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

APR 12 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**OPPOSITION OF DIRECTV, INC.**

Pursuant to Section 1.429 of the Commission's rules, DIRECTV, Inc. ("DIRECTV")<sup>1</sup> hereby opposes the Petition for Reconsideration ("ALTV Petition") filed by the Association of Local Television Stations, Inc. ("ALTV") of the Report and Order adopted by the Commission in the above-captioned proceeding (the "Order").<sup>2</sup> Although there are various issues surrounding the Order that DIRECTV believes should be reviewed by the Commission,<sup>3</sup> the issues raised by ALTV are not among them. As set forth below, the ALTV Petition should be denied.

**I. THE COMMISSION HAS CORRECTLY CONCLUDED THAT THE SHVIA DOES NOT REQUIRE SATELLITE CARRIERS TO SELL ALL LOCAL TELEVISION SIGNALS IN A SINGLE PACKAGE TO SUBSCRIBERS**

New Section 338(d) of the Communications Act states:

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

<sup>1</sup> 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.

<sup>2</sup> In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues, *Report and Order*, CS Docket Nos. 00-96, 99-363, FCC No. 00-417 (rel. Nov. 30, 2000).

<sup>3</sup> See DIRECTV, Inc., Petition for Reconsideration, CS Docket No. 00-96 (Feb. 22, 2001) (pending).

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retransmit the signal of the local television broadcast stations to subscribers in the station's local market on contiguous channels 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>4</sup>

ALTV asks the Commission to reconsider its implementation of the SHVIA's satellite carrier channel positioning requirements, arguing that the Commission erred in declining to extrapolate from the highlighted language above a requirement that satellite carriers "offer local stations as a single unitary package."<sup>5</sup> ALTV, however, acknowledges that the Commission expressly considered and rejected this precise argument in the Order, finding:

We do not believe that the statute requires satellite carriers to sell all local television stations as one package to subscribers. As EchoStar points out, Congress did not intend to establish a basic service tier-type requirement when it implemented Section 338. Nor did Congress explicitly prohibit the sale of local signals on an a la carte basis. Rather, Section 338'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. Thus, we find that a satellite carrier must offer local television signals, as a package or a la carte, at comparable rates.<sup>6</sup>

The Commission has correctly interpreted the plain language of Section 338(d) on this point. And ALTV provides no new evidence or arguments in its petition to suggest that the Commission's conclusion should be revisited.

First, ALTV's petition fails to trace its proposed "unitary package" rule to any express textual requirement of the SHVIA. The language that ALTV cites as the statutory basis for such a rule requires only that a satellite carrier provide access to a local television station's signal "at a

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<sup>4</sup> 47 U.S.C. § 338(f)(1) (emphasis supplied).

<sup>5</sup> ALTV Petition at 4.

<sup>6</sup> Order at ¶ 99.

nondiscriminatory price" and access "in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu." As the Commission correctly recognized, neither of these requirements prohibits or even speaks to the manner or extent to which local television signals must be offered to consumers, *e.g.*, in one or multiple packages, or on an *a la carte* basis. Congress certainly could have created such an explicit requirement if it wished to impose one. It did not do so.

Second, the evidence of Congressional intent with respect to channel positioning issues cuts against the extreme rule that ALTV has proposed. For example, ALTV completely ignores the import of the express language of Section 338 that states that satellite carriers are *not* required to provide placement of local television signals "on any particular channel number or to provide the signals in any particular order" -- *i.e.*, language indicating Congress's clear intent to limit the micromanagement of satellite carrier decisions as to the best and most consumer-friendly way to package local channels.

Indeed, it appears that ALTV has fundamentally misperceived the purpose of the SHVIA and its basic requirements. ALTV states:

[A]s a general policy matter, the FCC was instructed to create a regulatory structure that was as close as possible to the model applied to cable. This policy perspective was important for two reasons: 1) it gives consumers similar choices and, 2) it places satellite systems in a similar competitive environment.

Unfortunately, the FCC ignored this policy perspective when it permitted a la carte pricing of local signals that are carried as part of local-into-local satellite service. The 1992 Cable Act does not permit cable systems to offer local stations on an a la carte basis. Moreover, cable systems are not permitted to mix and match packages of local signals. Accordingly, the SHVIA Order does not place satellite systems in a comparable competitive position with

cable, and does not provide consumers with the same range of choice in local programming.<sup>7</sup>

ALTV's position, however, is ill-considered.

First, ALTV is flatly wrong in suggesting that Congress intended for identical regulatory requirements to be imposed on satellite carriers and cable operators. As the Commission has acknowledged in this proceeding, there are "important distinctions between satellite carriers and cable operators."<sup>8</sup> For example, the market conditions that have induced Congress and the courts to treat cable operators as "bottleneck" monopolists simply do not apply to satellite carriers. Indeed, for DBS providers to achieve a "similar competitive position" to dominant cable operators, as ALTV urges, the Commission should decline to intrude into their competitive decisions wherever possible, and provide them with maximum flexibility to meet the SHVIA's statutory requirements.

