

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

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

To: The Commission

**JOINT OPPOSITION OF
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS,
THE PUBLIC BROADCASTING SERVICE, AND
THE CORPORATION FOR PUBLIC BROADCASTING
TO THE PETITION FOR RECONSIDERATION OF DIRECTV, INC.**

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EXECUTIVE SUMMARY

When Congress enacted the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), it directed the Federal Communications Commission to adopt local noncommercial station carriage requirements for satellite providers comparable to those that apply to cable operators. The Commission complied with this congressional mandate by adopting a rule similar to – but less burdensome than – the cable noncommercial station carriage requirement. The Commission’s rule mandates satellite carriage of up to three local noncommercial educational channels that do not substantially *and simultaneously* duplicate programming, plus all other NCEs in the local market that do not duplicate programming on a simultaneous or non-simultaneous basis. In so doing, the Commission acted in the public interest and followed Congress’s intent to foster competition and diversity in the delivery of video programming to consumers, while preserving the public’s access to free, over-the-air television services.

DirecTV, in its petition for reconsideration, asks the Commission to eviscerate the noncommercial station carriage requirement and ignore SHVIA’s directive that a satellite carrier provide multiple local noncommercial stations in a qualified market. DirecTV asks the Commission instead to require carriage of only a single local NCE in each local market in which it provides local-into-local service. The Commission should dismiss DirecTV’s request, which has no basis in statute or public policy.

The Commission should also reject DirecTV’s unfounded proposals: (1) to require transmission of broadcast signals to a satellite carrier’s uplink facility via a TV1-quality line; (2) to permit it to require consumers to purchase an additional dish to receive certain local stations but not others; and (3) to limit transmission of program-related material in the vertical blanking interval. The Commission should instead affirm that a satellite carrier is required to

offer subscribers a full package of local broadcast stations in all markets in which the carrier offers local-into-local service. Finally, the Commission should reject any attempts to conflate the separate statutory scheme for a four percent public interest programming set-aside with SHVIA's local noncommercial station carriage requirement.

The Commission did a commendable job in its *Report and Order* in this docket implementing a complex statutory scheme in a manner consistent with Congress's intent to apply a principle of regulatory parity to satellite and cable video programming distribution. It should not disturb its findings here, based on DirecTV's misguided efforts to undo the statutory scheme established by Congress through the backdoor of challenging FCC interpretation.

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The Association of America’s Public Television Stations (“APTS”),¹ the Public Broadcasting Service (“PBS”),² and the Corporation for Public Broadcasting (“CPB”)³ (collectively, “Public Television”) submit this opposition to DirecTV, Inc.’s (“DirecTV”) petition for reconsideration of the Commission’s *Report and Order* adopting carriage rules to

¹ APTS is a nonprofit organization whose members comprise the licensees of nearly all of the nation’s 353 noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch and engages in planning and research activities on behalf of its members.

² PBS is a nonprofit membership organization of the licensees of the nation’s public television stations. PBS distributes national public television programming and provides other program-related services to the nation’s public television stations.

³ CPB is a private, nonprofit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. *See* 47 U.S.C. § 390 *et. seq.*

implement the local-into-local carriage provisions of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”).⁴

Public Television urges the Commission to reject DirecTV’s misguided objections to the *SHVIA Order* and to affirm the rules providing for satellite carriage of local noncommercial television broadcast stations. The Commission’s local noncommercial carriage rules comport with Congress’s intent to ensure that satellite subscribers have access to a diversity of local television broadcast programming, including noncommercial programming, and that satellite carriers’ local-into-local carriage decisions do not undermine the viability of a vibrant, local, over-the-air broadcast system. Moreover, the Commission’s carriage regulations concerning signal content and quality and local receive facilities appropriately allocate the costs and responsibilities for delivering local broadcast stations to satellite customers.

The Commission’s decision also appropriately prohibits satellite carriers from requiring subscribers to obtain additional equipment to receive some, but not all, local broadcast stations. However, the Commission undermined its decision and deviated from congressional intent when it allowed satellite carriers to offer a la carte pricing and packaging of local stations. As proposed in the petition for reconsideration filed by the Association of Local Television Stations, Inc. (“ALTV”), the Commission should rescind the a la carte packaging decision in order to give full effect to the reasonable local station carriage requirements imposed by Congress in SHVIA.

