

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

In the Matter of )  
 )  
The Establishment of Policies and Service Rules for the )  
Broadcasting Satellite Service at the 17.3-17.7 GHz )  
Frequency Band and at the 17.7-17.8 GHz Frequency )  
Band Internationally, and at the 24.75-25.25 GHz ) IB Docket No. 06-123  
Frequency Band for Fixed Satellite Services Providing )  
Feeder Links to the Broadcast-Satellite Service and )  
for the Broadcast Satellite Service Operating Bi- )  
directionally in the 17.3-17.7 GHz Frequency Band )

To: The Commission

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these brief comments on the above-captioned *Notice of Proposed Rulemaking*.<sup>2</sup> The *Notice* sought comment on proposed processing and service rules for the new 17/24 GHz Broadcasting Satellite Service (“BSS”).

While it remains unclear exactly what services will be provided in the new 17/24 GHz BSS band, NAB submits these comments anticipating that the new services could substantially increase the spectrum available for current Direct Broadcast Satellite (“DBS”) service providers, including DirecTV and EchoStar. To the extent this newly allocated band will be used to provide DBS-like service, NAB strongly encourages the Commission to adopt definitions consistent with

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<sup>1</sup> The National Association of Broadcasters is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

<sup>2</sup> *Notice of Proposed Rulemaking* in IB Docket No. 06-123, FCC 06-90 (rel. June 23, 2006) (“*Notice*”)

those in Sections 119 and 122 of the Copyright Act so that these provisions will govern these new services.

NAB does not oppose a majority of the rules proposed in the *Notice*, and would welcome expanded DBS service that would provide substantially more capacity for local-into-local carriage of stations. These comments are focused exclusively on questions posed in paragraphs 21 and 24 of the *Notice*, which ask whether 17/24 GHz licensees should be classified as “satellite carriers” under the Copyright Act. For the reasons stated below, and to the extent 17/24 GHz licensees provide DBS-like services, NAB submits that licensees in this newly allocated band should be classified as “satellite carriers” under the Copyright Act, and should be subject in particular to the “carry one, carry all” requirements of 47 U.S.C. §338.

The term “satellite carrier” is defined in 17 U.S.C. §119(d)(6) as “an entity that uses the facilities of a satellite or satellite service” licensed by the Commission and operates either as a Fixed Satellite Service (“FSS”) or a Direct Broadcast Satellite service. DBS service is defined in the Copyright Act by reference to its definition in “part 100 of title 47 of the Code of Federal Regulations.” Part 100 of title 47 no longer exists, and the DBS service definition was moved to part 25 of title 47 per a 2002 *Report and Order*<sup>3</sup>, which revised several of the rules that govern DBS service. The definition of DBS service in 47 C.F.R. § 25.202(a)(7) is frequency specific because, to this point, DBS service has been provided only in the 12.2 – 12.7 GHz band. The Commission chose to define DBS service by frequency in order to avoid confusion, and to differentiate the service from FSS services, which are more flexible in purpose and subject to

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<sup>3</sup> In the Matter of Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, IB Docket No. 98-21, FCC 02-110 (rel. June 19, 2002).

different international regulations.<sup>4</sup> If DBS service is being expanded, as the *Notice* suggests, 47 C.F.R. § 25.202(a)(7) should be changed to include the new frequencies in which DBS service will be provided. Such a change would be consistent with the way in which other satellite services are defined in part 25, and would help avoid confusion by ensuring that this new DBS-like service is regulated the same as existing DBS services. The change would also bring this new service within the rubric of Sections 119 and 122 of the Copyright Act, making new licensees subject to the same compulsory licensing provisions as current DBS providers. Furthermore, the change would ensure that new licensees abide by the “carry one, carry all” broadcast carriage rules mandated by Congress in 47 U.S.C. §338.

Again, while NAB supports expanded DBS-like service to the extent it will provide more competition in the multichannel video programming distribution market and more opportunity for local-into-local programming, it remains crucial that any new service be regulated in a manner consistent with similar video services.

Respectfully submitted,



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<sup>4</sup> *Id.* at ¶21. (“We believe that defining DBS based on both the frequencies and the nature of the service will avoid confusion because there are significant instances where DBS is subject to international regulations different from those applied to the FSS. Therefore, we amend the definition of DBS to include a reference to the frequencies used by the DBS service.”)