

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

In the Matter of)	
)	
Implementation of the Satellite Home Viewer Improvement Act of 1999)	CS Docket No. 00-96
)	CS Docket No. 99-363
Broadcast Signal Carriage Issues)	
Retransmission Consent Issues)	
)	

To: The Commission

**OPPOSITION OF THE NETWORK AFFILIATED STATIONS ALLIANCE TO THE
PETITION FOR RECONSIDERATION FILED BY DIRECT TV, INC.**

The Network Affiliated Stations Alliance (“NASA”)¹ opposes the Petition for Reconsideration filed by DIRECTV, Inc. (“DIRECTV”)² with respect to the Commission’s Report and Order in the above-captioned proceeding (the “*SHVIA Order*”).³ The issues raised in DIRECTV’s Petition have already been fully considered and rejected by the Commission. DIRECTV provides no new evidence that would support a departure from the Commission’s reasoned decision.

¹ NASA is a coalition representing the interests of the more than 600 local television stations affiliated with the ABC, CBS, and NBC Television Networks.

² Petition for Reconsideration of DIRECTV, Inc., CS Docket No. 00-96 (Feb. 22, 2001) (“*DIRECTV Petition*”).

³ *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, Broadcast Signal Carriage Issues, Retransmission Consent Issues*, CS Docket Nos. 00-96, 99-363, FCC 00-417, Report & Order (rel. Nov. 30, 2000) (“*SHVIA Order*”).

I. THE COMMISSION SHOULD AFFIRM THE “GOOD QUALITY SIGNAL” STANDARD.

Section 338(b)(1) of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”) provides that a local station shall bear the costs of delivering a “good quality signal” to a satellite carrier’s local or, if applicable, regional receive facility.⁴ In the *SHVIA Order*, the Commission properly determined to apply the good quality signal standard of the cable carriage regime to the satellite carriage context.⁵ Opposing this standard, DIRECTV has asserted that the signal should instead meet the requirements of GR-338 CORE, TV1 for <20 route miles.⁶ While DIRECTV argues that the TV1 signal standard provides an enhanced quality that it prefers, it does not – and cannot – argue that the standard adopted by the Commission fails to assure a “good quality signal.”⁷ As the Commission has determined, the good quality signal standard long used in the cable carriage regime is a “workable, tested standard,”⁸ and the accompanying Commission precedent regarding signal quality that has evolved in that context should apply equally in the satellite context.⁹

Further, complying with the TV1 standard would impose an excessive burden on local television stations that is contrary to the letter and the spirit of SHVIA.¹⁰ As the

⁴ See 47 U.S.C. § 338(b)(1).

⁵ *SHVIA Order* ¶ 64.

⁶ *DIRECTV Petition* at 17-20.

⁷ Of course, DIRECTV is free to insist on the TV1 delivery standard, provided that it bears the costs of such delivery that exceed the cost of providing a good quality signal pursuant to the cable delivery standard.

⁸ *SHVIA Order* ¶ 64.

⁹ See Joint Reply Comments of the ABC, CBS, Fox, and NBC Television Network Affiliate Associations, CS Docket No. 00-96, at 19 (Aug. 4, 2000) (“*Network Affiliates Reply Comments*”) (citing comments of ALTV and NAB).

¹⁰ See *id.*

Commission recognized, the cost of leasing a dedicated TV1 circuit from a telecommunications carrier would be “prohibitively expensive” for certain broadcasters.¹¹ In their joint reply comments, the Association of America’s Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting estimated that this cost could be \$800-\$1500 per month.¹² Because TV1 lines are leased in terms of distance, however, this cost has the potential to be even greater if a satellite carrier uses a regional, rather than a local, receive facility.¹³ In addition, as the Commission has explicitly stated, the TV1 standard cannot be easily implemented by most television broadcast stations and accordingly is too exacting a standard to impose on broadcasters as a condition to providing carriage.¹⁴

II. SATELLITE CARRIERS SHOULD BE REQUIRED TO RETRANSMIT ALL PROGRAM-RELATED MATERIAL IN THE VERTICAL BLANKING INTERVAL.

In the *SHVIA Order*, the Commission found that it is technically feasible for satellite carriers to carry the program-related material contained in a television station’s vertical blanking interval (“VBI”).¹⁵ DIRECTV has argued that its system cannot accommodate the

¹¹ *SHVIA Order* ¶ 63.

¹² See Joint Reply Comments of the Association of America’s Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting, CS Docket No. 00-96, at 15 (Aug. 4, 2000) (“*Public Television Reply Comments*”). DIRECTV acknowledges that leasing a TV1 circuit could impose additional costs on broadcasters and speculates that the cost would be on average less than \$1000 per month. See *DIRECTV Petition* at 19. As noted above, the cost could be significantly higher than \$1000 per month.

¹³ The TV1 standard is a “short-haul” standard designed for transmission of a signal up to 20 miles; in order to reach satellite carriers’ receive facilities, many stations will be sending their signals farther than 20 miles. *Public Television Reply Comments* at 16.

