EXHIBIT 4

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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

To: The Commission

REPLY COMMENTS OF
UNIVISION COMMUNICATIONS INC.

Scott R. Flick
Brendan Holland
Paul A. Cicelski

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037
(202) 663-8000

Dated: February 4, 2002

SUMMARY

As demonstrated in the initial comments submitted by Univision Communications Inc. ("Univision") in this proceeding, and supported overwhelmingly by other commenters, EchoStar Communications Corporation ("EchoStar") has made a conscious business decision to discriminate against certain broadcasters, particularly those that serve minority viewers, in a manner that harms the public interest and is contrary to both the Satellite Home Viewer Improvement Act ("SHVIA") and the Commission's Rules. Contrary to EchoStar's contentions, nothing in SHVIA or the Commission's Rules permits a DBS provider to discriminate in the carriage of local stations. Furthermore, in an attempt to scare the Commission into accepting its discriminatory plan, EchoStar mischaracterizes the remedy sought by broadcasters in this proceeding and grossly exaggerates the potential loss of service to subscribers. Ultimately, the Commission must find that EchoStar's plan is inconsistent with the law, and require that EchoStar commence carriage of all local stations in a market from the same satellite. Contrary to the suggestion made by some commenters, immediate carriage of all local stations on the same satellite is the only remedy that will halt the irrevocable damage that EchoStar's noncompliance is causing to local television stations and the public.

TABLE OF CONTENTS

PAGE

SUMMARY i

TABLE OF CONTENTS ii

I. Contrary to EchoStar's Contentions, SHVIA and the Commission's Rules Do Not Permit DBS Providers to Discriminate in the Carriage of Local Stations 2

A. EchoStar's Narrow Reading of the Commission's Regulations Ignores the Commission's Policy Statements and the Clear Intent of SHVIA 3

B. EchoStar's Fixation on the Price Discrimination Provisions of SHVIA Ignores Its Other Violations of That Statute 5

C. EchoStar's Carriage Scheme Violates the Contiguous Channel Requirement and the Prohibition on Non-Discrimination in Navigational Devices 6

II. EchoStar Grossly Mischaracterizes the Remedy Sought by Broadcasters in Claiming That a Million Subscribers Will Lose Service 8

III. Despite EchoStar's Attempts to Depict Its "Second Dish" Offer as a Reasonable Accommodation to Broadcasters That It Has Stranded on Secondary Satellites, EchoStar Has Demonstrated That It Is Not Capable of, Nor Interested in, Providing Accurate Information to the Public Regarding the Availability of Such Local Signals 9

A. Contrary to Its Assertion, EchoStar's Sales Representatives and Dealers Are Not Informing Subscribers About Local Stations Available on Secondary Satellites and the Need for Additional Equipment 10

B. Despite the Fact That a Significant Proportion of the Local Stations Isolated on the Secondary Satellites Are Spanish-Language Stations, EchoStar's Only Attempts at Publicizing the Availability of a Free Second Dish Have Been Targeted Exclusively at English-Speaking Viewers 11

IV. Even If EchoStar Was Doing Everything Possible to Publicize the Local Stations Carried on Secondary Satellites and the Availability of Free Dishes, and All Consumers Were Sufficiently Sophisticated to Obtain the Full Local Service They Are Entitled to, It Would Not Solve the Problem of Many Consumers Being Physically Unable to Receive a Signal From the Secondary Satellites 13

V. NAB's Interim Solution Is No Solution and Should Not Be Considered 13

CONCLUSION 15

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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

To: The Commission

REPLY COMMENTS OF
UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. ("Univision"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding. In this proceeding, EchoStar Communications Corporation ("EchoStar") has attempted to depict itself as a reasonable actor trying to deal with circumstances beyond its control. The comments of numerous other parties reveal, however, that the reality of the situation is far different. As demonstrated in Univision's comments, and supported overwhelmingly by other commenters in this proceeding, EchoStar has made a conscious business decision to discriminate against certain broadcasters, particularly those that serve minority viewers, in a manner that harms the public interest and is contrary to both the Satellite Home Viewer Improvement Act ("SHVIA") and the Commission's Rules.

While EchoStar claims that "it chose the least disruptive means of accomplishing the goal of continuing local service to its subscribers,"[1] it failed to choose the least disruptive *legal* means of accomplishing that goal, thus continuing a pattern of egregious behavior with which the

---

[1] Opposition to Petition for Modification or Clarification, filed by EchoStar Communications Corporation, CS Docket No. 00-96 (Jan. 23, 2002) at 2 ("EchoStar Opposition").

