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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 22, 2001

**BY HAND**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

EX PARTE OR LATE FILED

**EX PARTE PRESENTATION**

*Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268*

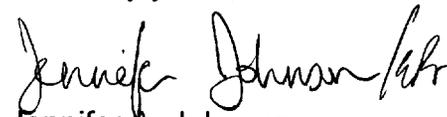
*Carriage of the Transmissions of Digital Television Broadcast Stations, CS Docket No. 98-120*

*Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39*

Dear Ms. Salas:

Please find enclosed copies of a letter sent today from the Network Affiliated Stations Alliance to Chairman Michael Powell for inclusion in the above-referenced proceedings. Please address any questions to the undersigned.

Sincerely yours,



Jennifer A. Johnson

Attorney for Network Affiliated Stations Alliance

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# NASA

Network  
Affiliated  
Stations  
Alliance

The ABC Television Affiliates Association  
The CBS Television Network Affiliates Association  
The NBC Television Affiliates Association

Representing the More than 600  
Television Stations Affiliated  
with the ABC, CBS, and NBC Networks

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**BY HAND**

The Honorable Michael Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554

Dear Chairman Powell:

In a letter to you dated September 20, 2001, Charlie Ergen, Chairman and CEO of EchoStar, asked the Commission to use its regulatory power over the DTV transition to shift copyright entitlements from broadcasters to satellite carriers in order to make it cheaper for EchoStar to carry broadcast programming. Our organization, the Network Affiliated Stations Alliance, wishes to explain, for the record, what is wrong with this idea.

Mr. Ergen proposes that the Commission use DTV build-out problems as a lever to pressure broadcast stations into waiving their copyrights and allowing EchoStar to transmit distant network signals into the markets of the local stations. Throughout the 1990's, satellite carriers tried to import (and in many cases did import) network signals into local markets in derogation of the copyright law. The 1999 law, SHVIA, was supposed to end that practice by giving satellite operators the right to transmit local signals into local markets. Not content with the bargain they struck with Congress in 1999, the operators have challenged SHVIA in court. Now, having been rebuffed by the only court thus far to rule on its claims, EchoStar is asking the Commission to give it rights that Congress refused to: rights to carry distant network signals to homes that are served by local network affiliates. EchoStar has wrapped this request in a thin policy argument that the FCC intervention it seeks will speed the DTV transition.

1. The Commission has already undertaken to ascertain what steps are needed to help broadcasters meet their build-out deadlines and, presumably, what steps

should be taken if they do not. The Commission has the ultimate “incentive” to ensure compliance with its rules -- it has broad authority over the renewal of licenses. The Commission has no business in leveraging its power to ensure compliance with its rules into a broader power to force copyright holders to relinquish their property rights.

2. Mr. Ergen’s proposal would not advance the DTV transition because it will not ensure that DTV sets capable of receiving broadcast digital signals are available in the market. The EchoStar boxes that are provided to process the broadcast digital signals will not be equipped with DTV tuners (unless the subscriber opts to pay 20% or so more to have a tuner installed). To the extent that EchoStar delivered the distant network signals to digital receivers, these receivers may or may not (and probably would not) have DTV tuners. Thus, these households will be no more capable of receiving DTV signals if EchoStar retransmits distant digital signals than they are today. Moreover, if these viewers become accustomed to receiving distant network signals, they will have even less incentive to purchase receivers that are capable of receiving DTV signals when all their local DTV stations are on the air;
3. EchoStar equipment will be able to downconvert the distant network signals for viewing on analog sets. Diversion of viewers from local affiliate stations to distant digital network signals would siphon off viewers and thus profitability from the local affiliate, making it even more difficult for those stations to make the transition to digital; and
4. The Commission already requires a station to show that any build-out delay is for reasons beyond the station’s control. Those stations that are eligible for extensions in the first place are those that cannot build out. The loss of signal protection for build-out delays is not an inducement to move faster but a penalty for stations that cannot move faster.

\* \* \*

There is much that the Commission can and should do to help speed the DTV transition. As you no doubt agree, interfering with Congress’ allocation of copyrights is not an activity that is appropriate for the Commission or helpful to the DTV transition.

Sincerely yours,



Alan Frank  
Chairman  
Network Affiliated Stations Alliance