues should be denied.

Respectfully submitted,

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January 29, 2001

¹⁰ See *id.* at ¶ 60 (recognizing that Section 339(b)(1)(B) in the case of the retransmission of network stations instructs the Commission to apply the sports blackout rule "only 'to the extent technically feasible and not economically prohibitive'").

¹¹ See Petition for Reconsideration of EchoStar Satellite Corporation (Dec. 14, 2000); Petition for Reconsideration of DIRECTV, Inc. (Dec. 14, 2000).