Commission has grown exceedingly familiar. The "means" that EchoStar chose, namely segregating some local stations on inferior secondary satellites based on content, is inconsistent with the law and contrary to the public interest. Indeed, in every EchoStar market where Univision owns a local station carrying the Univision Network, that station enjoys higher audience ratings than one or more of the six commercial English-language stations (ABC, CBS, Fox, NBC, UPN, and WB) in the market that EchoStar always carries on the primary satellite as part of its local station package.[2] Thus, EchoStar cannot argue that it has placed Univision stations on secondary satellites for any reason other than discrimination based on program content.

However, even if EchoStar could point to some rational basis for deciding which local stations are primary satellite "haves" and which are secondary satellite "have nots," it would not change the fact that EchoStar is discriminating against certain local stations in violation of the law. Accordingly, EchoStar must be held accountable under SHVIA and the Commission's Rules, and must be required to transmit all local stations in a particular market from the same satellite.

I. Contrary to EchoStar's Contentions, SHVIA and the Commission's Rules Do Not Permit DBS Providers to Discriminate in the Carriage of Local Stations

Pursuant to the underlying goals and intent of SHVIA, a DBS provider cannot discriminate between local stations by segregating disfavored stations on an inferior secondary satellite.[3] EchoStar nonetheless insists that its plan is acceptable under SHVIA and the Commission's Rules because it will not charge customers for the additional equipment necessary

---

2 *See* Nielsen NHSI Ranker Report Data (Adults 18-49), October 1, 2001 - December 30, 2001.

3 *See* Comments of Univision Communications Inc., CS Docket No. 00-96 (Jan. 23, 2002), at 5-7, 15-18 (discussing non-discrimination mandate of Section 338 of SHVIA and congressional intent underlying carry-one, carry-all provisions) ("Univision Comments").

to receive local signals from secondary satellites and because those local stations are available for the same monthly subscription fee. In making this claim, however, EchoStar has chosen to disregard numerous provisions of law that are "inconvenient" to its position.

A. EchoStar's Narrow Reading of the Commission's Regulations Ignores the Commission's Policy Statements and the Clear Intent of SHVIA

EchoStar contends that its current discriminatory scheme is derived from Section 338(d) of SHVIA and Section 76.66(i)(4) of the Commission's Rules. As already amply addressed in Univision's comments,[4] that claim is supported by no more than wishful thinking on EchoStar's part. EchoStar insists, however, that so long as subscribers are not required to pay for any additional equipment, then EchoStar is free to discriminate against local stations and deprive viewers of "convenient and practically accessible"[5] local stations – in effect using the supposedly free dish as a shield against the requirements of SHVIA. As Univision explained in its comments, EchoStar's plan is antithetical to the spirit and goals of SHVIA, violative of the explicit language of SHVIA, and an affront to the Commission's policy statements in its Report and Order and its Order on Reconsideration promulgating the rules governing carriage of local stations.[6] Even a casual review of these materials reveals a staunch governmental commitment (and requirement) that local stations be carried in a non-discriminatory manner, regardless of who pays for the receiving equipment.

---

4 *See* Univision Comments at 5-7, 15-22.

5 Joint Explanatory Statement of the Committee of Conference, 145 Cong. Rec. S14708, 14711 (November 17, 1999).

6 *See* In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues; Retransmission Consent Issues, Report and Order, 16 FCC Rcd 1918 (November 30, 2000), at ¶¶ 91-101 ("Report and Order"); In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues, Order on Reconsideration, 16 FCC Rcd 16544 (September 5, 2001), at ¶¶ 37-41 ("Order on Reconsideration"). *See also* Univision Comments at 5-7, 15-22.

