

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**

**Broadcast Signal Carriage Issues**

**CS Docket No. 00-96**

**OPPOSITION TO DIRECTV, INC.'S PETITION FOR  
RECONSIDERATION FILED BY THE  
ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.**

The Association of Local Television Stations, Inc. (ALTV) hereby files the following Opposition to the Petition for Reconsideration filed by DIRECTV, Inc. in the above captioned matter. ALTV is a national trade association representing local stations across the United States. Our members include numerous stations affiliated with the emerging television networks such as Fox, UPN, WB, PAX and traditional independent stations. ALTV has been actively involved throughout this proceeding. There will be a direct, negative impact on our member stations if the FCC revises its order as suggested by DIRECTV.

**I. SATELLITE CARRIERS SHOULD CARRY ALL PROGRAM  
RELATED MATERIAL CONTAINED IN A LOCAL STATION'S  
VERTICAL BLANKING INTERVAL (VBI)**

DIRECTV wants to strip out all "program related material" that is contained in a broadcast station's vertical blanking interval (VBI) (other than the information contained on line 21). The issue was raised and resolved in the *Report and Order*.

Based on the arguments presented, we find that it is technically feasible for satellite carriers to carry the current program related material contained in a television station's VBI. DirecTV has not provided detailed evidence to support its claim that it will incur financial hardship if it were required to carry such program content. We also find it significant that LTVS, a future satellite carrier, admits that it would have no difficulty carrying VBI information. With regard to Bell South's argument, there could be new kinds of program related data in the VBI that would cause the satellite carrier to incur inordinate expenses and to change or add a substantial amount of equipment. We will address such issues on a case-by-case basis in the future.<sup>1</sup>

In its Petition, DIRECTV asserts that, "In order to accommodate additional data in the VBI, DIRECTV would have no option but to replace each set top box in circulation today for an installed subscriber base of almost ten million DBS costumers."<sup>2</sup> It states further that it would need to replace "mirrored set top boxes (additional boxes which service a particular customer account), set top boxes currently in the distribution pipeline, and those set top boxes at the manufacturers' premises."<sup>3</sup>

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<sup>1</sup>*Report and Order, Implementation of the Satellite Home Viewer Improvement Act of 1999*, CS Docket Nos. 00-96, 99-363, FCC 00-147, (released November 30, 2000) at para.108. (Hereinafter sited as *Report and Order*.)

<sup>2</sup>Petition for Reconsideration of DIRECTV, INC, Technical Declaration of David Baylor, at 2, February 22, 2001.

<sup>3</sup>*Id.*

But for the alleged set top box problem, DIRECTV provides no evidence that there would be a financial hardship or technical issue with any other portion of its video stream. Apparently, the concern is confined to a legacy problem for existing set top boxes. Moreover, DIRECTV concedes that this is not a problem going forward. Accordingly, any new set top box should be capable of decoding all of the program related information contained in a station's VBI.

Even with respect to existing boxes, DIRECTV's analysis raises some significant questions. It is inconceivable that boxes designed to 1992 standards still comprise the majority of DIRECTV's set top box universe. In other contexts, DIRECTV trumpets the new improvements and features of its set top boxes. For example, DIRECTV offers several different set top boxes to correspond with its various service packages. It offers five RCA receiver models: 1) DTC 100, 2) DRD420RE, 3) DRD440RE, 4) DRD480RE, and 5) DWD490RE.<sup>4</sup> According to DIRECTV, "[E]very DIRECTV receiver gives you access to more than 225 digital-quality channels plus a customizable on-screen program guide with a built-in "Locks and Limits" feature for rating and spending control."<sup>5</sup> Indeed, On June 12, 2000, DIRECTV announced the arrival of the "new" RCA DS4290RE which was the result of a collaboration among DIRECTV, Microsoft and Thomson.

The all new RCA DS4290RE system with Ultimate TV and DIRECTV service is the first and only direct broadcast satellite (DBS) television platform that

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<sup>4</sup>DIRECTV web site, <http://www.directv.com/about/abouttablepages/0,1271,77,00.html>. (visited April 9, 2001)

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

integrates DIRECTV programming, digital video recording, interactive television and Internet access in one complete package. This package will allow viewers to watch two shows on DIRECTV at the same time (picture-in-picture), watch one show while recording another, and record over 30 hours of digital quality programming for later viewing on their own "personal line-up." Viewers can choose from more than 500 hours per week of interactive television, respond to promotions with the click of a remote, and stay in touch with family and friends via e-mail....

