

DOCKET ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Implementation of the Satellite Home Viewer)
Extension and Reauthorization Act of 2004)
)
Implementation of Section 340 of the)
Communications Act)
)
)
)

MB Docket No. 05-49

To: Office of the Secretary
Attention: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Saga Broadcasting, LLC, and Saga Quad States Communications, LLC (“jointly, “Saga”)¹, by counsel, and pursuant to Section 1.429 of the Commission’s Rules, hereby respectfully opposes the “Petition for Reconsideration” (“Petition”) jointly filed January 26, 2006, by DIRECTV, Inc. (“DIRECTV”) and EchoStar Satellite LLC (“EchoStar”) in the above-captioned Docket.² DIRECTV and EchoStar are referred to herein as “Petitioners.” The Petition seeks reconsideration of the Commission’s action in its Report and Order (“R&O”) in this docket.³ For the reasons set forth herein, the Commission’s R&O should not be modified in the manner requested by the Petitioners.

¹ Saga Broadcasting, LLC, is licensee of KAVU-TV, Victoria, Texas, and WXVT(TV), Greenville, Mississippi. Saga Quad States Communications, LLC, is licensee of KOAM-TV, Pittsburg, Kansas.

² This Opposition is timely filed by March 2, 2006 (See 71 Fed. Reg. 7965, published February 15, 2006).

³ *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 and Implementation of Section 340 of the Communications Act*, 20 FCC Rcd 17278 (FCC 05-187, released November 3, 2005).

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Background

1. In the R&O, the Commission adopted rules to implement section 202 of the *Satellite Home Viewer Extension and Reauthorization Act of 2004* (“SHVERA”). Section 202 of the SHVERA created Section 340 of the Communications Act of 1934, as amended (the “Act”), which provides satellite carriers with the authority to offer commission-determined “significantly viewed” signals of out-of-market (or “distant”) broadcast stations to subscribers. In brief summary, the Commission made the following rule changes and conclusions: (a) Adopted the Significantly Viewed List (“SV List”) published in the Notice of Proposed Rule Making in this Docket as the Final SV List; (b) Applied Section 76.54 of the Rules to satellite carriers (i.e., cable television model); (c) With respect to the application of the Commission’s network non-duplication and syndicated exclusivity rules to the carriage of significantly viewed stations, implemented the SHVERA provision to create a limited right for a station or distributor to assert exclusivity with respect to a station carried by a satellite carrier as significantly viewed and allowed that significantly viewed station to assert the significantly viewed exception, just as a station would with respect to cable carriage; (d) Allowed a satellite carrier to create a new community for purposes of the SV List by following certain procedures; (e) Found that Sections 340(b)(1) and (2) require that a subscriber must receive a specific local network station as part of “local-into-local” service in order to be eligible to receive a significantly viewed station affiliated with the same network as the local station; (f) Required satellite carriers to comply with “equivalent bandwidth” and “entire bandwidth” requirements; and (g) Concluded that determinations of bad faith or frivolousness will be made on a case-by-case basis.

The Petition

2. The Petitioners argue for reconsideration of the Commission's interpretation of two of SHVERA's requirements for the retransmission of significantly viewed network signals by satellite into local markets. They first seek reconsideration of the Commission's comparative bit rate approach to SHVERA's requirement that local network affiliates be afforded "equivalent bandwidth" to that provided to significantly viewed network stations. The Petitioners also seek reconsideration of the Commission's interpretation of SHVERA's requirement that a subscriber receive local-into-local service as a precondition to receiving distant-into-local analog service. The Petitioners claim these requirements are "overly restrictive," but Saga shows herein that that is not the case.

The Rules Should Not Be Changed As Requested by the Petitioners

3. Saga urges the Commission to make no changes to the Commission's Rules that depart from the Commission's goal of harmonizing the regulations for satellite providers with the regulations governing cable television. The Petitioners seek not to have to provide equal bandwidth to locally carried stations. This is a primary rule for cable. Satellite providers should not be permitted to degrade the broadcast signal to carry it and the signal must include all embedded data that comes with the signal (like closed captioning.) In the R&O (§ 94), the Commission noted its agreement that the concepts of "equivalent bandwidth" and "entire bandwidth" were created to prohibit satellite carriers from using technological means to discriminate against the digital signals of local stations in favor of the digital signals of significantly viewed stations: "This seems clear given

Congress' intent to prevent satellite carriage of a local network station's digital signal 'in a less robust format' than the digital signal of the significantly viewed network affiliate." Petitioners' argument that the Commission's new rules are "overly restrictive" based on scrutiny of the dictionary must be rejected and common sense must prevail. Petitioners offer nothing more than conjecture to support their arguments (Petition, p. 7) that the Commission's rules are "technically infeasible." The "equivalent bandwidth" requirements as set forth in the R&O should not be changed.

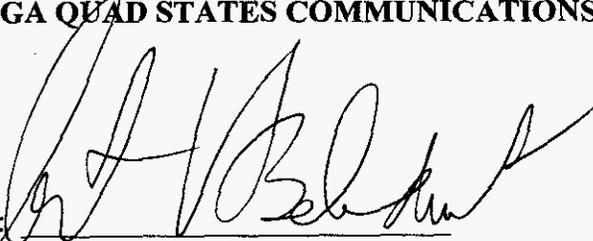
4. At R&O, ¶ 73, the Commission found that SHVERA does not allow a satellite carrier to retransmit a significantly viewed signal to a subscriber receiving local-into-local service but which local service does not include an affiliate of the network with which the significantly viewed station is affiliated, unless the exemption in Section 340(b)(3) or the waiver provision in Section 340(b)(4) applies. Petitioners challenge this finding. Accepting Petitioner's proposal would completely eviscerate the local-into-local model. If the satellite provider is not first required to carry the local network affiliate, the satellite provider could then import into the market the signals of network affiliates in larger markets that have significantly viewed status without ever providing local-into-local service. In television markets in which Saga operates stations, most of the DMA counties have some out-of-market station listed as significantly viewed from the SV List which is based on the extremely out of date Arbitron data from 1972.⁴ In

⁴ In its comments filed in this Docket, Saga attempted to correct the SV List by deleting stations on the SV List that could not be significantly viewed in Saga's markets, but the Commission rejected this approach at R&O ¶23 ("We disagree with Saga and Saga Quad that errors were made in 1972 with respect to the following counties: Greenville, MS; Pittsburg, KS/Joplin, MO; and Victoria, TX...the Saga submissions do not comply with the Section 76.54 petition process and exceed the scope of this proceeding. As a result, Saga's and Saga Quad's requests for deletion are rejected.")

these cases, as with most other stations, the Petitioners' plan could permit satellite providers to choose to legally import distant network signals into the DMAs without ever having to carry the local stations, seriously undermining the local-into-local requirements.

IN LIGHT OF THE FOREGOING, Saga respectfully requests that the Commission DENY the Petition.

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March 2, 2006

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was mailed by First Class U.S. Mail, postage prepaid, this 2nd day of March, 2006, to the following:

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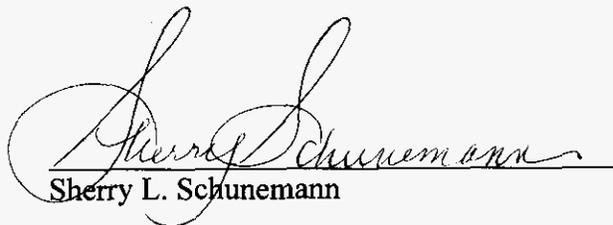
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