Second, in declining to mandate a "unitary package" of local channels, the Commission is promoting an *increase* in the range of choice in local programming, not decreasing the range of choice as ALTV suggests. The public will be well served by allowing the multichannel marketplace and satellite carrier business decisions to govern how local signals are packaged. It may be that a unitary package is indeed the best way to provide satellite carrier subscribers with local signals, as ALTV suggests. But it may be that offering local signals *a la carte* is preferable. The point is that the Commission was wise in to recognize here that its role is not to handicap the types of local signal packaging or channel positioning that will be the most effective in serving consumers. The Order appears to recognize that, apart from the

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<sup>7</sup> ALTV Petition at 12.

<sup>8</sup> Must Carry Notice, CS Docket No. 00-96, at ¶ 7.

particularized nondiscrimination safeguards required by Congress in Section 338, there not only is no requirement for the overbroad rule that ALTV advocates, such a rule could affirmatively harm MVPD competition.

ALTV denies that it is requesting that "satellite providers be subject to basic tier type regulation."<sup>9</sup> But that is essentially what ALTV argued in its original Comments in this proceeding,<sup>10</sup> and what ALTV in fact advocates here. The SHVIA, however, does not provide for any form of rate regulation of satellite carriers, and the Commission correctly rejected ALTV's proposed "unitary package" rule in the Order. It should do so again here.

## **II. THE COMMISSION HAS CORRECTLY INTERPRETED SECTION 338(b)(1) REGARDING THE STATIONS WHICH MUST CONSENT TO THE ESTABLISHMENT OF ALTERNATIVE RECEIVE FACILITIES**

The SHVIA requires a television station asserting its "right to carriage" under Section 338(a) to bear the costs associated with the delivery of a good quality signal to the satellite carrier's designated local receive facility or to "another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market."<sup>11</sup> The Commission has interpreted this language to "find that an alternative receive facility may be established if 50% or more of those stations in a particular market consent to such a site," and that the calculation includes "all stations, whether they elect mandatory carriage or retransmission consent."<sup>12</sup>

ALTV challenges this latter finding, and instead argues that the calculation should be based only

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<sup>9</sup> ALTV Petition at 13.

<sup>10</sup> ALTV Comments at 18 (stating that a "single-package requirement closely resembles the requirement that cable systems carry all broadcast stations on the basic tier," and observing that "[l]ike the basic tier requirement, it provides for nondiscriminatory carriage of local television stations").

<sup>11</sup> 47 U.S.C. § 338(b)(1).

<sup>12</sup> Order at ¶ 51.

on the number of local stations electing mandatory carriage, as opposed to including the local stations that elect to proceed via retransmission consent.

Once again, ALTV here simply rehashes its position on an issue that the Commission expressly addressed in the Order:

We disagree . . . with ALTV, which asserts that a non-local receive facility may be established if half the local stations electing mandatory carriage, rather than retransmission consent, agree to the alternate site. Just as we decide that a satellite carrier should include both retransmission consent and mandatory carriage local stations on the same designated local receive facility, we do not distinguish between retransmission consent and mandatory carriage in the determination of an acceptable alternative receive facility. . . . All stations 'asserting a right to carriage,' either through retransmission consent or mandatory carriage, may participate in the consideration of whether an alternative receive facility is acceptable.<sup>13</sup>

The ALTV Petition offers no persuasive rebuttal to this reasoning. The Commission has interpreted a local station's assertion of the right to satellite carriage as encompassing both must carry and retransmission consent elections by the station. It is unarguable that local television stations under both the cable and SHVIA local broadcast signal carriage regimes are give a choice of carriage rights via the must carry/retransmission consent election. It therefore is logical to characterize both must carry and retransmission consent stations as stations that have "assert[ed] a right to carriage" for purposes of Section 338. ALTV does not explain why this reasoning fails as a reasonable construction of the statutory language.

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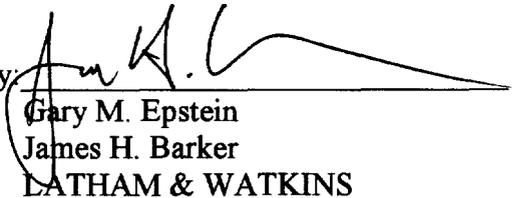
<sup>13</sup> *Id.* at ¶¶ 51-52.

### III. CONCLUSION

ALTV has simply re-argued the same position on two discrete issues that the Commission expressly considered and rejected in the Order. ALTV has presented no persuasive legal or policy reason why the Commission's conclusions on these two issues should be overturned. Accordingly, the ALTV Petition should be denied.

Respectfully submitted,

DIRECTV, INC.

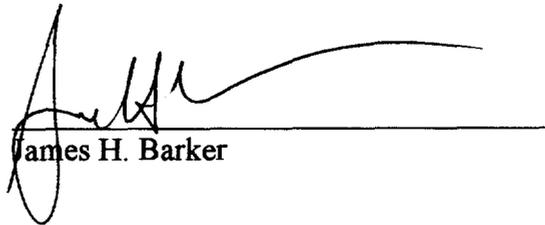
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Dated: April 12, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that this 12th day of April 2001, a true and correct copy of the foregoing Opposition of DIRECTV, Inc. was served via hand delivery upon:

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