The receiver... incorporates two DIRECTV satellite tuners and a hard disk drive for digital video recording, enabling consumers to watch or record two programs simultaneously by using the built-in picture-in-picture capability. For the first time, viewers can also watch one live digital program while recording another.

Additional advantages include digital audio output capability, a standard V.90-capable modem for fast Internet communications, and two USB ports that are planned to support, in addition to printers, advanced peripherals including keyboards and broadband network interfaces such as external DSL modems.<sup>6</sup>

Of course the receivers available on DIRECTV services are not limited to RCA models.

A subscriber can use a Sony SAT-T60, which integrates DIRECTV service with *Tivo*, which lets subscribers record up to 35 hours of digital recording without videotape. It also allows customers to pause, rewind and fast forward live DIRECTV service.<sup>7</sup> In 2000, Philips introduced two separate models of the DIRECTV system receiver.

The standalone DIRECTV system receivers from Philips will provide access to more than 210 digital-quality channels as well as local channels, and will also include features such a multiple satellite support, parental control and electronic program guide, digital-quality video and audio and personal favorite lists.<sup>8</sup>

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<sup>6</sup>DIRECTV Press Release, November 2, 2000, DIRECTV web site, <http://www.directv.com/press/pressdel/0,1112,330,00.html>. (visited April 9, 2001)

<sup>7</sup>DIRECTV Press Release, April 11, 2000, DIRECTV web site, <http://www.directv.com/press/pressdel/0,1112,338,00.html>. (visited April 9, 2001)

<sup>8</sup>*Id.*

It is difficult to understand why all of these receivers, with their advanced capabilities, are unable to decode information contained on a local television station's vertical blanking interval. ALTV realizes there is no vertical blanking interval with digital transmission. A digital receiver must take the information from the vertical blanking interval, repackage it in a digital form, and send it along with other information packets that contain the main voice and video information. Given the advanced features of these set top boxes, it is difficult to believe that many of these existing receivers are unable to decode program related information on a station's VBI. Likewise it is difficult to believe that all of these advanced programable digital receivers, many of which were introduced in the past few years, were built to meet 1992 standards.<sup>9</sup>

The alleged \$2.8 billion replacement cost assumes that a satellite operator would be required to *replace* all of its subscribers' boxes. However, given the advanced capabilities of many current set top boxes, one can certainly question whether there is a need to replace the actual box. The inability to receive VBI information may simply be a software problem that can be resolved by reprogramming from a central location. Alternatively, instead of replacing an entire box, it may be that DIRECTV may simply have to install a new chip in its current boxes.

From the Commission's perspective the issue is "technical feasibility." According to the FCC, a requirement is "technically feasible" if only nominal costs, additions or changes of

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<sup>9</sup>Given that the satellite industry and DIRECTV planned to provide local-into-local service some years ago, one would presume that the set top boxes would be designed to accommodate all portions of a local television station's signal, including material in the VBI. Indeed, the statute was passed in 1999 and any set top boxes in the manufacturing pipeline at that time should have been designed to decode information from a station's VBI.

equipment are necessary.”<sup>10</sup> At the very least, DIRECTV has admitted that it is technically feasible to carry all VBI related material in newly designed boxes. As for many existing, but nonetheless advanced boxes, the question is whether these boxes simply need to be reprogrammed to accommodate VBI information.

DIRECTV’s position is interesting given that it is able to carry VBI information from stations that have secured carriage through the retransmission consent process. For example, ALTV understands that DIRECTV is now delivering Automated Measurement Lineups (AMOL) data which is carried on Line 22 (not line 21) of a station’s VBI. If it is technically feasible to carry program related information for retransmission consent stations, then it is equally feasible to carry program related information for stations requesting carriage through Section 338.

Finally, the *Report and Order* adopted a specific waiver procedure to address these issues. Given the different types of boxes that are now in the hands of DIRECTV subscribers, and ability of these advanced boxes to meet the new standards, we do not believe DIRECTV should be given a blanket exemption from the rule. A blanket exemption would eliminate any incentive to “retrofit” existing set top boxes, and may create a disincentive to manufacture new set top boxes that can decode material in the VBI. As a general matter DIRECTV should be required to carry all program related material in the VBI. If there is a particular problem with a specific, older, set top box model, then the FCC should address the problem on a “case by case basis.”<sup>11</sup> It would be inappropriate to grant DIRECTV a blanket exemption from the rules.

