

**Before the
Federal Communications Commission
Washington, D.C**

RECEIVED

APR 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

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

**Reply of the
Association of Local Television Stations, Inc.
To Opposition filed by DirecTV, Inc.**

The Association of Local Television Stations Inc., hereby files the following reply to the Opposition filed by DirectTV in the above captioned proceeding. As stated in our Petition for Reconsideration, ALTV generally supports the Commission's decision. Nonetheless, two aspects of the decision should be revised. First, the Commission's decision to permit satellite carriers to market local-into-local signals in various packages or on an *a la carte* basis conflicts with the intent of Section 338 and runs counter to the express provisions of the statute. Second, when obtaining permission to move a local receive facility, the statute expressly requires carriers to secure approval of 50% of those stations asserting their rights to carriage under the statute. Unfortunately, the Commission interpreted the statute incorrectly and allowed all stations, not just those asserting a right to carriage, to participate in this decision.

No. of Copies rec'd _____
List A B C D E

ATV

ALTV has received near unanimous support for the revisions it is seeking to the Commission's Report and Order.¹ As expected, only DirecTV opposes the revisions suggested by ALTV. A careful examination of DirecTV's arguments reveals that they are neither compelling nor persuasive.

The FCC's Decision to Permit the Sale of Local-Into-Local Stations on an *A La Carte* Basis is Inconsistent with Section 338.

In our Petition for Reconsideration we observed that pursuant to Section 338, stations offered as part of a local-into-local service, may not be sold on an *a la carte* basis to consumers. Similarly, satellite carriers are not permitted to package some local stations together and offer others as part of a different package or on an *a la carte* basis. To this end we stated that, consistent with the intent and language of the statute, stations included as part of a local-into-local service should be sold as a single, unitary package.

The primary objective of Section 338 is "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."² Specifically

¹ See, Joint Opposition of the Association of America's Public Television Stations et al (opposes *a la carte* marketing), National Association of Broadcasters Statement in Support of ALTV Petition for Reconsideration, Comments of Paxson Communications Corporation (opposes *a la carte* marketing), Opposition of the Network Affiliated Stations Alliance (opposes *a la carte* marketing).

² Joint Explanatory Statement of the Committee of Conference on HR 1554, 106th Cong, 145 CONG REC, S14708, 14711 (daily ed. November 17, 1999) (hereinafter cited as "Conf. Rep.")

Congress was concerned that consumers not simply retain access to the major network stations. To the contrary, Congress was concerned that subscribers who receive network signals and hundreds of other programming choices from their satellite carrier will not undertake the trouble and expense to obtain over-the-air signals from independent broadcast stations.³ The remedy for this situation was to grant those satellite carriers providing a local-into-local service a compulsory license to carry *all* of the local stations in a market. In return, satellite carriers, who voluntarily chose to use the compulsory license to provide a local-into-local service, would be required to include *all* local stations requesting to be included in this service.

The packaging and *a la carte* marketing regime envisioned by the Commission's Report and Order is inconsistent with this statutory regime. Indeed, it will permit satellite carriers to eviscerate the statute's objective through a variety of marketing plans.

In opposing our Petition for Reconsideration, DirecTV chooses to ignore both the plain language and intent of the statute. Its primary argument is that the statute does not expressly call for local stations to be sold as a unitary package. DirecTV misconstrues the law and the policies that underpin Section 338.

³ Id.

It is clear that the statute in no way prohibits the FCC from enacting a rule in which stations included as part of a carrier's local-into-local service are sold as a unitary package. DirecTV's call for express language in the statute is largely irrelevant. The Commission certainly has the authority to enact rules which fill in the gaps, provided those rules are consistent with the language and underlying purpose of the statute. The question is which policy more accurately reflects the intent of Congress. In the instant case, the enactment of a unitary package approach is far more consistent with the statute's objective than the *a la carte* plan fostered by DirecTV and the Commission.

DirecTV refers to the fact that satellite carriers are not required to place local signals on a particular channel number or in a particular order. It infers from this language that Congress expressed its intent not to micro-manage a satellite carrier's decisions. Of course, a rule that requires local signals to be marketed as a unitary package does not require satellite carriers to place local stations on a particular channel number or in a particular position. The channel positioning provisions relied on by DirecTV are not implicated by a unitary package rule. To the extent such language is relevant, the Commission should focus on the contiguous channel requirement contained in Section 338. The concept of contiguous channel placement indicates that Congress intended that local stations would be grouped and sold together as a unitary package. Indeed, the ability to sell local signals as single *a la carte* offerings would seem to undermine the

“contiguous” channel provisions. Moreover, at the time the statute was enacted, satellite carriers providing local-into-local service sold the service as a single package. Congress clearly contemplated that this model would be used in the future.

