

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
DONALD J. EVANS
FRANCISCO R. MONTERO
EDWARD S. O'NEILL*
ROBERT M. GURSS*
EUGENE M. LAWSON, JR.
WRITER'S DIRECT
(703) 812-0470
jazzo@fhhlaw.com

ANN BAVENDER*
JOHN C. BUTCHER*
HARRY F. COLE
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
M. SCOTT JOHNSON*
MITCHELL LAZARUS
STEPHEN T. LOVELADY*
SUSAN A. MARSHALL
HARRY C. MARTIN
ALISON J. MILLER
LEE G. PETRO*
RAYMOND J. QUIANZON
MICHAEL W. RICHARDS*
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS
*NOT ADMITTED IN VIRGINIA

July 18, 2005

DOCKET FILE COPY ORIGINAL

RECEIVED

JUL 18 2005

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Re: Post-Reply Comment Period
Written *Ex Parte* Presentation
MB Docket No. 05-181

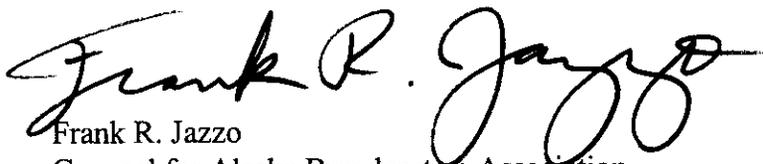
Dear Ms. Dortch:

Transmitted herewith, on behalf of the Alaska Broadcasters Association ("ABA"), pursuant to Section 1.1206(b) of the Commission's Rules, are two copies of its written *ex parte* presentation in the above-captioned proceeding.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.


Frank R. Jazzo
Counsel for Alaska Broadcasters Association

Enclosures

- cc: Chairman Kevin Martin (w/enc.),* Comm. Kathleen Abernathy (w/enc.),*
- Comm. Michael Copps (w/enc.),* Comm. Jonathan Adelstein (w/enc.),*
- Catherine Bohigian, Esq. (w/enc.),* Lauren Belvin, Esq. (w/enc.),*
- Jordan Goldstein, Esq. (w/enc.),* Rudy Brioche, Esq. (w/enc.),*
- Heather Dixon, Esq. (w/enc.),* Lisa Sutherland, Esq. (w/enc.)*
- Christine Kurth, Esq. (w/enc.)*

*By e-mail

No. of Copies Rec'd 042
List ABOVE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

JUL 18 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Implementation of Section 210 of) MB Docket No. 05-181
the Satellite Home Viewer)
Extension and Reauthorization)
Act of 2004 to Amend Section 338)
of the Communications Act)

Directed to: The Secretary of the Commission

WRITTEN EX PARTE PRESENTATION
OF ALASKA BROADCASTERS ASSOCIATION

Alaska Broadcasters Association (“ABA”),¹ by counsel, pursuant to Section 1.1206(b) of the Commission’s Rules,² hereby submits the instant post-Reply Comment period written *ex parte* presentation in response to the Notice of Proposed Rulemaking released by the Commission on May 2, 2005 (“NPRM”), concerning the implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”).³ Section 210 amends the satellite carriage requirements in “non-contiguous states.”

ABA agrees with the Commission’s observation that most of the requirements imposed on satellite operators by Section 210 are “self-effectuating”. The Commission does seek comment on the breadth of the meaning of “non-contiguous states” in Section 210. While ABA

¹ ABA’s members include substantially all of the commercial and noncommercial television stations operating in the state of Alaska.

² 47 CFR §1.1206(b).

³ *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, FCC 05-92, Notice of Proposed Rulemaking, MB Docket No. 05-181 (rel. May 2, 2005).

believes there can be no doubt that “non-contiguous states” include Alaska and Hawaii, ABA takes no position as to whether Congress intended to include territories and possessions beyond Alaska and Hawaii within the scope of “non-contiguous states.”