⁴ *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Report and Order*, CS Docket Nos. 00-96 & 99-363, FCC 00-417 (rel. Nov. 30, 2000) (“*SHVIA Order*”).

I. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS.

A. The Noncommercial Station Carriage Requirements Are Consistent With The Statute And Congressional Intent.

In enacting the carriage requirements accompanying the SHVIA compulsory license, Congress sought to promote competition and diversity in the delivery of video programming while preserving free, over-the-air television.⁵ As part of its effort to promote competition in video programming distribution, Congress aimed specifically to ensure regulatory parity between the cable and satellite industries.⁶ Thus, Section 338(a)(1) of the Communications Act prescribes a local station carriage requirement designed to be comparable to that imposed on cable operators. The statute requires a satellite carrier relying on SHVIA's local-into-local compulsory copyright license to retransmit the signal of any local station into a local market also to carry "all television broadcast stations located within that local market" that request carriage.⁷

Specifically with respect to local noncommercial educational ("NCE") stations, Section 338(c)(2) states that "[t]o the extent possible," the implementing regulations adopted by the FCC "shall provide the same degree of carriage by satellite carriers of such multiple [local

⁵ See H. Conf. Rep. No. 106-464, at 101 (1999) (explaining that local-into-local carriage "provisions are intended to preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources").

⁶ See *id.* at 93-94 (explaining that the compulsory license allowing satellite carriers to retransmit local broadcast signals "create[s] parity and enhanced competition between the satellite and cable industries in the provision of local television broadcast stations"); *id.* at 100 ("The procedural provisions applicable to [the local station carriage requirements] (concerning costs, *avoidance of duplication*, channel positioning, compensation for carriage, and complaints by broadcast stations) are generally parallel to those applicable to cable systems.") (emphasis added).

⁷ 47 U.S.C. § 338(a)(1).

noncommercial] stations as is provided by cable systems under Section 615.”⁸ Section 615 requires cable systems with more than 36 channels to carry all nonduplicating noncommercial educational stations in their DMAs and in no case fewer than three NCEs.⁹ As instructed by Congress, the Commission imposed similar, but less burdensome, carriage obligations on satellite carriers. The Commission’s rule requires DBS operators, which offer well over 36 channels (indeed, often 10 times as many) per market, to carry all nonduplicating NCEs in each DMA in which they offer local-into-local service pursuant to the SHVIA compulsory license. Until it reaches a threshold of three NCE stations in each market, a satellite provider need not carry any NCE that duplicates the programming of another NCE in the market on a simultaneous basis. Once the satellite provider carries three NCEs in the market, it need not carry any additional NCEs that duplicate programming on a simultaneous or non-simultaneous basis. This rule is consistent with the language of Section 338(c)(2) and promotes parity between DBS and cable by assuring that consumers receive via satellite essentially the same local channels they would receive if they subscribed to cable.¹⁰

DirecTV contends that the Commission’s NCE carriage requirement does not comport with the language in Section 338(c)(2) directing the Commission to “prescribe regulations limiting” satellite carriers’ obligations to carry multiple local noncommercial stations. DirecTV insists that this language means that the Commission must impose *further*

⁸ 47 U.S.C. § 338(c)(2).

⁹ See 47 U.S.C. § 535(e).

¹⁰ See *SHVIA Order* ¶ 86 (explaining that the more limited noncommercial station carriage proposals suggested “by DirecTV and EchoStar would deprive satellite subscribers of access to local noncommercial television stations in those markets where local-into-local service is offered”); see also H. Conf. Rep. No. 106-464, at 101 (1999) (explaining that the local-into-local (continued...))

limits on satellite carriers' carriage of local NCEs *beyond* those imposed on cable operators in Section 615. However, Congress clearly did not intend for the Commission to apply *more* limits on noncommercial station carriage by a satellite provider than a cable operator, since the very next sentence of Section 338(c)(2) admonishes the Commission to “provide the *same* degree of carriage by satellite carriers . . . as is provided by cable systems.”¹¹ That is precisely what the Commission did – it imposed limits on noncommercial station carriage by satellite providers comparable to the limits in Section 615 for cable operators, subject to a nonduplication requirement that is in fact more limiting and less burdensome than the cable NCE carriage requirements.¹²