DirecTV argues that by not adopting a unitary package requirement the FCC is promoting an increase in “choice.” DirecTV’s approach contradicts the policy that underpins the statute. Congress was concerned that unless *all* local stations in a market had an opportunity to be carried on a satellite platform, stations not affiliated with the major networks would be harmed. By creating a “market by market” compulsory license and carriage regime, Congress sought to ensure that those stations not affiliated with the major networks would not be damaged due to lack of carriage. The objective was to increase the range of choices that are available to both satellite subscribers and non-subscribers. DirecTV’s approach would decrease choice by eventually reducing the number of over-the-air television options in the market.

In its opposition DirecTV restates the assertion that a unitary package rule improperly creates a basic tier for satellite carriers. DirecTV is wrong. As the NAB’s statement in support of our Petition demonstrates, requiring that local stations be sold as a unitary package does not resemble the basic tier requirement that is applicable to cable systems. First, unlike cable, satellite providers may

choose not to provide any local-into-local service, thereby negating any carriage requirements. Second, unlike cable's buy through requirement, a unitary package for local-into-local signals does not require that consumers buy this package in order to access other satellite programs. Third, satellite carriers are not required to offer the local package on a standalone basis. They can combine this local-into-local package with other satellite programming. Fourth, a unitary package approach in no way regulates the price a satellite carrier can charge for the package. There is no rate regulation.

Finally, DirecTV fails to address the statutory obligations that satellite carriers may not discriminate with respect to price and manner of carriage. In this regard, the statute is highly specific. Nonetheless, the FCC's order rewrites the statute permitting stations to be sold in separate packages or on an *a la carte* basis so long as the rates are "comparable." Neither DirecTV nor the FCC can cite to any authority that would support such a complete re-writing of the statute.

**Only Stations Asserting Their Carriage Rights Under
Section 338 May Vote to Approving a Non DMA Receive Facility.**

DirecTV completely ignores the statutory requirement that only those asserting carriage rights under Section 338 may vote to approve an out-of-market receive facility. As we observed in our Petition, stations opting for retransmission consent are not authorized to vote under the terms of the statute. DirecTV merely

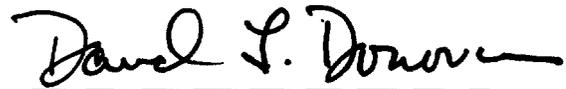
states that one may characterize both must carry and retransmission consent stations as “asserting” a right to be carried. DirecTV however provides no analysis for such a creative interpretation of the statute. While the statute gives all stations the ability to opt for either must-carry or retransmission consent, once a station selects retransmission consent it gives up its ability to assert the right to be carried. If retransmission consent negotiations fail, it has no carriage rights at all. Indeed, as we observed in our Petition, with retransmission consent a station is asserting its right “not to be carried without permission.” Accordingly, only those stations that have elected carriage rights – and not retransmission consent – should be counted when approving an out-of-market receive site.

Conclusion

ALTV urges the Commission to revise its decision with respect to 1) *a la carte* pricing and packaging, and 2) permitting retransmission consent stations to vote on approving out-of-market receive sites. Such revisions are fully consistent with both the language and legislative history of Section 338. DirecTV provides little, if any, rationale for objecting to the modifications presented in our Petition for Reconsideration. Absent these changes, the FCC’s rules will run counter to the letter and spirit of the Satellite Home Viewer Improvement Act.

Respectfully submitted:

ASSOCIATION OF LOCAL
TELEVISION STATIONS, INC.

A handwritten signature in black ink that reads "David L. Donovan". The signature is written in a cursive style with a horizontal line underneath it.

David L. Donovan
V.P. Legal & Legislative Affairs
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036

April 23, 2001

Certificate of Service

I, David L. Donovan, hereby certify that on April 23, 2001, the above captioned Reply to Opposition of DirecTV, Inc., was served via first class mail, postage prepaid, or in hand to:

James H. Barker, Esq.
Latham & Watkins
1001 Pennsylvania Avenue
Suite 1300
Washington, DC 20004-2505

Jonathan Blake
Jennifer Johnson
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004

Marilyn Mohran-Gillis
VP Policy and Legal Affairs
Association of America's Public Television Stations
1350 Connecticut Avenue, Suite 200
Washington, DC 20036

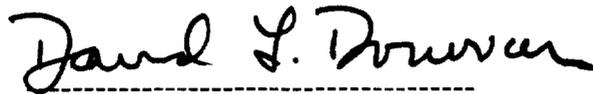
Kathleen Cox
Sr. VP, General Counsel
Corporation for Public Broadcasting
401 9th Street, NW
Washington, DC 20004

Gregory Ferenbach
Sr. VP and General Counsel
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

Wade Hargrove
David Kushner
Brooks, Pierce, McLendon
Hemphry & Leonard
209 Fayetteville Street Mall
Raleigh, NC 27602

William Watson
Secretary
Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

Henry L. Bauman
Benjamin F. P. Ivins
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

A handwritten signature in cursive script that reads "David L. Donovan". The signature is written in black ink and is positioned above a horizontal dashed line.

David L. Donovan
April 23, 2001