Furthermore, despite EchoStar's claims to the contrary, consumers are having a hard time locating EchoStar's cache of free dishes. As detailed in Univision's and numerous other comments, consumers are being frequently told by EchoStar and its dealers that their "free" dish and its installation will cost a significant amount of money.[7] In multiple markets, those attempting to sign up for all local stations were told by EchoStar sales personnel and dealers that there would be additional costs associated with the second dish ranging from $99.00 to $289.00.[8] KSLS, Inc., the licensee of station KSCI(TV), Long Beach, California, detailed viewer complaints regarding EchoStar's statements that a second dish would cost $70, or that a dish was free to new subscribers but that current subscribers would need to call and discuss their accounts.[9] Pappas Telecasting Companies indicated that its representatives were told that a second dish would cost "$100 for equipment and $69 for installation" and "$185 for the equipment with installation included."[10] In fact, the Joint Comments submitted by Hardy, Carey & Chautin, L.L.P. detail a consumer's experience in obtaining, and actually being billed $200 for, the installation of a "free" second dish.[11]

Moreover, even if EchoStar could somehow ensure that consumers installing second dishes in order to receive all local stations were not improperly billed, the discriminatory impact on local stations occurs not when a consumer is charged for a second dish, but when a subscriber

---

7 Indeed, in the past, Charlie Ergen, the CEO of EchoStar, has publicly gloated that when EchoStar says "free" it does not always mean free. With regard to a promotion in 1999 offering consumers a free receiving dish, Charlie Ergen stated, "[i]t required $500-$600 out of pocket to take advantage of our free offer.... It was essentially legalized lying." "Ergen Shoots From Lip," Broadcasting & Cable, Feb. 22, 1999.

8 Univision Comments at 14 and associated Declarations.

9 Comments of KSLS, Inc., CS Docket No. 00-96 (Jan. 20, 2002) at 3.

10 Comments of Pappas Telecasting Companies, CS Docket No. 00-96 (Jan 22, 2002) at 4.

11 Joint Comments of Hardy, Carey & Chautin, L.L.P., CS Docket No. 00-96 (Jan. 22, 2002) at 14.

declines to request a second dish after being incorrectly told that there is a charge for the dish. As a result, even if the Commission were to audit whether consumers were charged for their second dish, it would not reduce the discriminatory impact faced by those stations isolated on secondary satellites. Thus, even if the Commission could ignore the hassle, frustration, and lost work time consumers must endure to secure a second dish, EchoStar's purportedly free dish is no bargain for either consumers or broadcasters.

B. EchoStar's Fixation on the Price Discrimination Provisions of SHVIA Ignores Its Other Violations of That Statute

In addition to Congress's general admonition against discrimination in local station carriage under SHVIA, the statute explicitly prohibits three specific types of discrimination: discrimination among local stations in their placement in a channel lineup, discrimination in the price that the satellite carrier charges for access to those signals, and discrimination in the manner in which the stations are presented on any navigational device, on-screen program guide, or menu.[12] Recognizing that its two-satellite/two-dish carriage scheme cannot be defended with regard to the channel lineup requirement or the on-screen program guide requirement, EchoStar chooses to ignore those provisions entirely. In its comments, Univision refuted EchoStar's myopic fixation on the price element of the Rules, and, as discussed below, noted that even if the Commission were to set aside the matter of price discrimination, EchoStar's carriage scheme also fails to comply with SHVIA's requirement that local stations be provided to consumers on contiguous channels, and that they be given non-discriminatory treatment in on-screen program guides.[13]

---

12 47 U.S.C. § 338(d).

13 Univision Comments at 15-18.

EchoStar nonetheless asserts repeatedly that because of the "free" second dish, access to local stations on the secondary satellite costs nothing extra, and as a result, EchoStar's carriage scheme is not discriminatory in price and is therefore completely legal. It then pretends that the other anti-discrimination provisions do not exist, arguing, for example, that the "hassles" faced by consumers in viewing all local stations "are not cognizable under the price discrimination provision of SHVIA."[14]

However, with the benefit of input from other commenters, it is now clear that even under the contorted standard being proffered by EchoStar, EchoStar is in fact engaging in prohibited price discrimination by charging consumers more for stations carried on secondary satellites. In particular, comments submitted by Rancho Palos Verdes Broadcasters, Inc. state that in the Albuquerque DMA, subscribers are being told that it will cost an additional six dollars a month to receive the signals carried on the secondary satellites.[15] Thus, it appears that EchoStar is indeed violating the one aspect of the Commission's Rules with which it claims compliance.