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<sup>10</sup>*Report and Order* at para. 106.

<sup>11</sup>*Report and Order* at para. 108.

## II. DIRECTV'S REQUEST FOR A TV-1 QUALITY SIGNAL SHOULD BE REJECTED

DIRECTV restates its claim for a GR-388Core, TVI signal quality standard. In the *Report and Order*, the FCC expressly rejected this position:

We decline to adopt DirecTV's good quality signal proposals for several reasons. First we believe that the TV1 standard is too rigid a construct. Specifically, a signal-to-noise ratio of +67 cannot be easily implemented by most television broadcast stations. Broadcasters do not have to meet such exacting ratios and levels when delivering signals to a cable operator's headend to qualify for carriage. Moreover, as NAB points out, satellite carriers such as Echostar, have been retransmitting local television signals that they have received over-the-air without much concern about signal quality. We also note that it would be prohibitively expensive for a small television station to lease a dedicated TVI circuit from a telecommunications carrier. It is not our intention to impose inordinate costs on small television stations that would prevent them from being carried by a satellite carrier.<sup>12</sup>

DIRECTV presents no new evidence on reconsideration. Moreover, the legislative history instructs the Commission to enact regulations that are similar to those applied to the cable industry.<sup>13</sup> As the Commission observed, Section 614(h) requires a broadcast station to provide a signal level of -45dBm for UHF signal and -49 dBm for VHF to a cable head end. This is more than a sufficient signal strength to provide a top quality signal to either a cable headend or a

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<sup>12</sup>*Report and Order* at para 63.

<sup>13</sup>See Joint Explanatory Statement of the Committee of Conference, 145 CONG. REC. S14708 (daily ed. November 17, 1999) (hereinafter cited as "Conf. Rep").

satellite receive facility.<sup>14</sup> There is simply no need to increase burdens on local television stations and force them to pay for a TV 1 fiber line to the local receive facility.

Indeed, a local station has the strongest economic interest in making sure it provides a high quality picture on the satellite platform. The station must compete with other local stations as well as hundreds of other programming channels. If the local station is satisfied with providing a -45dBm or -49 dBm signal to the receive facility, the satellite carrier should have no cause to complain.

DIRECTV's demand for a TV-1 line is nothing more than an attempt to increase the costs of local carriage. Contrary to DIRECTV's claim, the costs of a TV-1 line can be significant. The FCC was correct in worrying about whether all local television stations could afford to provide a TV1 line to a carrier's local receive facility. Indeed, the legislative history specifically references concern for these smaller stations. As the Conference Committee noted:

Providing the proposed license on a market-by-market basis furthers both goals by preventing satellite carriers from choosing to carry only certain stations and effectively preventing many other local broadcasters from reaching potential viewers in their service areas. The Conference Committee is concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals.<sup>15</sup>

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<sup>14</sup>For example, EchoStar uses off-air television signals at its receive sites. In these situations, EchoStar, "employs an off-air signal for local-into-local service, it deploys a combination of industrial antenna systems and ghost cancellation equipment, filters, audio processors and TV-1 receive systems to ensure maximum signal quality." Letter from David K. Moskowitz to Ms. Magalie Roman Salas in CS Docket No. 00-96, January 19, 2001 at 2.

<sup>15</sup>Conf. Rep. S14711.

Thus, Congress expressed deep concern about the small emerging network and non-network stations. Satellite carriers should not be able to accomplish their objective -- non-carriage -- by imposing requirements that will make it economically difficult or impossible for a smaller television station to assert its carriage rights and gain access to the platform.

**III. CONSUMERS SHOULD NOT BE FORCED  
TO PURCHASE EXTRA EQUIPMENT TO GAIN  
ACCESS TO SOME LOCAL TELEVISION STATIONS.**

The Commission found that satellite carriers may not discriminate against some stations by forcing consumers to purchase additional receiving equipment in order to access these local signals. The FCC concluded:

We find that the language of Section 338(d) covers the additional equipment concerns raised by the parties and bars satellite carriers from requiring subscribers to purchase additional equipment when television stations from one market are segregated and carried on separate satellites. However, we are not prohibiting a satellite carrier from requiring a subscriber to pay for an additional dish in order to receive all television stations from a single market. For example, DirecTV may require an additional dish to receive all television stations from the Baltimore market, but it may not require subscribers to purchase the same to receive some Baltimore stations where the others are available using existing equipment.<sup>16</sup>

We believe the FCC interpreted Section 338 correctly. We urge the FCC to reject DIRECTV's attempt to revise the Commission's conclusions.

