

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Steven G.T. Reed
202.429.6232
sreed@steptoe.com

February 12, 2002

Via HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
The Portals
445 12th Street SW -- Room GWB204
Washington, D.C. 20554

Dear Mr. Caton:

**Re: 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**

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), EchoStar Satellite Corporation ("EchoStar") hereby submits this disclosure regarding an *ex parte* meeting between David Goodfriend, Rex Povenmire, David Bair, and Steven Reed representing EchoStar and the staff of the Commission's Cable Services Bureau and International Bureau which occurred on Friday, February 8, 2002.¹ The purpose of the meeting was to discuss the issues raised in this proceeding by the Emergency Petition submitted by the National Association of Broadcasters ("NAB") and the Association of Local Television Stations ("ALTV") on January 4, 2002. A list of the principal points discussed by EchoStar's representatives at the meeting is attached hereto as Attachment A. Also enclosed with this letter are three copies of a videotape containing excerpts from a "Charlie Chat" broadcast in which EchoStar's CEO, Charlie Ergen, discusses EchoStar's offer of a free second satellite dish to subscribers seeking access to non-network must-carry stations that are transmitted via EchoStar's eastern and western satellites.²

¹ The Commission Staff who attended the meeting were: Ben Bartolome, Rosalie Chiara, W. Kenneth Ferree, Eloise Gore, William Johnson, Deborah Klein, Michael Lance, Ron Parver, Rockie Patterson, and John Wong.

² Due to the large number of parties participating in this proceeding, copies of the videotape are not being distributed to the Service List. The videotape is being provided to the Commission, however, for inclusion in the public record.

ORIGINAL
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoel.com

RECEIVED

FEB 12 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

No. of Copies rec'd 0 + 2
List A B C D E
3 VHS

In response to questions set forth in the various comments filed in this proceeding, EchoStar representatives reaffirmed that the company's policy is and remains that the second dish (and any other equipment necessary to view local must-carry stations in particular markets) is available free of charge (including free installation) to any customer who requests it. They also committed that, to the extent there have been any deviations from that commitment in particular instances (especially during the initial weeks of implementing this new plan), EchoStar will take the necessary steps to fix the problems.

In response to questions regarding the supposed "hassles" involved in receiving a second dish, EchoStar representatives noted that, even prior to January 1, 2002, more than 400,000 EchoStar subscribers had requested and obtained installation of a second dish in order to access foreign language and high-definition programming only available from EchoStar's wing satellites, many at their own expense. All of those pre-existing second-dish subscribers automatically have access to the additional local channels carried on the eastern and western satellites. Moreover, any consumer electing to receive free installation of a second dish in order to access local channels also has the option to access the foreign language and high-definition programming (by subscription), using the same equipment. To date, it was reported that almost 7,000 subscribers have taken advantage of EchoStar's offer by requesting installation of a second dish to receive additional local channels.

Although not discussed at the meeting of February 8, 2002, EchoStar also has a number of brief, additional comments on points raised by parties other than the NAB and ALTV. First, the thrust of the NAB/ALTV Petition was that the Commission should either modify or "clarify" its existing rule to bar satellite carriers from requiring a second satellite dish, even when the second dish and other necessary equipment is provided free of charge. For the reasons stated in EchoStar's January 23, 2002 Opposition to the NAB/ALTV Petition, the request is inconsistent with the intent of the statute, the text of the rule, the discussion of the rule in the Report and Order, and the Reconsideration Order in this proceeding.³ Many of the commenters, however, have raised issues that are essentially unrelated to the relief requested by the NAB/ALTV Petition. To the extent they are raising individualized instances in which they allege EchoStar has violated the existing rules, those complaints should have been presented through the established complaint procedures, so that EchoStar would have an opportunity to remedy any problems before involving the Commission. There is certainly no procedural warrant for addressing them here.

³ See EchoStar's Opposition to Petition for Modification or Clarification (filed Jan. 23, 2002), at 3-9.

Second, a number of commenters have suggested that EchoStar's compliance plan violates the existing rule because a satellite dish is a "navigational device."⁴ Under this theory, a satellite carrier may not require use of a second satellite dish (even if it is free), because the statute requires that the consumer have access to all must-carry stations "in a nondiscriminatory manner on any navigational device"⁵ There are two problems with this theory. First, as a matter of common sense, a "navigational device" is a device used within the consumer's home to "navigate" among the various channels offered. The fact that the term "navigation devices" (which is not even the same term) is defined in another section of the regulations to mean devices "such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming"⁶ only reinforces this common sense view, since the regulation is obviously referring to "other equipment" of the same nature as the specific examples given (*e.g.*, converter boxes, which are the equivalent of satellite set-top boxes).⁷ Second, even if (contrary to logic and common sense) a satellite dish were interpreted to be a "navigational device," there is still nothing in the statute or regulations that suggests providing a second dish for free is contrary to the applicable requirements. A customer who elects to receive the second free dish receives all of the available local station programming in a completely nondiscriminatory manner, including receiving all of the local channels on contiguous channels (*i.e.*, seamlessly). The fact that some consumers may decline the second dish offer in no way suggests that they are unable to receive the additional channels in a nondiscriminatory manner. That is simply a matter of consumer choice.

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), an original and two (2) copies of this letter are provided for inclusion in the public record. Please contact the undersigned counsel if you have any questions regarding this letter.

⁴ See, *e.g.*, Joint Comments of WLNY-TV, Inc. and Golden Orange Broadcasting Co. on NAB and ALTV Emergency Petition (dated Jan. 23, 2002), at 2-3.

⁵ 47 U.S.C. § 338(d); *see also* 47 C.F.R. § 76.66(i)(5).

⁶ See 47 C.F.R. § 1200(c).

