



May 10, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Submission, CS Docket Nos. 98-120, 00-96

Dear Chairman Powell:

Public Television hereby writes to the Commission to support the extension of the Satellite Home Viewer Improvement Act (SHVIA) to the carriage of local digital broadcast television signals. Local carriage of these signals is consistent with the plain language of the Act, will aid the progress of the DTV transition, is consistent with long-standing federal policy giving public television stations access to all telecommunications technologies, and will preserve what may be one of the few remaining locally owned and controlled media in the digital age. Satellite companies either currently or will soon have the capacity to carry all local digital signals without compromising local analog carriage. Accordingly, the Commission may consider a range of options, including immediate full carriage, a phased-in approach, or an interim rule requiring ATSC tuners to be integrated into all HD satellite set-top boxes.

Public Television is an enthusiastic proponent of digital television. With its higher quality images and sound, and its inherent flexibility to broadcast either a high-definition or multiple standard definition streams, along with additional streams of data, digital television gives public television stations new innovative tools to expand their educational mission in ways that were not possible in the analog world. For instance, public television stations are regularly producing new **high-definition digital programming** for national, regional and local distribution. In addition, **multicasting** will enable an expanded distribution of formal educational services, workforce development services, children's programming, locally-oriented public affairs programming, and programming addressed to traditionally unserved or underserved communities. Lastly, public television stations also have plans to provide innovative, educational and public safety data services through "**datacasting**."

In light of the significant public interest benefits of noncommercial educational digital services, public television respectfully requests that satellite companies such as DIRECTV and EchoStar be required to carry all free, over-the-air digital signals where local television stations are being carried pursuant to SHVIA. Carriage should include but not be limited to both high-definition programming and the value-added multicast digital programming currently being broadcast by the 246 public television stations now on the air with a digital signal.

Digital carriage is clearly consistent with the plain language of SHVIA's carry-one / carry-all construct. That provision states in relevant part:

[E]ach satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market[.]¹

Both section 122(j)(5) of the Copyright Act, and Section 338 of the Communications Act define in identical terms what television broadcast stations are eligible to be rebroadcast under this legislative scheme. Both provisions specifically reference all "over-the-air, commercial or noncommercial television broadcast station[s] licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations," exempting only low-power or translator stations (which operate pursuant to part 74 of the Commission's rules).² As all digital broadcast television stations are licensed under part 73, subpart E,³ this would clearly place those stations within the ambit of SHVIA's carry-one / carry-all mandate. The fact that only low-power or translator stations were specifically exempted from this provision underscores that **no other exemptions were contemplated by the statute—including any purported exemption for digital television signals.**⁴

In addition, digital carriage on satellite will aid in further speeding up the digital transition in this country. Analog broadcast television service is scheduled to be turned off at the end of 2006 unless 15% or more households cannot receive digital broadcast signals either over the air or through cable or satellite. Cable accounts for 67% of all households; satellite accounts for over 20% with significantly higher percentages in some markets. Over half of all satellite subscribers purchase a local package, and at least one satellite provider, DIRECTV, reports that 75% of its residential customers subscribe to the local package.⁵ In light of these figures, it is vitally important that satellite subscribers have access to digital broadcast signals in order for the digital transition to be a success within a reasonable period of time. In this regard, shortening the

¹ 47 U.S.C. § 338(a).

² See 17 U.S.C. § 122(j)(5) and 47 U.S.C. § 338(h)(7) [referencing 47 U.S.C. § 325(b)(7)].

³ The DTV table of allotments is located at § 73.622 within subpart E of part 73 of the Commission's rules. See 47 C.F.R. § 73.622.

⁴ In this regard, it is traditional principle of statutory construction that where a statute contains specific exceptions no other exceptions are to be implied. Sutherland Stat. Const. § 45.11 (6th Ed.) (collecting cases) and Andrus v. Glover Constr. Co., 446 U.S. 608, 616-617 (1980). Although SHVIA's legislative history indicates that Congress did not take any position regarding mandatory carriage of digital signals by satellite carriers, neither is there any evidence that digital signals were intended to be excluded. See Joint Explanatory Statement of the Committee of Conference on H.R. 106-1554, 145 Cong. Rec. at H11792, H11795 (Daily ed. Nov. 9, 1999).

⁵ Federal Communications Commission, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, FCC 04-5, note 297 (rel., January 28, 2004).

digital transition is especially important to public broadcasters, which must shoulder the substantial cost of dual analog-digital operations for an unknown period of time during the transition to digital.

Moreover, Congress has established the consistent federal policy that public television stations should have access to all telecommunications technologies, including satellite-delivered services.⁶ Within the cable context, Congress explicitly concluded that “the Federal Government has a substantial interest in making all nonduplicative local public television services available” (a) because public television provides educational and informational programming to the nation’s citizens, thereby advancing the Government’s compelling interest in educating its citizens; (b) because public television stations are intimately tied to their communities through substantial investments of local tax dollars and voluntary citizen contributions; (c) because the Federal government has invested substantially in the public broadcasting system; and (d) because without carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.⁷ The reasons for this policy apply with equal force, regardless of whether the public television station is broadcasting in either analog or digital format.