A cable system with more than 36 channels must carry all of the first three NCEs in a market, even when the stations transmit substantially the same programming at the same time. Satellite carriers, on the other hand, need not carry any simultaneously duplicative signals. Satellite providers are required to carry up to three local NCEs that do not duplicate programming – with duplication defined as more than 50 percent of prime time programming and more than 50 percent of programming outside of prime time broadcast on a simultaneous basis. Once the carrier provides three local noncommercial stations, the duplication test becomes the same as for cable – whether more than 50 percent of prime time programming and more than

carriage requirement “benefits consumers and enhances competition with cable by allowing consumers the same range of choice in local programming they receive through cable service”).

¹¹ 47 U.S.C. § 338(c)(2) (emphasis added).

¹² As the Commission explained, although “Section 338 requires the Commission to limit the carriage of multiple NCE stations in markets where local-into-local service is provided[, i]t is important to note that this instruction was embedded in the NCE duplication provision of Section 338. Against this backdrop, we adopt a limitation principle based upon duplicative programming.” *SHVIA Order* ¶ 87 (footnote omitted). Thus, the substantial duplication (continued...)

50 percent of programming outside of prime time is duplicative on a simultaneous or non-simultaneous basis.¹³ This standard prevents satellite capacity from being wasted on repetitive programming while ensuring carriage of nonduplicating, diverse public stations that respond to the different audiences and distinct needs of each community. These stations provide unique and valuable programming, such as college telecourses and video conferencing, minority-oriented programming, and services designed to address rural communities.

DirecTV also contends that the local NCE carriage requirements impose a greater burden on satellite carriers than on cable operators by failing to take into account technical differences in how local stations occupy channel capacity on satellite and cable. However, in light of expected increases in DBS capacity and the flexibility SHVIA affords satellite carriers to determine the pace at which they introduce local-into-local service and incur the accompanying carriage obligations, it was reasonable for the Commission to determine that requiring satellite carriers to carry all nonduplicating NCEs in each local market they serve would impose a burden on satellite carriers comparable to that borne by cable operators under Section 615. As Public Television has explained in earlier filings in this proceeding, the advent of Ku-band spot-beam technology, improved compression technology, and the addition of more transponder space and spot beams at the Ka-band will increase satellite carriers' capacity tenfold.¹⁴ In fact, since

requirement in Section 338(c)(2) is a limit on the statute's earlier directive that a carrier offer *all* local stations in the market. *See* 47 U.S.C. §§ 338(a)(1) & 338(c)(2).

¹³ *See SHVIA Order* ¶ 87.

¹⁴ *See Ex Parte* Filing of APTS, PBS & CPB in CS Docket No. 00-96 (Nov. 17, 2000) (submitting report by Strategic Policy Research entitled *Channel-Carrying Capacity of DBS Systems*, which explains that providing local-into-local service would impose few technical or economic burdens on satellite carriers); *see also Joint Reply Comments of the Association of America's Public Television Stations, the Public Broadcasting Service and the Corporation for Public Broadcasting* in CS Docket No. 00-96, at 8 (Aug. 4, 2000) ("Public Television Reply (continued...)

DirecTV and EchoStar filed their reply comments in this proceeding last August, both have taken significant steps toward increasing channel capacity by launching or announcing plans to launch additional satellites, several featuring spot-beam technology for providing local-into-local service.¹⁵

In short, the Commission’s “approach is a reasonable means of achieving the statutory goal of implementing an NCE carriage obligation for satellite carriers that parallels the existing cable carriage requirement, and takes into account, ‘to the extent possible,’ the other relevant technical and legal constraints.”¹⁶ It is DirecTV’s noncommercial station carriage proposal that would clearly run afoul of the language of Section 338(c)(2). Section 338(c)(2) requires the Commission to adopt rules providing for “carriage by satellite carriers of . . . multiple [local noncommercial television broadcast] stations.”¹⁷ Congress’s use of the word “multiple” plainly contemplates carriage of more than one local noncommercial station per

Comments”); *Joint Comments of the Association of America’s Public Television Stations, the Public Broadcasting Service and the Corporation for Public Broadcasting* in CS Docket No. 00-96, at 19-22 (July 14, 2000) (“Public Television Comments”).

