

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of)	
)	
Petition for Rulemaking to Amend)	
47 C.F.R. §§ 76.64, 76.93, and 76.103)	RM 11203
)	
Retransmission Consent, Cable Network)	
Non-Duplication, and Syndicated)	
Exclusivity)	
_____)	

COMMENTS OF ECHOSTAR SATELLITE L.L.C.

EchoStar Satellite L.L.C. (“EchoStar”) hereby submits its comments concerning the above-referenced Petition for Rulemaking (“Petition”) filed by the American Cable Association (“ACA”).¹ The regulatory benefits enjoyed by broadcasters in the form of retransmission consent and broadcast exclusivity protections have received significant attention from Congress, the Commission, and industry participants, particularly in the last few years.² In

¹ Petition for Rulemaking of American Cable Association, In the Matter of Petition for Rulemaking to Amend 47 C.F.R. §§ 76.64, 76.93, and 76.103; Retransmission Consent, Network Non-Duplication, and Syndicated Exclusivity, RM 11203 (filed Mar. 2, 2005), placed on Public Notice by Report No. 2696 (rel. Mar. 17, 2005).

² See, e.g., Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), Pub. L. No. 108-447, 118 Stat. 2809 (2004), § 208 (ordering the Commission to study and report to Congress concerning “the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules”); Public Notice, “Media Bureau Seeks Comment For Inquiry Required By The Satellite Home Viewer Extension and Reauthorization Act On Rules Affecting Competition in the Television Marketplace,” MB Docket No. 05-28 (rel. Jan. 25, 2005) (initiating the inquiry required by SHVERA Section 208); Public Notice, “Comment Requested On A La Carte And Themed Tier Programming And Pricing Options For Programming Distribution On Cable Television And Direct Broadcast Satellite Systems,” MB Docket No. 04-207 (dated May 25, 2004) (commencing inquiry at the request of certain Members of Congress concerning the ability of multichannel video programming distributors

each instance, the same fundamental question is asked: what role, if any, should such protections play in the present-day market for distribution of television programming?

The ACA's Petition once again brings this question to the Commission's attention. EchoStar supports grant of the ACA's Petition by the Commission. EchoStar notes, however, that the retransmission consent regime affects the ACA's members and satellite distributors such as EchoStar in similar ways. Parity in the treatment of cable and satellite operators militates for expanding the scope of the rulemaking requested by ACA to address the adverse effects of the present retransmission consent framework on subscribers of all MVPDs.

Thus, if the Commission adopts proposals to address the abuses identified by MVPDs, it should ensure that its solutions do not exacerbate competitive imbalances among MVPDs. Specifically, changes should apply equally to all MVPDs to the extent possible. And changes in rules that differ for cable operators and DBS providers, for example the programming exclusivity rules, should be tailored so that DBS subscribers are not disadvantaged by being prohibited from receiving programming that cable subscribers are allowed to receive.

("MVPDs") to provide a la carte programming services, including how networks' use of retransmission consent limits this ability); Petition for Inquiry Into Retransmission Consent Practices, American Cable Association, Proceeding PRM02MB (filed Oct. 1, 2002); Comments of EchoStar Satellite L.L.C., *In the Matter of A La Carte And Themed Tier Programming And Pricing Options For Programming Distribution On Cable Television And Direct Broadcast Satellite Systems*, MB Docket No. 04-207 (filed July 15, 2004) (urging the Commission to clarify its interpretation of the retransmission consent rules to address broadcasters' practice of tying retransmission consent to carriage of affiliated cable programming).

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April 2005, a copy of the foregoing Comments was sent via first class mail, postage pre-paid, to the following:

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/s/
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