C. EchoStar's Carriage Scheme Violates the Contiguous Channel Requirement and the Prohibition on Non-Discrimination in Navigational Devices

As mentioned above and discussed in Univision's comments, Section 338(d) of SHVIA and Section 76.66(i)(4) of the Commission's Rules require that DBS providers provide local stations in a contiguous channel lineup and offer the stations in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.[16] As pointed out by several commenters, including Maranatha Broadcasting Company, Inc. ("MBC"), Roberts Broadcasting

---

14 EchoStar Opposition at 13.

15 Joint Comments of Rancho Palos Verdes Broadcasters, Inc., et al, CS Docket No. 00-96 (Jan. 23, 2002) at 11.

16 47 U.S.C. § 338(d); 47 C.F.R. § 76.66(i)(4).

Company ("Roberts"), and Brunson Communications, Inc., EchoStar's discriminatory carriage plan violates these prohibitions.[17] MBC's comments detail the fact that EchoStar's on-screen channel lineup of local stations in the Philadelphia market includes only the ABC, CBS, Fox, NBC, UPN, WB and PBS stations. As MBC states, "[n]othing on the EchoStar program guide advises subscribers of the availability of WFMZ-TV [MBC's station] or other Philadelphia stations or how subscribers may access those signals."[18] Roberts also notes that the stations carried on the secondary satellites "do not appear in the on-screen electronic programming guides that depict the local affiliates of the major networks."[19] Brunson Communications, Inc. states that its station is not provided to consumers on a channel contiguous with any other local station in the Philadelphia market, therefore violating SHVIA.[20]

Thus, while EchoStar attempts to divert the Commission's attention by focussing solely on the issue of price discrimination, its scheme of carrying disfavored stations in a market on secondary satellites violates several different aspects of SHVIA and the Commission's Rules, as well as the underlying goal and intent of SHVIA. In light of the multiple ways in which its carriage scheme violates the law, EchoStar's assertion that broadcasters have failed to connect its actions with a cognizable violation of the statute is clearly an exercise in self-delusion on the part of EchoStar.

---

17 *See* Comments of Maranatha Broadcasting Company, Inc., CS Docket No. 00-96 (Jan. 23, 2002); Comments of Roberts Broadcasting Company, CS Docket No. 00-96 (Jan. 18, 2002); and Comments of Brunson Communications, Inc., CS Docket No. 00-96 (Jan. 24, 2002).

18 Comments of Maranatha Broadcasting Company, Inc., CS Docket No. 00-96 (Jan. 23, 2002) at 10.

19 Comments of Roberts Broadcasting Company, CS Docket No. 00-96 (Jan. 18, 2002) at 2.

20 Comments of Brunson Communications, Inc., CS Docket No. 00-96 (Jan. 24, 2002) at 7.

II. EchoStar Grossly Mischaracterizes the Remedy Sought by Broadcasters in Claiming That a Million Subscribers Will Lose Service

Having ignored the provisions of both SHVIA and the Commission's Rules that EchoStar's carriage scheme violates, EchoStar's Opposition proceeds to distort the remedy sought by broadcasters in an effort to threaten the Commission with a loss of service to the public if the Commission dares to enforce the law. Specifically, EchoStar claims that NAB and broadcasters would completely ban DBS providers from ever using secondary satellites to provide local-into-local service, and that any markets whose local stations could not be fit on the CONUS satellites would be deprived of local into local service.[21] This is simply untrue. As detailed in Univision's comments, SHVIA and the Commission's Rules do not prevent DBS providers from transmitting *all* local stations in a particular market on a secondary satellite, as this would not create discrimination in carriage among local stations in that market.[22] The statute and the rules do, however, prohibit a DBS provider from intentionally discriminating against some stations in a market by segregating those stations on a secondary satellite, thereby discouraging local viewers from watching those stations.

Indeed, the Commission has acknowledged that a DBS provider may use secondary satellites in order to provide all of the local signals in a particular market.[23] As a result, all of the satellite capacity currently being used to provide local signals will continue to be available for that purpose, and no reduction in local station carriage is necessary. Given that its satellite capacity for carrying local stations will remain unchanged regardless of the Commission's ruling in this proceeding, EchoStar's claim that it "would be forced to take down local service in multiple local markets, disenfranchising as many as one million subscribers" is completely

---

21 EchoStar Opposition at 7, 20.

22 Univision Comments at 17-18.

misleading and inaccurate.[24] EchoStar remains free to use its secondary satellites, just not in a discriminatory manner.