¹⁵ See “EchoStar Announces Launch Plans for Two New Satellites to Serve Its Fast Growing Dish Network Satellite TV Service,” EchoStar Press Release (Feb. 5, 2001) (announcing plans to launch one “advanced, high-powered direct broadcast satellite[] (DBS) featuring spot-beam technology” in the fourth quarter of 2001 and a second in the first quarter of 2002); “DIRECTV Renames Satellite Fleet,” DirecTV Press Release (Aug. 10, 2000) (announcing plans to launch one new satellite later in 2000 and another, “an advanced, high-power spot-beam spacecraft,” late in 2001).

¹⁶ *SHVIA Order* ¶ 87 (quoting 47 U.S.C. § 338(c)(2)); see also H. Conf. Rep. No. 106-464, at 101 (1999) (stating Congress’s intent to provide consumers with “*the same range of choice in local programming they receive through cable service*”) (emphasis added). Further, the rules allow a satellite carrier to remove any station from its line-up, after timely notification, if the station’s programming becomes substantially duplicative after carriage of the station has commenced. See *SHVIA Order* ¶ 78.

¹⁷ 47 U.S.C. § 338(c)(2).

market. Therefore, DirecTV's proposal that satellite carriers be required to carry only one local NCE per DMA is inconsistent with the statutory language and congressional intent.¹⁸

B. Local NCE Carriage Should Not Count Toward The Four Percent Public Interest Set-Aside.

DirecTV argues that it should be able to count carriage of local noncommercial stations on a nationwide basis toward its four percent public interest set-aside obligations. As the Commission correctly observed in the *SHVIA Order*, Congress enacted the public interest set-aside and the SHVIA local noncommercial station carriage requirements for different reasons, pursuant to different statutory regimes, to carry out different congressional goals.¹⁹ Thus, satisfaction of one requirement cannot replace or supplant satisfaction of the other. Accordingly,

¹⁸ See Petition for Reconsideration of DIRECTV, Inc., at 11-12 (Feb. 22, 2001) (“DirecTV Reconsideration Petition”). Public Television also points out that DirecTV misconstrues the language of the SHVIA Conference Report when it states that “Congress wanted the FCC to account for the ‘unique technical challenges on satellite technology and constraints on the use of satellite spectrum’ in crafting its satellite carrier must carry regime.” *Id.* at 11 (quoting H. Conf. Rep. No. 104-464, at 102 (1999)). In fact, Congress refers to the “unique technical challenges on satellite technology” in the context of allowing satellite carriers to rely on new compression technologies like video streaming to help overcome capacity limits, noting that this “could enable satellite carriers to deliver must-carry signals into many more markets than they could otherwise.” H. Conf. Rep. No. 104-464, at 102 (1999). The language quoted by DirecTV *did not* direct the Commission to take these factors into account when adopting limitations on carriage of multiple local noncommercial broadcast signals.

¹⁹ Compare 47 U.S.C. § 335(b) (requiring a public interest set-aside to make “channel capacity available to national educational programming suppliers,” which include “any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions”), and H. Conf. Rep. No. 102-862, at 100 (1992) (explaining that Congress structured the public interest set-aside in part “to enable *national* educational programming suppliers to utilize this reserved channel capacity”) (emphasis added), with H. Conf. Rep. No. 106-464, at 92 (1999) (emphasizing “the importance of protecting and fostering the system of television networks as they relate to the concept of localism” and explaining that one reason for the local-into-local carriage regime is “to encourage and promote retransmissions by satellite of *local* television broadcast stations to subscribers who reside in the *local markets* of those stations”) (emphasis added).

Public Television urges the Commission to clarify that carriage of a local NCE station *on a national basis* will count toward the set-aside only if the carrier satisfies two conditions:

First, national retransmission of a local noncommercial station under the public interest set-aside cannot take the place of carriage of a local noncommercial station in a local market. For example, if a satellite provider were to carry WGBH (located in the Boston DMA) nationally and count it toward the set-aside, it must still carry all nonduplicating local NCEs in all markets in which it provides local-into-local service. Thus, simultaneous duplicative programming on WGBH could not be cited to avoid carrying a local NCE in the San Francisco DMA. Similarly, WGBH programming could not be taken into account in determining whether the three NCE station threshold triggering the non-simultaneous duplication standard has been reached in any local market.