¹⁴ *SHVIA Order* ¶ 63 (explaining that the TV1 standard is “too rigid” a construct in that the required signal-to-noise ratio of 67dB – as opposed to the 53dB required in the cable context – cannot be easily implemented by most television broadcast stations); see also *Public Television Reply Comments* at 16.

¹⁵ *SHVIA Order* ¶ 108.

carriage of anything other than primary video and audio signals and line 21 closed-caption transmissions and that requiring it to carry program-related material in the VBI would entail a costly retrofitting of its system.¹⁶ Specifically, DIRECTV has asserted that the set-top boxes used by current subscribers will need to be replaced at a cost of 2.8 billion dollars in order to accommodate the carriage of program-related material in the VBI.¹⁷

NASA agrees that DIRECTV need not replace all of the set-top boxes currently being used by subscribers if it is not technically feasible or is prohibitively expensive for it to do so. However, DIRECTV has presented no evidence that it would not be technically feasible for it to carry all program-related material in the VBI on a going-forward basis. Specifically, set-top boxes distributed after the release date of the *SHVIA Order* should be capable of carrying all program-related material in the VBI. DIRECTV also should be required to make available to current subscribers at a reasonable price an upgraded set-top box that is capable of carrying

¹⁶ *DIRECTV Petition* at 13-17.

¹⁷ *Id.* While DIRECTV makes this argument, it has not asserted that none of its retransmission consent agreements obligate it to carry program-related material in the VBI. In addition, it is unclear whether DIRECTV's 2.8 billion dollar cost calculation includes the cost of replacing set-top boxes that it may already be obligated to replace under existing retransmission consent agreements or for other reasons. Further, DIRECTV's assertions are contrary to the statements of Local TV on Satellite, LLC ("LTVS"). As the Commission noted, LTVS has stated that it would have no technical feasibility problems in carrying VBI information. *See SHVIA Order* ¶ 107-08.

program-related material, to enable current subscribers to receive this material if they so choose.¹⁸ Consumers must not be indefinitely deprived of program-related material that they would otherwise receive if they obtained their television signal over the air.¹⁹

DIRECTV also states that if its retransmission consent agreements in a particular market do not require it to carry program-related material, then broadcasters in that market electing mandatory carriage should not be entitled to the carriage of program-related material.²⁰ Presenting no authority, DIRECTV asserts that retransmission consent agreements represent the “absolute ceiling” for such requirements.²¹ Contrary to DIRECTV’s assertions, requirements for stations electing mandatory carriage generally represent the floor for such requirements. Certainly the failure of stations to negotiate for the carriage of program-related material should not undermine the Congressional directive that the Commission adopt satellite carriage requirements that are comparable to the cable carriage requirements,²² which explicitly mandate the carriage of program-related material.

¹⁸ This position is consistent with that taken by the ABC, CBS, Fox, and NBC Television Network Affiliate Associations in their joint reply comments. *See Network Affiliates Reply Comments* at 37 (“Network Affiliates propose the following: If it is not technically feasible or is prohibitively expensive to retrofit existing equipment to accommodate new types of content, then any newly-manufactured equipment must be capable of transmitting and receiving program related material in the VBI and subcarriers. This would ensure that neither satellite carriers nor their subscribers bear unreasonable expense and that subscribers will not indefinitely be deprived of program-related material they would receive if they obtained their television signal over the air.”).

¹⁹ *See id.*

²⁰ *DIRECTV Comments* at 17.

²¹ *See id.*

²² 47 U.S.C. § 338(g).

III. SATELLITE CARRIERS MUST BE REQUIRED TO BEAR THE COSTS OF TRANSMITTING BROADCASTERS' SIGNALS TO A RECEIVE FACILITY THAT IS RELOCATED MID-CYCLE.

DIRECTV disagrees with the Commission's purported decision "to require satellite carriers to bear the costs of signal delivery in cases in which satellite carriers decide to relocate their local receive facilities."²³ However, DIRECTV mischaracterizes the Commission's decision. Under the *SHVIA Order*, a broadcast station must bear the costs of delivering its signal to the receive facility designated by the satellite carrier at the time the station elects mandatory carriage or retransmission consent.²⁴ Thus, satellite carriers are permitted to relocate their designated receive facilities every three years coinciding with the election cycle – without bearing the costs of signal delivery.²⁵ It is only if a carrier moves its receive facility *mid-cycle* that a carrier must bear the stations' cost of transmitting to the new location.²⁶ And even then, it must only bear those costs until the next election cycle.²⁷

The Commission's decision thus imposes a limited burden on satellite carriers in order to protect the reasonable expectations of broadcasters. An important factor in a station's decision to elect mandatory carriage or retransmission consent is the cost of transmitting its signal to a receive facility. If the location of the receive facility changes mid-cycle, the station may no longer wish to be carried or it may no longer be able to afford the cost of transmitting its signal to the receive facility.

²³ *DIRECTV Petition* at 20.

²⁴ *SHVIA Order* ¶ 45.

²⁵ *Id.* ¶ 58.