If, on the other hand, EchoStar is arguing that placing all of the signals in a particular market on a secondary satellite is the equivalent of terminating local service because few will be willing to use a second dish to receive their local signals, then EchoStar is conceding that placement of some local broadcasters on those satellites is a severe form of carriage discrimination. In either case, EchoStar's claim that its carriage scheme is necessary and non-discriminatory fails.

III. Despite EchoStar's Attempts to Depict Its "Second Dish" Offer as a Reasonable Accommodation to Broadcasters That It Has Stranded on Secondary Satellites, EchoStar Has Demonstrated That It Is Not Capable of, Nor Interested in, Providing Accurate Information to the Public Regarding the Availability of Such Local Signals

EchoStar's Opposition makes the unsupported assertion that "thousands" of subscribers have obtained a second dish in the past few weeks in order to receive all of the local stations in their market.[25] Despite the overwhelming record in this proceeding documenting the difficulty that consumers are having in even learning of the need for a second dish, much less obtaining installation of that dish, EchoStar blithely states that "a subscriber need only make one phone call to schedule a free installation."[26] As detailed in the numerous comments submitted in this proceeding, obtaining information regarding the availability of all local stations in a market and the installation of a free second dish is a difficult, time consuming, and frustrating experience.

Footnote continued from previous page

23 Report and Order at ¶ 101; Order on Reconsideration at ¶ 41.

24 EchoStar Opposition at 2.

25 EchoStar Opposition at 12.

26 EchoStar Opposition at 12.

A. Contrary to Its Assertion, EchoStar's Sales Representatives and Dealers Are Not Informing Subscribers About Local Stations Available on Secondary Satellites and the Need for Additional Equipment

Although EchoStar asserts that its customer service representatives have been well-trained to help customers obtain a second dish, the evidence to the contrary accumulating in this proceeding is substantial. Whether it is a reflection of EchoStar's inability to adequately educate its employees and dealers or, more insidiously, its desire to avoid the significant cost of providing and installing "free" dishes to those entitled to them, numerous commenters have provided information as to what actually happens in the real world when a consumer contacts EchoStar or its local dealers. Starting with the basic information regarding which local stations are available in a market, EchoStar representatives are providing inaccurate, inconsistent, and just plain false information to callers. First, subscribers are often falsely told that particular stations are not carried in the market. When asking why a particular local station is not available, an alarming number of consumers are being told outright falsehoods, such as the station asked not to be carried, or that a local Spanish-language station "is broadcast from Mexico" and therefore cannot be local.[27]

In addition, as Public Television's comments detail, "[e]ach time, our researchers had to raise the issue of the free second dish first with EchoStar customer service representatives, and even then, the researchers had to be aggressive in asserting their right to free equipment and installation."[28] Similarly, MBC's comments describe experiences with EchoStar representatives

---

27 *See, e.g.*, Univision Comments at 13; Comments of KSLS, Inc., CS Docket No. 00-96 (Jan. 20, 2002) at 2.

28 Comments of the Association of Public Television Stations and the Public Broadcasting Service, CS Docket No. 00-96 (Jan. 23, 2002) at 6. *See also* Comments of Brunson Communications, Inc., CS Docket No. 00-96 (Jan. 24, 2002) at 8-9 (describing EchoStar's failure to advertise and consumers' difficulty in obtaining service).

not providing information about its local station, the "free" upgrade, or installation.[29] These experiences appear to be the rule rather than the exception even for knowledgeable consumers,[30] and one can only imagine the difficulties encountered by more typical consumers who are unaware that other local stations are available or that a second dish is supposed to be free.

B. Despite the Fact That a Significant Proportion of the Local Stations Isolated on the Secondary Satellites Are Spanish-Language Stations, EchoStar's Only Attempts at Publicizing the Availability of a Free Second Dish Have Been Targeted Exclusively at English-Speaking Viewers

EchoStar claims that it has thoroughly publicized its "offer" for the free second dish necessary to receive the complete package of local stations by discussing it on its "Charlie Chat" program. Significantly, however, "Charlie Chat" is not in Spanish, and thus is unlikely to attract many Spanish-language viewers. Moreover, "Charlie Chat" is available only to existing EchoStar subscribers, and therefore is completely incapable of providing any relevant information to potential new subscribers.

