

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

EX PARTE SUPPLEMENT TO REPLY OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby supplements its Reply to the oppositions filed by various broadcast interests¹ to DIRECTV's pending Petition for Reconsideration ("Petition") of the Report and Order adopted by the Commission in the above-captioned docket (the "Order").² DIRECTV required several additional days to investigate certain broadcaster assertions regarding the technical feasibility of satellite carriage of additional material in the Vertical Blanking Interval ("VBI"). As discussed below, the broadcaster claims are without merit.

¹ See 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. (April 12, 2001) ("Public Television Opposition"); Opposition to DIRECTV, Inc.'s Petition for Reconsideration Filed By the Association of Local Television Stations, Inc. (April 12, 2001) ("ALTV Opposition"); Response of National Association of Broadcasters to DIRECTV Petition for Reconsideration (April 12, 2001) ("NAB Response"); Opposition of the Network Affiliated Stations Alliance to the Petition for Reconsideration Filed By DIRECTV, Inc. (April 12, 2001) ("NASA Opposition"); Comments of Paxson Communications Corporation on Petitions for Reconsideration (April 12, 2001) ("Paxson Comments").

² 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).

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I. THE COMMISSION MUST REVISIT ITS FINDING AS TO THE TECHNICAL FEASIBILITY OF SATELLITE CARRIAGE OF ADDITIONAL MATERIAL IN THE VERTICAL BLANKING INTERVAL

DIRECTV has requested that the Commission reconsider its finding in the Order that carriage by satellite carriers of additional program-related material in the VBI is "technically feasible" for existing, deployed satellite systems.³ The Commission based this conclusion in the Order on the comments offered by a single potential satellite operator whose system is still in the design phase, rather than on input provided by real world satellite carriers.

Apart from primary video and audio signals and Line 21 closed caption transmissions, it is not technically feasible for DIRECTV's DBS system to reliably pass through additional material in a usable form from other portions of the VBI. Thus, as shown in DIRECTV's Petition, the Commission's erroneous position on this issue could require the replacement of DIRECTV equipment for as many as ten million households, resulting in a cost of *more than 2.8 billion dollars*.⁴

The broadcasters speculate about several of the admittedly innovative capabilities of new DBS set-top boxes, but provide no evidence to refute DIRECTV's estimate of the cost that the Commission's finding would impose.⁵ Ultimately, even the broadcasters agree that DIRECTV

³ Order at ¶ 108.

⁴ See Petition, Declaration of David A. Baylor ("Baylor Declaration").

⁵ The broadcasters wonder whether new DBS set-top boxes with "flash memory," NAB Response at 3, software "reprogramming [software] from a central location," or installing a "new chip" in deployed set-top boxes, ALTV Opposition at 5, would alleviate the need to replace DBS set-top boxes in circulation today if the Commission were to require additional VBI material to be retransmitted. The answer is no. Among other things, ensuring reliable carriage of additional VBI material in a usable format would necessitate not only software changes, but also revisions to the fixed digital-to-analog conversion

"need not replace all of the set-top boxes currently being used by subscribers if it is not technically feasible or prohibitively expensive for it to do so."⁶ However, the broadcasters assert that the Commission should force DIRECTV to redesign its system and set-top boxes on a going-forward basis to deliver additional program-related VBI material to subscribers.

This opportunistic request should be rejected as inconsistent with the express language and purpose of the SHVIA.

Section 338(g) of the SHVIA requires the Commission to "include requirements on satellite carriers that are comparable to the requirements on cable operators . . ." with respect to the signal content that must be carried.⁷ The statutory requirements governing cable operators require carriage of the primary video, accompanying audio, and Line 21 closed caption transmission of each local station signal carried on the cable system.⁸ To the extent that it is "technically feasible," the cable operator is required to carry program-related material carried in the VBI or on subcarriers.⁹ Thus, like cable operator VBI obligations, satellite carrier VBI requirements are bounded by the notion of "technical feasibility," meaning that carriage of program-related material in the VBI is required if it does not require the cable operator or

hardware in the DBS set-top box. The only way to make such a revision is to replace the set-top box.

⁶ NASA Opposition at 4; *see* Public Television Opposition at 12 ("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").

⁷ 47 U.S.C. § 338(g).

⁸ *See* 47 U.S.C. §§ 614(b)(3), 615(g)(1).

⁹ *See* 47 U.S.C. §§ 614(b)(3), 614(g)(1).

satellite carrier "to incur additional expenses and to change or add equipment in order to carry such material."¹⁰

It is inappropriate for broadcast interests or the Commission to mandate significant prospective design changes in DIRECTV's DBS system or set-top boxes. DIRECTV has proffered specific evidence that its system was not designed to support any portion of a broadcast signal other than the primary video, audio, and Line 21 of the VBI.¹¹ Cable systems are not subject to an invasive "redesign" rule. And nowhere in the SHVIA has Congress instructed the Commission either to order the replacement of millions of set-top boxes in order to accommodate such material, *or* to require major design modifications to existing satellite systems or set-top boxes on a going-forward basis, as the broadcasters contend.

The Commission's current rule formulation with respect to VBI carriage does not need to be revised; the Commission simply needs to rescind its finding regarding the technical feasibility of satellite carriers carrying additional program-related material in the VBI. The requirement to carry additional VBI material should only apply, as in the cable context, if "nominal costs, additions or changes of equipment are necessary."¹² Under this standard, retrofitting the existing DIRECTV system and bearing the replacement cost of subscribers' set-top boxes to

¹⁰ Order at ¶ 106; *see* Cable Must Carry Order, 8 FCC Rcd at 2986.

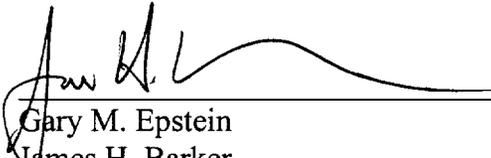
¹¹ The broadcasters speculate that DIRECTV has agreed to carry Automated Measurement of Lineups ("AMOL") data on Line 22 in certain of its retransmission consent deals. *See* NAB Response at 4; ALTV Opposition at 6. This is not correct. DIRECTV has not agreed to carry additional VBI data or material in any of its retransmission agreements; to the contrary, DIRECTV has made clear in *all* of its retransmission consent contracts that, with respect to VBI material, its signal includes *only* information contained in fields one and two of Line 21.

¹² Public Television Comments at 24 (*quoting* Cable Must Carry Order, 8 FCC Rcd at 2986).

accommodate additional VBI material is not technically feasible. Nor is a requirement that DBS providers do so on a going forward basis.

Respectfully submitted,

DIRECTV, INC.

By: 
Gary M. Epstein
James H. Barker
LATHAM & WATKINS
1001 Pennsylvania Ave. N.W.,
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2200

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