Second, under no circumstances may carriage of a local NCE solely in its local market count toward the four percent public interest set-aside. As Public Television explained in its reply comments and as the Commission recognized in the *SHVIA Order*, the noncommercial station carriage requirements in SHVIA and the four percent public interest set-aside were adopted for different purposes to fill distinct programming niches.²⁰ While the set-aside focuses on *national* noncommercial public interest programming, SHVIA is intended to provide satellite subscribers with their *local* noncommercial educational stations – the same local NCEs they would receive if they subscribed to cable.²¹ Therefore, a satellite provider must carry the signals of nonduplicative NCEs in each local market in which it offers local-into-local service in addition to satisfying the four percent public interest set-aside obligation.

²⁰ See *id.*; see also Public Television Reply Comments at 9-13.

II. SIGNAL CONTENT AND QUALITY.

A. The Commission Should Affirm Its “Good Quality Signal” Standard.

SHVIA requires local stations requesting satellite carriage to bear the cost of delivering a “good quality signal” to the satellite carrier’s designated receive facility. In the *SHVIA Order*, the Commission determined, based on the record before it, that it was appropriate “to apply the current good quality signal standards applicable in the cable context to satellite carriers,” noting the absence of evidence “suggesting the cable signal quality standard will not prove equally satisfactory in the satellite context.”²² While DirecTV’s petition reiterates its contention that a TV1 line provides the enhanced quality it prefers, it does not and cannot argue that the cable standard adopted by the Commission is not in fact a “good quality signal.” In fact, satellite carrier EchoStar carries some local stations using their over-the-air signals rather than signals transmitted via a TV1 line.²³ DirecTV is free to insist on TV1 delivery for its own technical reasons, but DirecTV should be required to bear the costs associated with such transmission. As Public Television explained in its reply comments, and the Commission agreed, the cost of a TV1 line could be prohibitively expensive for broadcasters. Leasing a TV1 line costs approximately \$29 per mile per month, resulting in a \$800-\$1500 per month expense for most stations.²⁴ Moreover, because the cost of leasing a TV1 line is based on distance, there

²¹ See H. Conf. Rep. No. 106-464, at 92, 101 (1999).

²² *SHVIA Order* ¶ 64; see also Reply Comments of the National Association of Broadcasters in CS Docket No. 00-96, at 18-21 (arguing for rejection of DirecTV’s TV1-quality standard) (“NAB Reply Comments”).

²³ See NAB Reply Comments at 20; see also *id.* at 19-20 (noting that satellite carriers BellSouth and LTVS recommend applying the cable good quality signal standard to satellite providers).

²⁴ See Public Television Reply Comments at 15-17; *SHVIA Order* ¶ 63 (“We also note that it would be prohibitively expensive for a small television station to lease a dedicated TV1 circuit from a telecommunications carrier.”).

is the potential for the cost to be even greater, especially if the satellite carrier uses a regional, rather than a local, receive facility.²⁵ In addition, as Public Television explained in its reply comments, the TV1 standard advanced by DirecTV is a “short-haul” standard designed for transmission of a broadcast signal up to 20 miles, and many stations will be sending their signals a much greater distance to reach the carrier’s receive facility.²⁶

DirecTV suggests that requiring local stations to provide their signals via a TV1 line would not be unreasonable because the costs of such transmission would be borne only by those stations requesting carriage.²⁷ But SHVIA gives stations in local markets served by satellite carriers the right to request such carriage. Requiring broadcasters who exercise this right to deliver something more than the “good quality signal” SHVIA mandates would impose a much *greater* burden than that contemplated by the statute.