In a similar vein, the only other effort to publicize the free dish offer cited by EchoStar is a letter that went just to those subscribers that were already receiving their local ABC, CBS, Fox, and NBC stations through EchoStar.[31] In short, the letter was sent only to those subscribers

---

29 Comments of Maranatha Broadcasting Company, Inc., CS Docket No. 00-96 (Jan. 23, 2002) at 10.

30 *See, e.g.*, Univision Comments at 13-14 and associated Declarations; Comments of KSLS, Inc., CS Docket No. 00-96 (Jan. 20, 2002); Comments of the Association of Public Television Stations and the Public Broadcasting Service, CS Docket No. 00-96 (Jan. 23, 2002); Comments of Brunson Communications, Inc., CS Docket No. 00-96 (Jan. 24, 2002).

31 As discussed by several commenters, it is quite a stretch to assert that EchoStar's letter in any way "publicized" even the need for a second dish, let alone an "offer" to provide it free of charge. Among the programming and pricing changes discussed in EchoStar's one page letter is the addition of UPN, WB and PBS stations to the local package. EchoStar's sole reference to stations transmitted via secondary satellites is a passing reference that many other stations have been added depending on the city. The reader is then referred to a footnote which obliquely refers to the need for additional equipment,

Footnote continued on next page

already demonstrating a predisposition to mainstream English-language programming. It is hardly surprising that few viewers of Spanish-language programming are even aware that their local Spanish-language stations are available on EchoStar, much less that they are entitled to a free dish to receive those signals.

Finally, even if these narrowly targeted disclosures of the availability of a free second dish reached any portion of the Hispanic community, the generic knowledge that a free second dish is available is not particularly useful if the viewer is not told which specific stations will be available through the second dish in that particular market. In this regard, one of the few places where information can be obtained about what stations are carried by EchoStar, its English-language website, makes no mention of a free second dish. As detailed by various commenters, the EchoStar website refers only to the need for a second dish to view particular stations, and makes no reference to a free dish and installation.[32] EchoStar has effectively buried the "offer" of a free second dish through a campaign of non-publicity and false and conflicting information issued by its representatives. It appears that EchoStar has made the business decision that it is not interested in Spanish-language broadcast stations or their viewers in the Hispanic community, or alternatively, that it would prefer those viewers remain unaware of the availability of their local Spanish-language stations so that EchoStar can sell them far more profitable Spanish-language cable programming packages.[33] It was to prevent this very type of

---

Footnote continued from previous page

stating that "[c]hannels vary by market. Some channels require the installation of additional hardware; installation available at no cost until 3/31/02." A copy of this letter is attached to the Joint Comments of Hardy, Carey & Chautin, L.L.P., CS Docket No. 00-96 (Jan. 22, 2002).

32 *See, e.g.*, Comments of Joint Broadcasters submitted by Covington & Burling, CS Docket No. 00-96 (Jan. 23, 2002) at 5.

33 Univision Comments at 13-14.

anti-competitive conduct that Congress adopted the anti-discrimination provisions of SHVIA in the first place.

IV. Even If EchoStar Was Doing Everything Possible to Publicize the Local Stations Carried on Secondary Satellites and the Availability of Free Dishes, and All Consumers Were Sufficiently Sophisticated to Obtain the Full Local Service They Are Entitled to, It Would Not Solve the Problem of Many Consumers Being Physically Unable to Receive a Signal From the Secondary Satellites

As Univision fully described in its comments, locating some stations on secondary satellites is inherently discriminatory if for no other reason than the technical restrictions and limitations that apply to transmissions from partial-CONUS satellites.[34] Other parties have detailed similar difficulties in receiving signals from the secondary satellites. For example, MBC's comments describe several circumstances where subscribers were unable to obtain line of sight to the satellites, or could not mount an additional dish in the proper direction.[35] Such physical and technical limitations ensure that local stations carried on secondary satellites cannot be received in as many households as their local competitors carried on primary satellites. As a result, carriage of some local stations in a market on secondary satellites guarantees their competitive inferiority, and creates impermissible discrimination that can only be cured by ensuring that all stations in a market are carried on the same satellite with the same receiving requirements.

V. NAB's Interim Solution Is No Solution and Should Not Be Considered

Under no circumstances can EchoStar's discriminatory behavior be tolerated, even briefly. Contrary to the NAB's suggestion in its comments that EchoStar perhaps be allowed a "very limited and temporary waiver" of the Commission's Rules, this will only serve to

---

[34] Univision Comments at 11-12.

