

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	PP Docket No. 00-67

**REPLY COMMENTS OF ECHOSTAR SATELLITE L.L.C.**

Pursuant to Section 1.415(c) and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415(c), 1.419, EchoStar Satellite L.L.C. (“EchoStar”) hereby submits its reply comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> The further rulemaking is focused on two issues: (1) whether the Commission should prohibit activation by MVPDs of down-resolution for non-broadcast MVPD programming content; and (2) whether Cable Television Laboratories, Inc. (“CableLabs”) is the appropriate entity to make all initial approval determinations regarding outputs and associated content protection technologies to be used in unidirectional digital cable products.

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<sup>1</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumers Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd. 20885 (2003) (“*Second Further Notice*”).

EchoStar is not alone in urging the Commission not to prohibit the use of down-resolution by MVPDs for non-broadcast MVPD programming content.<sup>2</sup> In essence, if a content provider demands down-resolution as a condition for licensing premium HDTV content such as pay-per-view, the choice for the MVPD is stark: either accept the condition and secure content with significantly higher transmission quality than standard definition, or be denied access to anything better than standard definition. In this situation, MVPDs and consumers alike are better off with the flexibility to accept down-resolution as a condition.

EchoStar would prefer, of course, to distribute HDTV content without any downresolution requirement. Realistically, however, in light of the potential trade-off faced by MVPDs, affording this flexibility will actually place consumers in a more advantageous position than if the Commission were to prohibit downresolution altogether. Such flexibility cannot be said to unfairly punish consumers.<sup>3</sup> Similarly, arguments that that downresolution facilitates recoding and redistribution may be relevant to whether content providers should demand it but are not relevant to whether the Commission should prohibit an MVPD from accepting such demands.<sup>4</sup> Whatever the motives behind a content provider's demand of downresolution,

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<sup>2</sup> Comments of BellSouth Entertainment, LLC at 2-3; Comments of DIRECTV at 10; Joint Comments of the Motion Picture Association of America, Inc., Metro-Goldwyn-Mayer Studios, Inc., Paramount Pictures Corp., Sony Pictures Entertainment, Inc., Twentieth Century Fox Film Corp., Universal City Studios LLP, and The Walt Disney Co. at 5-7; Comments of National Cable and Telecommunications Association at 2-5; Comments of Time Warner, Inc. at 3-4, 7-10.

<sup>3</sup> *See, e.g.*, Comments of Consumer Electronics Association at 4-5; Comments of Public Knowledge and Consumers Union at 4.

<sup>4</sup> *See, e.g.*, Comments of Consumer Electronics Association at 4 (“by having the numbers of vertical and horizontal pixels, downresolution eliminates  $\frac{3}{4}$  of the signal bandwidth, thereby *facilitating* both recording and redistribution”); Comments of Home Recording Rights Coalition at 3 “HDTV downresolution keeps nothing from going to the Internet -- in fact, by reducing the

EchoStar's purpose in requesting flexibility is not an attempt to exert indirect influence over consumer purchasing behavior, but rather an attempt to secure otherwise unavailable services for consumers.<sup>5</sup>

At the same time, EchoStar agrees that this flexibility should be subject to reasonable limits. Content providers should not be encouraged to demand downresolution to such an extent that the transmission quality would be degraded to close to standard definition levels. It would therefore be appropriate for the Commission to prescribe a minimum standard for acceptable DTV transmission quality, on the order of a maximum reduction to 1/2 of the 1080i mode, or 540 x 960.

In its comments, EchoStar also stated that CableLabs "is a partisan organization that cannot reasonably be viewed as an impartial arbiter on any dispute involving non-cable MVPDs... as it would have both the incentive and the ability to hinder or prevent the use of certain outputs and technologies that could benefit non-cable MVPDs more than the cable industry."<sup>6</sup> Numerous other commenters have joined EchoStar in urging the Commission not to appoint CableLabs the sole initial arbiter of outputs and associated content protection technologies based on its inherent bias in favor the cable industry.<sup>7</sup> EchoStar concurs with the

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signal to one-quarter of its previously transmitted size, it efficiently *compresses the signal for redistribution.*")

<sup>5</sup> See, e.g., Comments of Consumer Electronics Association at 4; Comments of Public Knowledge and Consumers Union at 4.

<sup>6</sup> Comments of EchoStar Satellite L.L.C., CS Docket No. 97-80, PP Docket No. 00-67 (Jan. 14, 2004), at 4-5.

<sup>7</sup> See, e.g., Comments of AAI at 5-6; Comments of BellSouth Entertainment, LLC at 3-4; Further Comments of DIRECTV, Inc. at 3-4, 10-11; Comments of Genesis Microchip, Inc. at 8; Comments of the Home Recording Rights Coalition at 11; Comments of Intel Corp. at 6-7; Joint

American Antitrust Institute (“AAI”), for example, that “[l]acking the requisite independence to make impartial approval determinations which can have substantial competitive effects on multiple industrial sectors, CableLabs *a fortiori* lacks the qualifications to make approval determinations under a unified regime.”<sup>8</sup> Such comments only reinforce EchoStar’s recommendation that the Commission select a competitively neutral organization for this role. EchoStar is certainly willing to assist the Commission in identifying the attributes and requirements that such an organization should satisfy. These attributes should likely include a public or quasi-public status (probably not a private for profit entity), funding from independent sources, equal participation of all affected constituencies in the process, ability to codify requirements for IT, CE, MVPD and other devices, established standards development processes, and the opportunity for public comment. However, should the Commission not identify such a qualified independent organization, like many other commenters, EchoStar agrees that the Commission take on the task of making both initial and final determinations.<sup>9</sup>

For the foregoing reasons, EchoStar asks that the Commission not prohibit MVPDs from activating down-resolution for non-broadcast programming content, within certain limits, and not allow CableLabs to become the sole initial arbiter of outputs and associated content protection technologies.

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Comments of Microsoft Corp., Hewlett-Packard Corp., Dell, Inc. and Apple Computer, Inc. at 10-12

<sup>8</sup> AAI Comments at 5.

<sup>9</sup> *See, e.g.*, Comments of AAI at 6; Comments of ATI Technologies, Inc. at 4.

Respectfully submitted,

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