²⁶ *Id.*

²⁷ *See id.*

Moreover, the Commission's decision is consistent with SHVIA. Section 338(b) requires television broadcast stations to bear the costs of delivering a good quality signal to "the *designated* local receive facility of the satellite carrier."²⁸ The Commission appropriately interpreted "designated" local receive facility to mean the facility designated by the carrier for that three-year election cycle. Like a broadcaster's carriage election, the satellite carrier's selection of a "designated" facility remains in force until the next election cycle. If the carrier decides to change the receive facility mid-cycle, it is only reasonable to require it to bear the costs of signal delivery to its new location.

Finally, the satellite carrier has total control over where to locate its facility and over whether and when a facility will be moved.²⁹ A carrier could choose to wait until the next election cycle to move its receive facility if it is particularly concerned about bearing signal delivery costs. Regardless, as noted above, if a carrier does choose to relocate its receive facility mid-cycle, it would have to bear such signal delivery costs only for a limited period of time.

IV. CARRIERS SHOULD BE PROHIBITED FROM UTILIZING EQUIPMENT OR PRICING MECHANISMS THAT DISCRIMINATE AMONG LOCAL STATIONS.

SHVIA provides that a satellite carrier must provide access to the signals of a local television broadcast station "at a nondiscriminatory price and in a nondiscriminatory manner."³⁰ The Commission accordingly found that under this provision, satellite carriers may

²⁸ 47 U.S.C. § 338(b)(1) (emphasis added).

²⁹ See *SHVIA Order* ¶ 45.

³⁰ 47 U.S.C. § 338(d).

not require subscribers to purchase an additional satellite dish in order to receive a subgroup of local stations.³¹

DIRECTV contends that the Commission's finding is contrary to the legislative history of SHVIA.³² However, DIRECTV misinterprets this legislative history. DIRECTV notes that an earlier draft of SHVIA contained a provision (subsequently deleted from SHVIA as enacted) requiring that subscribers receive the signals of local television stations without having to install additional equipment.³³ While the deletion of this provision possibly suggests a Congressional determination to leave to the Commission's discretion whether satellite carriers may require subscribers to install an additional satellite dish in order to receive local signals generally, it does not imply that local stations may be treated differently in terms of the equipment that subscribers must install in order to receive their signals.

Specifically, the deletion of this provision does not bear upon whether a satellite carrier may require subscribers to install additional equipment in order to receive the signals of *some* local stations when the signals of other local stations in the same market may be received with existing equipment. Such an arrangement would undermine SHVIA's interest in ensuring

³¹ *SHVIA Order* ¶ 101.

³² *DIRECTV Petition* at 21-23.

³³ The deleted provision stated:

No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels *which a subscriber may receive without the need to install an additional reception antenna or any other additional equipment* and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

Id. at 22 (citing House Conferees' Counteroffer of the Copyright Satellite Statutory License Improvement Act, Discussion Draft, at 27 (Oct. 15, 1999) (emphasis added)).

the nondiscriminatory treatment of local stations. The Commission thus correctly determined that SHVIA's anti-discrimination requirements prohibit carriers from requiring subscribers to install an additional satellite dish to receive some local signals – when other local signals are available without the additional dish.

Along similar lines, the Commission's decision to allow "a la carte" pricing of local stations would result in discrimination among local stations and would run counter to SHVIA's anti-discrimination requirements. Toward this end, NASA supports the Petition for Reconsideration filed by the Association for Local Television Stations, Inc.³⁴ and urges the Commission to reconsider its decision to permit satellite carriers to package and sell "local-into-local" stations on an a la carte basis.³⁵ Satellite carriers must offer all local television signals in a single package in order to ensure that consumers have access to all local stations and to comply with SHVIA's anti-discrimination requirements.

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³⁴ Petition for Reconsideration by the Association of Local Television Stations, Inc., CS Docket Nos. 00-96, 99-363, at 3-4 (Feb. 22, 2001).

³⁵ *SHVIA Order* ¶ 99.

For the foregoing reasons, NASA urges the Commission to reject the proposals advanced by DIRECTV in its Petition for Reconsideration.

Respectfully submitted,

THE NETWORK AFFILIATED STATIONS ALLIANCE

/s/ Wade H. Hargrove

Wade H. Hargrove
David Kushner
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD
209 Fayetteville Street Mall
Raleigh, North Carolina 27602
(919) 839-0300 – Phone
(919) 839-0304 – Fax

Its Counsel

April 12, 2001

/s/ Jonathan D. Blake

Jonathan D. Blake
Jennifer A. Johnson
Faith D. Kasparian
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000 – Phone
(202) 662-6291 – Fax

Its Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2001, I caused true copies of the foregoing Opposition of the Network Affiliated Stations Alliance to the Petition for Reconsideration filed by DIRECTV, Inc. to be served by hand on the following:

Gary M. Epstein, Esq.
James H. Barker, Esq.
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Suite 1300
Washington, D.C. 20004-2505

Counsel for DIRECTV, Inc.

David L. Donovan, Esq.
V.P. Legal & Legislative Affairs
Association of Local Television Stations, Inc.
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036

Counsel for the Association of Local Television Stations, Inc.

/s/ Faith D. Kasparian

Faith D. Kasparian