[35] Comments of Maranatha Broadcasting Company, Inc., CS Docket No. 00-96 (Jan. 23, 2002) at 7.

compound the harm that EchoStar's plan is causing by permitting it to continue its discriminatory plan.[36] In adopting such a clearly flawed carriage plan, EchoStar obviously gambled that the Commission would be hesitant to risk any claimed disruption in service, and that EchoStar could indefinitely extend its non-compliance by claiming that the potential disruption caused by enforcement of the law has increased as more and more local station subscribers sign up under the existing carriage plan. As demonstrated in Univision's comments, EchoStar's carriage scheme is causing real, irrevocable harm to the stations it deems "disfavored," and harms the public as a whole by preventing subscribers from readily accessing all of their local stations. The Commission must immediately compel EchoStar to cease its illegal actions and carry all of the stations in a market on the same satellite, consistent with the law. To do otherwise would only let the problem fester to the point where the damage being done is irreversable.

EchoStar's decision to segregate particular stations within a market on inferior secondary satellites is not based on technical restrictions or satellite capacity, but instead is a conscious decision to preserve capacity on its CONUS satellites for other uses while favoring large, commercial English-language stations in a market. While EchoStar claims that it will have plenty of CONUS capacity if and when its proposed merger with DirecTV is approved and effectuated, that merger may never occur, and even if it does, there is no guarantee that EchoStar will use the increased capacity to move all local stations in the country to CONUS satellites. Similarly, there is no guarantee that EchoStar would use any new satellite capacity that it may claim to be in the process of implementing to move the disfavored stations off their current position on secondary satellites. Thus, a "wait and see" approach would cause irreparable

---

36 *See* Comments of National Association of Broadcasters and Association of Local Television Stations, CS Docket No. 00-96 (Jan. 23, 2002) at 3.

competitive harm in the interim to those stations segregated on secondary satellites, while providing no assurances that the competitive imbalance in carriage will ever be resolved without Commission intervention.

CONCLUSION

For the reasons set forth above and in Univision's comments in this proceeding, the Commission must enforce the law, and require EchoStar to commence carriage of all stations in a market from the same satellite. Without such action, EchoStar's continued discrimination in carriage of Spanish-language and other stations will harm the public's access to their local stations while creating competitive imbalances that threaten the continued existence of a diverse and vibrant local broadcast service.

Respectfully submitted,

UNIVISION COMMUNICATIONS INC.

By: Scott R. Flick

Scott R. Flick
Brendan Holland
Paul A. Cicelski

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037
(202) 663-8000

Dated: February 4, 2002

CERTIFICATE OF SERVICE

I, Rhea Lytle, Secretary at Shaw Pittman LLP, do hereby certify that I caused a copy of the foregoing **"REPLY COMMENTS OF UNIVISION COMMUNICATIONS INC."** to be sent via U.S. Mail this 4th day of February, 2002, to the following:

The Honorable Michael K. Powell*
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-A204
Washington, D.C. 20554

The Honorable Michael J. Copps*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, D.C. 20554

The Honorable Kevin J. Martin*
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, D.C. 20554

Robert E. Branson
Association of Local Television Stations
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036

Qualex International**
Federal Communications Commission
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Eloise Gore**
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-A726
Washington, D.C. 20554

Ben Bartolome**
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-A820
Washington, D.C. 20554

Henry L. Baumann
Benjamin F.P. Ivins
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

David K. Moskowitz
Senior Vice President and General Counsel
David R. Goodfriend
Director, Legal and Business Affairs
EchoStar Satellite Corporation
1200 20th Street, N.W., Suite 701
Washington, D.C. 20036

Pantelis Michalopoulos
Steven Reed
Rhonda M. Bolton
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

John R. Feore, Jr., Esq.
Keven P. Latek, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Jovon Broadcasting Corp.

Kevin F. Reed, Esq.
Kevin P. Latek, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Telemundo Group, Inc.

Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036
Counsel for North Pacific International TV, Inc.

J. Geoffrey Bentley, Esq.
Bentley Law Office
P.O. Box 710207
Herndon, VA 20171
Counsel for Maranatha Broadcasting Company, Inc.

Joseph C. Chautin, III, Esq.
Hardy, Carey & Chautin, L.L.P.
110 Veterans Boulevard, Suite 300
Metairie, LA 70005
Counsel for LeSea Broadcasting Corp., Christian Television Network, Inc. and Carolina Christian Broadcasting, Inc.

