

## Alaska Hawaii Rulemaking

### **1. The Provision Rests on Untested Constitutional Ground**

- SHVERA's mandate is to retransmit the analog signals in Alaska and Hawaii by December 2005, and to replace such signals with digital signals in 2007.
- As constitutional matter, this is very different from earlier must-carry rules.
  - Benefit isn't ensuring carriage for disfavored broadcasters. It's ensuring carriage for Alaska-Hawaii stations instead of stations from other markets.
  - Burden is higher because of unique DBS capacity constraints. Congress, not DIRECTV, decides where DIRECTV provides service. For example, DIRECTV must serve Juneau instead of Bangor, where it has ten times as many subscribers. Cable not faced with this burden.

### **2. The Commission should not exacerbate constitutional concerns by expanding the provision beyond what is explicitly required by the statute.**

Section 338(A)(4) only applies in Alaska and Hawaii.

- The statute requires carriage in noncontiguous states, but only where a satellite carrier has subscribers. For DIRECTV, this means only Alaska and Hawaii.
  - Congress only intended to provide for service in Alaska and Hawaii.
  - The provision begins by requiring satellite carriers to retransmit signals to noncontiguous states, but continues by stating that such retransmissions must be made available to substantially all of the satellite carrier's subscribers in such noncontiguous states. Where a satellite carrier has no subscribers, there can be no requirement to retransmit the local signals.
  - DIRECTV's satellites, moreover, technically cannot serve Guam and areas in the South Pacific. And some of the territories are in a different ITU BSS plan, which uses different frequencies.
  - DIRECTV's satellites are not designed to serve areas in the Caribbean, and the signal levels would be far too weak to support a viable consumer service.

SHVERA does not require HD or multicast carriage.

- The statute requires carriage of the "digital signals of each . . . station." But this says nothing about the format of such carriage. Nor does it say anything at all about carrying multiple programming streams.

- “Signals of each station” means “signal of a station over time,”
- This is why the provision uses the phrase “signals of each station” for analog carriage as well as digital carriage, and this is how the Commission itself has used the phrase for years.
- Requiring HD carriage would dramatically *increase* the statute’s burden on DIRECTV’s non-Alaska/Hawaii subs. And the addition of multicast carriage requirements would make the situation even worse, depending on the nature of the programming streams then offered by Alaska and Hawaii broadcasters.
  - DIRECTV could fulfill this requirement by delaying or dropping HD service in at least four or as many as eight markets where DIRECTV has more subscribers. Or it could do so by eliminating plans to initiate local analog service in roughly twenty smaller markets.
  - Would place greater requirements on DBS (with less capacity) than on incumbent cable operators (with more capacity) and would hinder DIRECTV from competing with cable operators in many markets where cable is already offering local analog and HD signals.

The statute does not require dual carriage.

- The statute requires carriage of digital signals eighteen months after carriage of analog signals. But this says nothing about whether satellite carriers must continue carrying analog signals after launching digital signals.
  - The Notice suggests that satellite carriers must continue to carry the analog signals for so long as the broadcasters are transmitting in analog. An equally plausible reading, that would be far less burdensome, would require satellite carriers to retransmit the analog signals until they retransmit the digital signals.
  - The retransmission of a single programming stream of digital signals in SD format will nearly always be identical to the retransmission of analog signals and the SD signals would continue to be available to all of DIRECTV’s subscribers.
- 3. In absence of clear statutory direction to the contrary, the Commission should interpret this provision to maximize satellite carriers’ ability to bring local signals to as many subscribers as possible.**