Lastly, satellite carriage of digital public television signals would help to preserve one of few remaining locally owned and operated media outlets in the digital age. In an era of media consolidation, public television stations may represent the last true bedrock of locally controlled free, over-the-air media. The overarching purpose of public television stations is to serve the public interest by providing educational and informational services to their local communities. To that end, the 357 local public television stations that comprise the decentralized system of public broadcasting in this country are operated by local community foundations, colleges, universities, school districts and state commissions. In addition, many public television stations possess community advisory boards that provide direct feedback from the community regarding stations’ performance of and adherence to public television’s mission. Moreover, stations’ daily business operations are directly funded by donations from local viewers, thereby ensuring community responsiveness in a very concrete financial way.⁸ Local carriage of digital public television stations on satellite will promote localism and diversity in the media, will expand the reach of noncommercial educational services available to the public, and will also provide a further incentive for individual donations to public television stations.

⁶ Congress has stated, for instance, that “it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies.” 47 U.S.C. § 396(a)(9).

⁷ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), Section 2(a)(8).

⁸ In fact, one-quarter of Public Television’s funding comes from individual donations, while only about 15 percent of funding comes from the Federal government. The balance is funded by local businesses, state and local governments, local colleges and universities, and foundations. See www.cpb.org/about/funding/whopays.html.

Satellite carriers have claimed that they lack the capacity to rebroadcast the digital signals of each local station in each of the 210 local markets.⁹ However, DIRECTV itself has recently claimed that it will increase the amount of high definition television programming available to the public.¹⁰ Moreover, recent technical submissions to the FCC and Congress have demonstrated that there are technologically feasible means to deliver terrestrial digital signals via satellite.¹¹ For instance, the National Association of Broadcasters has demonstrated that satellite firms have available to them a wide range of potential new techniques for expanding their capacity,¹² including:

- Spectrum sharing between DIRECTV and Echostar either directly or through a third-party intermediary,¹³
- Use of Ka-band as well as Ku-band spectrum,¹⁴
- Higher-order modulation and coding;
- Closer spacing of Ku-band satellites;
- Satellite dishes pointed at multiple orbital slots;

⁹ See, e.g., Ex Parte Notice from Echostar, CS Docket No 98-120 (January 31, 2003); Ex Parte Notice from DIRECTV, CS Docket Nos. 98-120, 00-96 (February 25, 2003).

¹⁰ See *General Motors Corp, Hughes Electronics Corp and New Corp Ltd Seek Approval to Transfer Control of FCC Authorizations and Licenses Held by Hughes Electronics Corp to the News Corp Ltd*, Public Notice, DA 03-1725 (May 16, 2003), p. 3. See also <http://www.directv.com/DTVAPP/Imagine/HDTV.jsp>, and Communications Daily, Satellite (June 5, 2003) (DIRECTV to add Discovery HD Theater, ESPN HD, HDNet and HDNet Movies).

¹¹ See Reply Comments of the National Association of Broadcasters, Federal Communications Commission, MB Docket No. 03-172 (Sept. 26, 2003); and Letter from Dianne Smith, Capitol Broadcasting Company to Marlene Dortch, Federal Communications Commission, CS Docket 98-120 and MB Docket 03-15 (January 22, 2004). See also Written Testimony of Robert G. Lee, President and General Manager of WDBJ-TV, on behalf of the National Association of Broadcasters, Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, United States House of Representatives, pp. 20-22 (February 24, 2004).

¹² Written Testimony of Robert G. Lee, President and General Manager of WDBJ-TV, on behalf of the National Association of Broadcasters, Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, United States House of Representatives, p. 21 (February 24, 2004).

¹³ See, e.g., Letter from Dianne Smith, Capitol Broadcasting Company to Marlene Dortch, Federal Communications Commission, CS Docket 98-120 and MB Docket 03-15 (January 22, 2004).

¹⁴ “[U]sing technology now available, or that will be available during calendar 2004, both EchoStar and DIRECTV could each deliver ALL full-power 19.4 digital stations using only one of their Ka-band orbital slots and two spot beam satellites.” Letter from Dianne Smith, Capitol Broadcasting Company to Marlene Dortch, Federal Communications Commission, CS Docket 98-120 and MB Docket 03-15 (January 22, 2004).

- Use of a second dish to obtain all local stations; and
- Improved signals compression techniques.

Nevertheless, if mandated digital carriage on satellite systems pursuant to SHVIA's carry-one-carry-all provision is not feasible immediately for legal or political reasons, the Commission may consider a phased-in approach to digital carriage as it did with the DTV tuner mandate, digital television infrastructure build-out and closed captioning requirements, among others. Alternatively, the Commission may mandate as an interim measure that all satellite set-top boxes come equipped with integrated digital off-air tuners until the end of the DTV transition, after which full digital carriage would be required on all satellite systems providing local service. This approach would impose little or no burden on satellite carriers themselves, as all three DBS services – DIRECTV, EchoStar and Cablevision's Voom satellite service—are already providing this technology to their HD customers. A Commission rule in this regard would therefore ensure the continuation of this laudable – but voluntary – industry practice.¹⁵

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¹⁵ For the reasons articulated above, it is also fully within the Commission's authority, as a further alternative measure, to allow television broadcast stations that have returned their analog channel licenses to the Commission to substitute their digital signal (or an equivalent) under SHVIA.

For the reasons stated above, Public Television urges the Commission to consider rules that guarantee access by satellite subscribers to all local digital signals.

Respectfully submitted,

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