Richard Millet
Senior Vice President
Assistant General Manager
KSCI-TV
1990 South Bundy Drive, Suite 850
Los Angeles, CA 90025

Andrew S. Wright, President
Satellite Broadcasting and Communications Assoc.
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

Ronald A. Siegel, Esq.
J. Brian DeBoice, Esq.
Cohn and Marks LLP
1920 N Street, N.W., Suite 300
Washington, D.C. 20036
Counsel for WLNY-TV Inc. and Golden Orange Broadcasting Co.

Barry A. Friedman
Barry D. Umansky
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
Counsel for Rancho Palos Verdes Broadcasters, Inc. and Costa de Oro Television, Inc.

Peter C. Pappas
Pappas Telecasting Companies
500 South Chinowth Road
Visalia, CA 93277

Barry D. Wood, Esq.
Paul H. Brown, Esq.
Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036
Counsel for Brunson Communications, Inc.

Amy L. Levine, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Joint Broadcasters

Lawrence M. Miller, Esq.
Schwartz, Woods & Miller
1350 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036
Counsel for The Board of Education of the City of Atlanta and The Long Island Educational Television Council

Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs
Lonna D. Thompson
Director, Corporate and Legal Affairs
Association of Public Television Stations
666 11th Street, N.W., Suite 1100
Washington, D.C. 20001

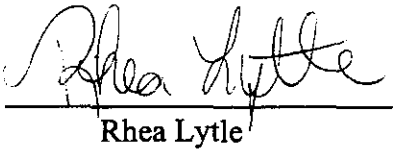
Paul Greco
Vice President and Deputy General Counsel
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

Harry F. Cole, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Arlington, VA 22209

Kathryn R. Schmeltzer, Esq.*
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for Cornerstone Television, Inc.

Richard R. Zaragoza, Esq.*
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for State Broadcasters Assoc.

William L. Watson
Secretary
Paxson Communications Corp.
601 Clearwater Park Road
West Palm Beach, FL 33401



Rhea Lytle

*Via Hand Delivery
**Via E-Mail

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary in the law offices of Shaw Pittman LLP, hereby certify that on February 4, 2002, copies of the foregoing "Petition to Deny" were sent via First Class Mail, postage prepaid, to the following parties:

*W. Kenneth Ferree, Esq., Chief
Cable Services Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*The Honorable Michael K. Powell
Chairman
Federal Communications Commission
Room 8-B201
445 12th Street, SW
Washington, DC 20554

*The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-A204
Washington, DC 20554

*The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-A302
Washington, DC 20554

*The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-C302
Washington, DC 20554

**Barbara Esbin
Cable Service Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C458
Washington, DC 20554

**James Bird
Office of General Counsel
Federal Communications Commission
445 12th Street, SW
Room 8-C824
Washington, DC 20554

**David Sappington
Office of Plans and Policy
Federal Communications Commission
445 12th Street, SW
Room 7-C452
Washington, DC 20554

**JoAnn Lucanik
International Bureau
Federal Communications Commission
445 12th Street, SW
Room 6-C416
Washington, DC 20554

**Douglas Webbink
International Bureau
Federal Communications Commission
445 12th Street, SW
Room 6-C730
Washington, DC 20554

*Jane E. Mago, Esq.
General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Qualex International
Federal Communications Commission
Room CY-B402
445 12th Street, SW
Washington, DC 20554

**Royce Sherlock
Cable Service Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-A729
Washington, DC 20554

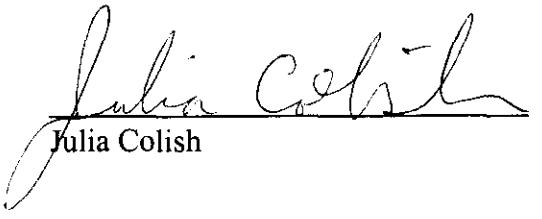
**Marcia Glauberman
Cable Service Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-A738
Washington, DC 20554

**Julius Knapp
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Room 7-B133
Washington, DC 20554

***Linda Senecal
Policy and Rules Division
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A734
Washington, DC 20054

Pantelis Michalopoulos
Philip L. Malet
Rhonda M. Bolton
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, DC 20036

Gary M. Epstein
James H. Barker
Latham & Watkins
555 11th Street, NW
Suite 1000
Washington, DC 20004



Julia Colish

* By Hand
** Two Copies By Hand
*** 12 Copies By Hand