B. Carriers Should Retransmit All Program-Related Material In The Vertical Blanking Interval.

DirecTV contends that it should not be required to transmit all program-related material in the broadcast vertical blanking interval (“VBI”) because its system is not equipped to retransmit anything other than primary video, audio, and line 21 closed captioning and that retrofitting the system to carry additional program-related material would be costly and overly burdensome.²⁸ However, DirecTV does not assert that it would be technically infeasible to provide future subscribers with a set-top box capable of receiving additional program-related

²⁵ See Public Television Reply Comments at 15-17.

²⁶ See *id.* at 16.

²⁷ See DirecTV Reconsideration Petition at 19 (“Local broadcasters are not forced to bear this cost in the first instance unless they desire satellite carriage.”).

²⁸ See *id.* at 14.

material, only that retrofitting the set-top boxes used by its current subscribers would be costly.²⁹ Public Television agrees that DirecTV need not be required to replace all of its installed set-top boxes with boxes capable of delivering additional program-related material; however, set-top boxes distributed after the release date of the *SHVIA Order* – the date by which satellite carriers were on notice regarding the signal content they would be required to carry – must be able to deliver all program-related material in the VBI. DirecTV must also make available to existing subscribers at a reasonable price an upgraded set-top box capable of receiving additional program-related material, so that existing subscribers who would like to receive this material can do so.

III. RECEIVE FACILITIES.

A. Carriers Should Bear The Cost Of Transmitting Broadcasters' Signals To A Receive Facility Relocated Mid-Cycle.

DirecTV's petition overstates the effect of the Commission's rule requiring a satellite carrier to bear the costs of transmitting a local station's signal to the carrier's designated receive facility when the carrier relocates the facility in the middle of the election cycle. The Commission's rule requires broadcast stations to bear the full cost of delivering a good quality signal to the satellite carrier's designated receive facility identified at the time the station elects carriage.³⁰ Thus, a satellite carrier has the option of relocating its receive facility every three

²⁹ In support of its retrofitting argument, DirecTV proffers the declaration of David Baylor, who provides an estimate of the expense of replacing or retrofitting the set-top boxes currently used by DirecTV subscribers with new set-top boxes capable of passing through additional program-related material. Public Television points out that DirecTV could have submitted Mr. Baylor's declaration at the comment or reply comment stage of this proceeding and therefore, pursuant to Commission rule 1.429(b)(2), the Commission is not required to consider his declaration.

³⁰ See 47 C.F.R. § 76.66(g)(1).

years, coinciding with the election cycle, without incurring any local station delivery costs.³¹ Only if a carrier moves its receive facility mid-cycle is it required to bear stations' costs to transmit a good quality signal to the new receive facility location (and then only until the next election cycle). This imposes a limited burden on carriers that is consistent with the statute and protects a broadcast station's reasonable expectations of the signal delivery costs it is incurring when it elects satellite carriage.

Section 338(b) requires a station exercising its carriage rights to bear the cost of delivering a good quality signal to “the *designated* local receive facility of the satellite carrier.”³² It was well within the Commission's discretion to interpret “designated” facility as the facility for which the carrier gives a station notice *before* the station makes its carriage election. The carrier thus cannot change the “designated facility” to which the broadcaster can be held responsible for delivering its good quality signal until it comes time to make a carriage election for the next election cycle. If the carrier does make such a change mid-cycle, it is only reasonable to require it to bear the cost, since the new receive facility is not the “designated” one.

One factor that will affect a local station's decision whether or not to be carried by a satellite carrier serving its local market will be the expense of getting a good quality signal to the carrier's designated receive facility.³³ If the location of the carrier's receive facility changes mid-cycle, a broadcast station may no longer be able to afford the cost of getting a good quality signal to the relocated receive facility. Additionally, it is the carrier who controls where

³¹ *See id.* Although the first election cycle lasts for four years, subsequent election cycles will be three years in length and will run simultaneously with the cable carriage election cycle.

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

in the DMA the receive facility is located and if and when that location changes. In most cases, the carrier could wait until the start of the next election cycle to move its facility if it is concerned about bearing stations' transmission expenses. In any event, since the carriage election cycle is only three years, a carrier would have to bear these costs only for a limited period of time.

B. Only Stations Electing Carriage Pursuant To Section 338 Should Count Toward Those Required To Agree On An Alternate Or Regional Receive Facility.