⁷ The well known canon of statutory construction *eiusdem generis* instructs that when a general term follows specific ones, the general term should be understood as related to subjects akin to the specific terms. See, *e.g.*, *Third National Bank v. Impac Ltd., Inc.*, 432 U.S. 312, 322 (1977) ("It is a familiar principle of statutory construction that words grouped in a list should be given related meaning.").

Mr. William F. Caton
February 12, 2002
Page 4

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Reed". The signature is fluid and cursive, with the first name "Steven" and last name "Reed" clearly distinguishable.

Pantelis Michalopoulos
Steven Reed

David K. Moskowitz
Senior Vice President and General Counsel
David R. Goodfriend
Director, Legal and Business Affairs
EchoStar Satellite Corporation
1233 20th Street, NW, Suite 701
Washington, D.C. 20036
(202) 293-0981

Counsel for EchoStar Satellite Corporation

cc: Service List (w/o videotape)

ATTACHMENT A

KEY POINTS REGARDING ACCESS TO LOCAL MUST-CARRY STATIONS

- EchoStar's must-carry compliance plan originally hinged on timely delivery of two new spot-beam satellites; in late 2001, it became evident that these two satellites would not be ready in time to meet the statutory compliance deadline of January 1, 2002
- EchoStar's two-dish compliance plan conforms to the regulations as written since consumers are not required to obtain the second satellite dish "at their own expense or for an additional carrier charge"
- The statute and its legislative history indicate that Congress did not intend to prohibit use of second satellite dishes generally, but only where price discrimination would result
- The Commission thus has no statutory authority to ban second satellite dishes altogether, and certainly could not even attempt to take such a step without following required notice and comment rulemaking procedures
- EchoStar has acted in good faith to put its free-second-dish plan into effect, including sending a letter to all local station subscribers, special training for customer service representatives, and publicizing the offer through statements of EchoStar's CEO on his "Charlie Chat" program
- To date, thousands of EchoStar subscribers have been provided with free second dishes, and additional requests are currently being filled on a timely basis
- To the extent the comments filed reflect unfortunate incidents in which particular customers or others may have been provided with incorrect or insufficient information, EchoStar is working hard to rectify those problems and ensure that any customer who wants access to the additional stations available on the wing satellites is able to do so
- Nothing in EchoStar's compliance plan violates the "contiguous channel" requirement or the requirement that access be provided in a nondiscriminatory manner "on any navigational device, on-screen program guide, or menu"; subscribers with a second satellite dish have the same access to all available local stations, including on contiguous channels on the electronic program guide
- Draconian remedies sought by some commenters that would result in *less* carriage of any local television signals in various markets are not consistent with the statute or the public interest

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on February 12, 2002, via hand delivery (indicated by *) or by first class mail, upon the following:

William F. Caton*
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB - 204C
Washington, D.C. 20554

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

W. Kenneth Ferree*
Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W.
Room 36-740
Washington, D.C. 20554

Rosalie Chiara*
Federal Communications Commission
445 12th Street, S.W.
International Bureau
Room 6-A521
Washington, D.C. 20554

Rockie Patterson*
Federal Communications Commission
International Bureau
445 12th Street, S.W.
Room 6-B524
Washington, D.C. 20554

John P. Wong*
Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W.
Room 4-C838
Washington, D.C. 20554

Michael Lance*
Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W.
Room 4-C818
Washington, D.C. 20554

Ronald Parver*
Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W.
Room 4-A822
Washington, D.C. 20554

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

William H. Johnson*
Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W.
Room 3-C742
Washington, D.C. 20554

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

Jonathan D. Blake
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Joint Broadcasters

Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
11th Floor
Arlington, Virginia 22209
*Counsel for African-American Broadcasting
Company of Bellevue, Inc.*

Lawrence M. Miller
Schwartz, Woods & Miller
Suite 300
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036-1717
*Counsel for The Long Island Educational
Television Council*

Barry D. Wood
Paul H. Brown
Woods, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036
Counsel for Eagle III Broadcasting, LLC

J. Brian DeBoice
Ronald A. Siegel
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.*

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

Lawrence M. Miller
Schwartz, Woods & Miller
Suite 300
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036-1717
*Counsel for The Board of Education of the
City of Atlanta*

John R. Feore, Jr.
Kevin P. Latek
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
*Counsel for Roberts Broadcasting Company of
Denver*

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

Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs
Association of Public Television Stations
666 Eleventh Street, N.W., Suite 1100
Washington, D.C. 20001

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

Peter C. Pappas
Executive Vice President
Government & Regulatory Affairs
Pappas Telecasting Companies
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Peter Tannenwald
Kevin M. Walsh
Irwin, Campbell & Tannenwald, P.C.
1730 Rhod Island Ave., N.W., Suite 200
*Counsel for North Pacific International
TV, Inc.*

Barry A. Friedman
Barry D. Umansky
Carolina Coll
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
*Counsel for Rancho Palos Verdes
Broadcasters, Inc.; Costa de Oro Television,
Inc.; KVMD Acquisition Corporation;
Entravision Holdings, LLC*

Richard R. Zaragoza
Tony Lin
Shaw Pittman LLC
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for State Broadcasters Associations

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

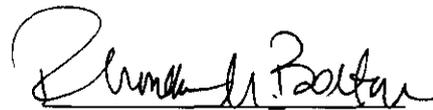
Joseph C. Chautin, III
Hardy, Carey & Chautin, L.L.P.
110 Veterans Blvd., Suite 300
Metairie, La 70005
Counsel for HCC Commenters

Scott R. Flick
Brendon Holland
Paul A. Cicelski
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for Univision Communications Inc.

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

Mark Holtz
7943 Sungarden Drive
Citrus Heights, CA 95610-3133

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



Rhonda M. Bolton

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

One video cassette.