DIRECTV would have the FCC establish a policy that permits satellite carriers to force consumers to purchase two separate dishes and/or receivers in order to receive *all* local signals. DIRECTV's complaint is not that it lacks the ability to charge extra for equipment in order for a consumer to receive *all* local television stations. Clearly, the FCC's Order gives DIRECTV such

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<sup>16</sup>*Report and Order* at para. 101.

flexibility. However, consistent with Section 338 of the statute, the FCC will not allow DIRECTV to discriminate against some local television stations by requiring consumers to pay extra for additional equipment to obtain access to some of these local stations.

The FCC's construction of Section 338 is fully consistent with the letter and spirit of the legislation. As noted above, Congress was primarily concerned with the discriminatory effect of carrying only the major network stations.<sup>17</sup> If enacted, DIRECTV's plan would permit a satellite carrier to package some local signals with hundreds of other channels, while placing other local signals on a different satellite and forcing consumers to purchase extra equipment to access these signals. Such a result is clearly contrary to the express non-discrimination language in section 338 as well as the legislation's intent.

To support its claim, DIRECTV references a so-called working "Discussion Draft" that appears to have been proffered during the conference. This so-called "Discussion Draft" should have no bearing on legislative interpretation. The language referenced therein was not adopted by either the House or the Senate version of the bill. As a "Discussion Draft" there is no evidence that any member of Congress voted on this language. Thus, it is impossible to infer any Congressional intent from the removal of such language in the final bill.

Even if the "Discussion Draft" has some relevance to Congressional intent, the purported language referenced by DIRECTV does not prove its point. According to DIRECTV, the "Discussion Draft" bill read as follows:

...[E]xcept that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the station's local market on

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<sup>17</sup>Conf. Rep. at S14711.

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.<sup>18</sup> (Emphasis supplied)

DIRECTV argues that the language italicized above would have prohibited satellite carriers from forcing consumers to purchase separate equipment in order to receive some local television stations as part of a local-into-local service. Because this language was eliminated, DIRECTV reasons that satellite providers may now engage in such activity.

DIRECTV's interpretation of this language is incorrect. The highlighted language never addressed the situation where a satellite operator would place some local signals on one satellite and other local stations on a different satellite, thereby requiring consumers to purchase two sets of receiving equipment in order to receive *all* local signals. Eliminating this language cannot be construed to permit such activity now.

To the contrary, the referenced language would have prohibited satellite operators from requiring consumers to purchase *any* additional equipment to access local-into-local stations. In short, had this provision been adopted, satellite carriers would have been required to provide all local-into-local signals over then-existing consumer equipment. Eliminating this provision gave satellite operators the freedom to require a subscriber to pay for an additional dish in order to receive any and *all* television stations from a single market. On this point, the FCC's interpretation of Section 338 is correct. Elimination of this language merely allowed satellite

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<sup>18</sup>DirecTV Petition at 22, *citing* House Conferees' Counteroffer of the Copyright Satellite Statutory License Improvement Act, Discussion draft, at 27 (October 15, 1999)

carriers to charge for additional equipment to receive *all* of the local signals. Deleting this language cannot be construed to permit satellite carriers to discriminate against some local signals by requiring consumers to purchase additional equipment to receive some, but not all local signals.

This interpretation is fully consistent with the letter and spirit of the statute. As we have noted elsewhere, Section 338 requires satellite carriers to provide *access to these signals at a nondiscriminatory price*. The requirement appears in both the enacted version of the statute as well as the so-called "Discussion Draft" referenced by DIRECTV. The nondiscrimination prohibition has not changed.

DIRECTV's interpretation of the legislative history would eviscerate the statute's non-discrimination safeguards. For example, a satellite carrier would be permitted to package hundreds of programming channels with the four major network stations. However, consumers seeking to access emerging network stations, independent stations, and local public stations would be required to purchase an additional dish and receiver. Such a result is the epitome of price discrimination, and is clearly prohibited by section 338. DIRECTV's approach is the antithesis of what Congress intended. Congress stated that it was "[L]ess sanguine that subscribers who receive network signals and hundreds of other programming choices from their satellite carrier will undertake such trouble and expense to obtain over-the-air signals from independent broadcast stations." This is precisely what will happen if DIRECTV's proposal is adopted. It is unlikely that consumers will purchase additional satellite equipment simply to

access some, but not all, local television stations. DirecTV's proposal undermines the very basis for the statute and should be rejected.<sup>19</sup>