SHVIA permits a satellite carrier to use a regional, rather than a local, receive facility only if half of all stations "asserting the right to carriage in the local market" agree.³⁴ As ALTV explains in its petition for reconsideration, only stations exercising must-carry rights "assert" their right to carriage, since stations carried pursuant to a retransmission consent agreement negotiate for carriage and generally get some kind of consideration in return.³⁵ Retransmission consent stations have the greatest bargaining power vis-à-vis satellite carriers and do not require statutory protection from unilateral use of a regional receive facility. Transmitting a good quality signal to a carrier's receive facility, even to a receive facility located within the station's DMA, is a significant expense for broadcasters. While retransmission consent stations can negotiate around this cost, must-carry stations cannot. Therefore, the Commission should reconsider its interpretation of which stations "assert their right to carriage"

³³ See *SHVIA Order* ¶ 58 ("We are concerned . . . that the relocation of a local receive facility may make it more difficult for some television stations to pay the costs of delivering a good quality signal.").

³⁴ 47 U.S.C. § 338(b)(1).

³⁵ See *Petition for Reconsideration by the Association of Local Television Stations, Inc.* in CS Docket No. 00-96, at 14-18 (Feb. 21, 2001).

in the market and thus are entitled to participate in approving or rejecting an alternative or regional receive facility.

IV. LOCAL STATION PACKAGING

A. Carriers Should Be Prohibited From Requiring Subscribers To Obtain A Separate Dish To Receive A Subgroup Of Local Signals.

DirecTV misinterprets the legislative history of SHVIA in arguing that it should be permitted to require subscribers to use two separate dishes to receive the full package of local channels.³⁶ When Congress adopted SHVIA, it rejected language that said subscribers could not be required to install an additional dish to receive *any* local signals; it did not, as DirecTV contends, expressly endorse the use of more than one dish to deliver subgroups of local signals.³⁷ The Commission correctly determined that a limited prohibition on requiring subscribers to obtain a separate dish to receive some local signals when other local signals are available without the separate dish was necessary to give full effect to local station carriage requirements. Otherwise, satellite carriers could structure local station packages and separate dish requirements to discourage consumers from subscribing to certain local stations, including local noncommercial stations. This would undermine Congress's intent that satellite subscribers receiving local signals over satellite receive a complete package of local stations.

B. The Commission's A La Carte Packaging Rules Would Have The Same Effect As The Prohibited Separate Dish Requirement.

Unfortunately, the Commission ignored its own rationale for prohibiting separate dishes for subgroups of local broadcast stations when it adopted a rule allowing satellite carriers

³⁶ See DirecTV Reconsideration Petition at 21-23.

³⁷ See House Conferees' Counteroffer of the Copyright Satellite Statutory License Improvement Act, Discussion Draft, at 27 (Oct. 15, 1999), *quoted in* DirecTV Reconsideration Petition at 22.

to offer local stations to consumers on an a la carte basis. Although the Commission recognized that SHVIA’s “anti-discrimination language prohibits satellite carriers from implementing pricing schemes that effectively deter subscribers from purchasing some, but not all, local television station signals,” the decision to allow carriers to offer local stations either as a package or a la carte will have precisely that effect.³⁸ Accordingly, in conjunction with affirming the prohibition on satellite carriers’ offering subgroups of local stations only to subscribers obtaining a separate dish, the Commission should rescind the rule permitting satellite carriers to create the same disincentives by offering stations in subgroup packages or on an a la carte basis.

V. CONCLUSION

The Commission should affirm the reasonable and statutorily consistent noncommercial station carriage requirements it adopted in the *SHVIA Order*, which give effect to Congress’s intent in enacting SHVIA. Moreover, to ensure that local stations are able effectively to exercise their carriage rights, the Commission should retain the good quality signal standard and separate dish prohibition and eliminate a la carte packaging of local stations. This result will effectuate congressional intent, ensure that DBS subscribers receive local programming comparable to that received by cable customers, and promote the viability of the local broadcast system.

³⁸ *SHVIA Order* ¶ 99.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2001, I caused true copies of the foregoing Joint Opposition of the Association of America's Public Television Stations, the Public Broadcasting Service, and the Corporation for Public Broadcasting to the Petition for Reconsideration of DirecTV, Inc. to be served by hand on the following:

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