

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Carriage of Digital Television Broadcast Signals)	CS Docket No. 98-120
)	
Amendments to Part 76 of the Commission's Rules)	
)	
Implementation of the Satellite Home Viewer Improvement Act of 1999:)	
)	
Local Broadcast Signal Carriage Issues)	CS Docket No. 00-96
)	
Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals)	CS Docket No. 00-2

**COMMENTS OF THE SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION TO FURTHER NOTICE OF
PROPOSED RULEMAKING**

The Satellite Broadcasting and Communications Association (SBCA) is pleased to submit its comments to the Commission in the above-referenced rulemaking. The SBCA is the national trade association that represents the various industry sectors that are engaged in the delivery of television, radio and broadband services directly to consumers via satellite. The members of the Association include the Direct Broadcast Satellite (DBS) carriers and distributors that provide television programming and broadband service directly to consumers; the programming services that offer entertainment, news and sports to consumers over satellite platforms; satellite equipment manufacturers and distributors; and satellite dealers and retail firms that sell systems directly in the

consumer marketplace. At present, United States DBS operators serve more than 15 million households.

A principal focus of the *Further Notice* is the so-called “dual carriage” issue with regard to the applicability of the Commission’s must-carry rules during the transition from an analog to a digital broadcast delivery marketplace. The SBCA is vitally concerned over “dual carriage,” as well as the legal grounding of the satellite must-carry regime as a whole.¹

In general, we believe that considering DTV-related issues in the context of satellite carriage at this point is premature despite the best intentions of the Commission. It will not be easy to anticipate the workings and operating rules of the digital landscape - - the situation is murky at best. Significant questions abound concerning the development of many of the important components that are necessary for a smooth and consumer-friendly transition. They include whether or not all – or even most - local broadcasters will meet the deadlines imposed by the Commission; assessing the development of satisfactory interfaces for the routing of programming through consumer receiving devices that will suit all distribution technologies; determining the effects of the application, if any, of a copy control regime; and ensuring that the configuration of appropriate consumer electronics equipment is consistent with consumer needs as well as the programming being delivered in the marketplace. None of these important factors shows any sign of resolution in the near future, not to mention five years from now when

¹ The SBCA’s participation in this rulemaking proceeding does not constitute an endorsement of any provision of the SHVIA or a concession that any provision of that statute is enforceable against satellite carriers. SBCA reserves all its rights, including the right to seek judicial evaluation of the constitutionality of any provision of the SHVIA prior to promulgation of any rules or regulations thereunder. *See, e.g., Reno v. ACLU*, 521 U.S. 844 (1997); *Califano v. Sanders*, 430 U.S. 99, 109 (1997); *Time Warner Entertainment Co. v. United States*, 211 F.3d 1313, 1315 (D.C. Cir. 1996); *Able v. United States*, 88 F.3d 1280, 1288-89

local broadcasting supposedly becomes fully digital, and current analog spectrum is theoretically returned to the U.S. Government.

In any event, none of these factors affects the Commission's sound conclusion that dual carriage is inappropriate. The SBCA has already expressed in previous comments filed with the Commission its opposition to any dual carriage requirements.² We have reminded the Commission that there is no statutory authority directing the Commission to impose a dual-carriage regime on DBS satellite carriers. Furthermore, a unilateral decision by the Commission to implement the carriage of both the analog and digital signals of a television broadcaster would run counter to the trends that are rapidly evolving in the television distribution marketplace. Mandating dual carriage would actually be a setback to the development of the competitive environment that is already making even more video choices available to consumers. The Commission must make sure that its policies are positioned to encourage those choices in a free market environment and not delay their potential through the enforcement of obsolete concepts.

Television broadcasters are gaining immense new benefits by virtue of the transition to digital broadcasting. They are receiving, at no cost, valuable new spectrum in what many observers have termed "a giant government giveaway." These new frequencies will enhance the utilization of video compression techniques that will enable broadcasters to multicast within their bandwidths, giving them the opportunity to offer a variety of channels of their choosing to consumers who receive their service. Given these new benefits, they should be required to compete in the marketplace without the special

(2nd Cir. 1996). The SBCA also reserves the right to submit additional comments addressing the constitutionality of the SHVIA itself or any proposed rules enforcing SHVIA.

² Comments of the Satellite Broadcasting and Communications Association in Docket CS 00-96, July 14, 2000, and CS Docket 00-132, September 8, 2000.

government-granted privileges for protecting their markets. That includes the now archaic and gratuitous benefit of must-carry as well as the obsolete Grade B contour protection.³ We believe that it would be poor public policy to allow a digital television broadcaster to operate in a free and competitive market while continuing to enjoy government-mandated privileged access to consumers from which they currently benefit.

For the reasons set forth, the Commission should not pursue a dual must carry obligation for satellite carriers.

SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION

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³ SBCA participated extensively in the Commission's 1998 proceedings regarding the validity of utilizing Grade B measurement as a realistic indication of television broadcast signal propagation.