Section 210 mandates dual analog and digital carriage in the “non-contiguous states” for satellite carriers with more than five million subscribers, requiring carriage of “signals originating as analog signals” and “signals originating as digital signals” (Section 338(a)(4)). This SHVERA amendment to Section 338 does not contain any limitation on the nature of the broadcast signal that satellite operators must carry in the “non-contiguous states.” The Commission believes Section 210 requires that satellite carriers carry all multicast signals of each television station in “non-contiguous states” and carry the high definition digital signals (“HDTV”) of such stations in high definition format. NPRM at para. 9. ABA agrees with the Commission’s interpretation. SHVERA’s use of the plural “signals” and the absence of the limiting “primary video” used in cable mandatory carriage provisions⁴ clearly evidences Congressional intent for expansive carriage rights for the very narrow class of television stations located in the “non-contiguous states.” In SHVERA, Congress has recognized the unique and special circumstances for television viewers in Alaska and Hawaii.

Mandated satellite carriage of Alaskan television stations’ multicast and HDTV signals, without degradation in HDTV format, is especially important to Alaskan television viewers because many viewers can only receive video service by satellite, unlike most areas in the contiguous forty-eight states, where viewers generally have a choice of satellite, cable and over-the-air video service. Many areas in Alaska will never be reached by cable.

⁴ U.S.C. §§534(b)(3) and 535(g).

Approximately 23% of Alaskan households or about 160,000 people have no access to cable television service. This is not surprising since Alaska has the lowest population density of any state in the Union.

Alaskans living in the Anchorage, Juneau, Fairbanks, Bethel and possibly Sitka areas, which comprise approximately two-thirds of the state's population, or 400,000 people, have access to two or more over-the-air television signals. Significantly, approximately 200,000 people, or one-third of the state's population have access to one over-the-air station or less. Alaska Rural Communications Service ("ARCS") is a state-funded program that serves about 125,000 people with television translators that rebroadcast selected programming from Anchorage and Fairbanks stations. For a sizeable portion of the Alaskan population, satellite service provides the only means of obtaining multi-channel video service.

Unlike the rest of the country, a sizeable portion of the geographic area of Alaska is not assigned to a DMA. SHVERA requires a satellite carrier in Alaska to make available the signals of all the local television stations that it carries in at least one local market to substantially all of its subscribers in areas outside of local markets (DMAs) who are in the same state.⁵ Alaska has three DMAs: Anchorage; Fairbanks and Juneau, cities which are separated by hundred of miles. Non-DMA satellite subscribers should be able to choose which DMA's local stations they will be able to receive. Non-DMA satellite subscribers living closer to Juneau and Fairbanks are more likely to find programming targeted to their interests from those markets' stations than from Anchorage market stations. This goes to the very heart of broadcast localism.

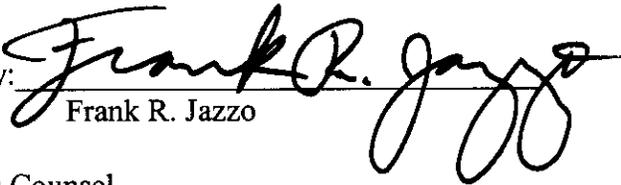
⁵ 47 U.S.C. §338(a)(4), as amended by Section 210 of SHVERA.

With regard to the phrase in the NPRM, “The SHVERA also mandates that satellite carriers may not charge subscribers for these local signals more than they charge subscribers in other States to receive local market television stations,” it is imperative that this include upfront hardware costs as part of the definition for a “charge.” See NPRM at para. 5. Fairbanks stations are now available via local-into-local. However, existing subscribers are required to make an additional investment of \$200-\$300 in hardware, so that they can “upgrade” to receive local channels. If they choose to receive a Distant Network signal (*i.e.*, Los Angeles, Denver, or even Anchorage stations), the extra hardware expense is unnecessary because the subscriber can use their existing hardware. This hidden requirement is not in any of DishNetwork’s marketing material or press releases. The Fairbanks local stations are on Echostar’s satellite at 110° W. To receive the 110° W satellite requires an additional dish of at least 4 and sometimes 6 feet for Fairbanks area subscribers. This is not practical for many people in the Fairbanks area. When DirecTV says they will offer Alaskans stations on some extra capacity, it may also require that people install more than one dish. To be compliant they should offer these services on an orbital slot that can easily be seen in Alaska from existing antennas and move other services if needed.

WHEREFORE, for the foregoing reasons, ABA respectfully requests that the Commission implement Section 210 of SHVERA as discussed above.

Respectfully submitted,

ALASKA BROADCASTERS ASSOCIATION

By: 
Frank R. Jazzo

Its Counsel

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

July 18, 2005

E:\Alaska Bctrs Assn\Pleadings\Ex Parte Presentation.2005.07.18.fj.wpd