

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

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

Directed to: Marlene H. Dortch, Secretary
For transmission to: The Commission

**REPLY OF THE ALASKA BROADCASTERS ASSOCIATION
IN SUPPORT OF THE OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS**

1. Alaska Broadcasters Association (“ABA”),¹ by counsel, hereby submits its Reply in support of the Opposition filed in the above-captioned proceeding by the National Association of Broadcasters (“NAB”). The NAB’s Opposition is directed to petitions filed by DIRECTV, Inc. (“DIRECTV”) and EchoStar Satellite, L.L.C. (“EchoStar”) (collectively, “Petitioners”) in which the Petitioners seek reconsideration of the Commission’s Report and Order (“*R&O*”), FCC 05-159, released August 23, 2005, in the above-captioned proceeding. ABA fully supports the arguments and observations advanced by the NAB in its Opposition. The Commission was plainly correct in its determination that Section 210 of the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”), 47 U.S.C. §338(a)(4), mandates satellite carriage of the entire free, over-the-air digital signal (including any multi-cast streams) of local television stations in Alaska and Hawaii. Further, that determination suffers no constitutional infirmity.

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

2. As a threshold matter, it is well-established (as the NAB demonstrates) that the Commission's reasoned and reasonable interpretation of its own governing statute is entitled to substantial deference. Most importantly, such an interpretation should not and will not be disregarded or reversed merely because private parties (such as the Petitioners) happen to disagree with the Commission's interpretation. *See, e.g., Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984). In the *R&O*, the Commission determined that the relevant language in SHVERA was unambiguous. If that determination is correct, then the Petitioners' efforts don't even get out of the starting gate. But even if the SHVERA mandate were deemed, *arguendo*, to be ambiguous in some way, shape or form, the Commission's interpretation of that mandate clearly constitutes a reasonable effort to give meaning to the statutory terminology and to advance the Congressional intent underlying that terminology. In the face of this record, the Petitioners' self-interested second-guessing is unavailing.

3. With respect to the Petitioners' extravagant claims concerning the supposed burden the Commission's decision will impose on the Petitioners' capacity, ABA merely directs the Commission's attention to the extensive and detailed technical showing advanced by the NAB in its Opposition. That showing establishes that the carriage requirements imposed by the Commission will have negligible effect on the Petitioners' capacity.

4. Similarly, the NAB's detailed and cogent analysis establishes beyond cavil that the Petitioners' constitutional arguments are without merit. The Supreme Court has upheld requirements, such as must-carry, against First Amendment challenges when (a) the contested requirements further an important governmental interest unrelated to the suppression of free expression and (b) any incidental burden on First Amendment freedoms is no greater than

essential to the furtherance of that governmental interest. *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 662 (1994). It is particularly noteworthy that the Petitioners' constitutional claims are based largely on the notion that the Alaska/Hawaii must-carry requirement will impose a constitutionally unacceptable burden on the Petitioners – even though, as noted above, analysis of the Petitioners' actual and anticipated capacity proves that the Petitioners will not, in fact, suffer any real burden! Importantly, the Petitioners have offered little more than vague, unexplained, unsupported – and obviously self-serving – hypotheses to suggest, ineffectively, that they will suffer any burden at all.

5. Moreover, neither Petitioner even comes close to demonstrating, through actual proof (as opposed to fanciful speculation), that any anticipated burden would be imposed on speech. And as to the Petitioners' unsurprising claim that the Alaska/Hawaii must-carry requirement would not advance any important governmental interest, Congress has previously determined (with the Supreme Court's blessing) that must-carry requirements advance precisely such governmental interests. *See, e.g., Turner, supra*. The Commission has in turn identified additional such interests in this very proceeding. *See R&O* at ¶¶18-19. The Commission's expert judgment in such matters is entitled to deference, a factor which further undermines the Petitioners' First Amendment argument.

6. And finally, the Petitioners' Fifth Amendment claims are equally flawed, as the NAB demonstrates.

WHEREFORE, for the reasons stated, ABA urges the Commission to reject the petitions for reconsideration and to re-affirm the must-carry requirement set out in the *R&O*.

Respectfully submitted,

ALASKA BROADCASTERS ASSOCIATION

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CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 19th day of December, 2005, I caused copies of the foregoing "Reply of the Alaska Broadcasters Association In support of the Opposition of the National Association of Broadcasters" to be transmitted electronically to the following persons, addressed as indicated below:

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