#### **IV. SATELLITE COMPANIES SHOULD BEAR THE COST OF PROVIDING A SIGNAL TO A RECEIVE SITE THAT IS RELOCATED DURING AN ELECTION CYCLE**

The FCC's decision to require satellite carriers to bear the cost of providing signals to relocated receive sites should not be revised. ALTV does not dispute the obligation to bear the costs of providing a signal to the satellite carrier's designated local receive facility or alternative receive facility (provided 50% of the stations asserting their right to be carried agree.)<sup>20</sup>

When a receive facility is changed during the election cycle, however, the cost of providing a signal to the new facility should be borne by the satellite operator. The issue here is the apportionment of risks and costs. It may be reasonable for a local station asserting carriage rights to be responsible for getting its signal to the initial receive site. At this point in time, the station can properly calculate the costs involved in its decision to assert its rights.

If the receive site is moved during the election cycle, however, a local station may be forced to incur additional, significant and *unforeseen* costs. Indeed, these additional costs could

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<sup>19</sup>From a technical standpoint, there appears to be no reason for DIRECTV to place consumers in such a position. Indeed, DIRECTV trumpets technology that gives consumers the ability to access all of its satellites. Its multi-satellite 18 x 24 inch oval dish is specially designed to receive signals from all of DIRECTV current satellite locations. Moreover, it has introduced set top receivers that are capable of receiving signals from different satellites. See DIRECTV web site <http://www.directv.com/about/abouttablepages/0,1271,77,00.html> (visited April 9, 2001).

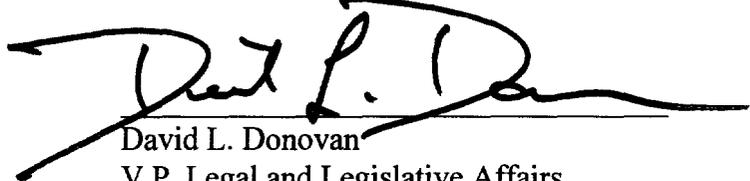
<sup>20</sup>As we stated in our Petition for Reconsideration, ALTV believes that only those stations asserting their signal carriage rights should be counted when calculating whether 50% of the stations in the local market agree to the change.

prevent a station from getting its signal to the new receive facility. Such a result is contrary to the policies that underpin the statute. Moreover, the decision to relocate a receive site rests with the satellite carrier, not the television station. Presumably, a DBS service would not attempt to relocate a receive site unless it provided some benefit (or reduce costs) to the satellite provider. In these situations, it is only fair that the satellite providers bear the costs of providing a signal to the new receive site.

## **V. CONCLUSION**

ALTV respectfully requests that the FCC deny DIRECTV's Petition for Reconsideration. There are no legal or public policy reasons for permitting satellite carriers to strip out program related material in a local station's vertical blanking interval. Also, local stations should not be required to provide a TV-1 signal to a carrier's local receive site. The current standards are more than sufficient to provide a good quality signal to a satellite carrier's receive site. Moreover, if a satellite carrier decides to move its receive site during the election period, the satellite carrier should bear the cost of getting the broadcaster's signal to the new receive facility. Finally, under no circumstances should consumers be forced to purchase additional equipment in order to access some local-into-local broadcast television stations. DIRECTV's approach would lead to rampant discrimination, and is contrary to the statute.

Respectfully submitted:  
**ASSOCIATION OF LOCAL  
TELEVISION STATIONS, INC.**

A handwritten signature in black ink, appearing to read "David L. Donovan", written over a horizontal line.

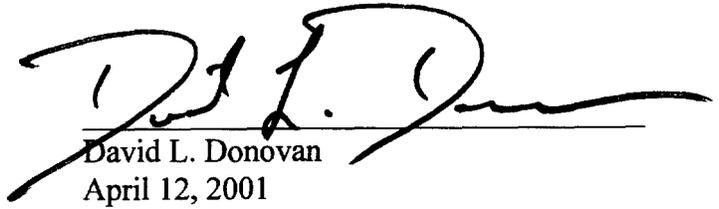
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April 12, 2001

**Certificate of Service**

I hereby certify that on this 12<sup>th</sup> day of April 2001, I caused a copy of the foregoing Opposition of ALTV to DIRECTV'S Petition for Reconsideration to be served by U.S. Mail, first class postage prepaid to counsel for DIRECTV:

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April 12, 2001