

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

In the Matter of	)	
	)	
Implementation of Section 203 of the Satellite	)	MB Docket No. 10-148
Television Extension and Localism Act of	)	
2010 (STELA)	)	
	)	
Amendments to Section 340 of the	)	
Communications Act	)	
	)	

**COMMENTS OF DIRECTV, INC.**

DIRECTV, Inc. (“DIRECTV”) appreciates the Commission’s quick action to implement new rules for satellite provision of out-of-market “significantly viewed” broadcast stations.<sup>1</sup> We support the Commission’s proposed rules, which we believe are compelled by Congress’s passage of the Satellite Television Extension and Localism Act of 2010 (“STELA”).<sup>2</sup> We also have one suggestion on how the Commission might harmoniously interpret the two key statutory provisions, specifically those: (1) eliminating the “same network service” requirement; and (2) eliminating the “equivalent bandwidth” rule.

**Background.** Five years ago, Congress first allowed satellite carriers to offer significantly viewed stations out-of-market in an attempt to level the field with cable operators, which have long been permitted to carry such stations.<sup>3</sup> After Congress did so, however, the Commission interpreted two key provisions of that law very restrictively and contrary to

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<sup>1</sup> *Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA)*, Notice of Proposed Rulemaking, FCC 10-130, MB Docket No. 10-148 (rel. July 23, 2010) (“*Notice*”).

<sup>2</sup> The Satellite Television Extension and Localism Act of 2010 (“STELA”) § 203, Pub. L. No. 111-175, 124 Stat. 1218, 1245 (2010).

<sup>3</sup> Pub. L. No. 108-447, § 202, 118 Stat. 2809, 3393 (2004) (codified at 47 U.S.C. § 340); *Notice*, ¶ 7.

Congressional intent. It promulgated a “same network service” requirement, conditioning satellite carriage of significantly viewed network stations on carriage of the *local affiliate* of the same network (rather than requiring the offering of *local service* only). It also required satellite carriers to offer the digital signal of that local affiliate in the “equivalent bandwidth” as the significantly viewed station *at all times* (rather than merely in the same general format).<sup>4</sup>

At the time, DIRECTV and others asked the Commission not to interpret the statute in this way.<sup>5</sup> We argued that the same network service requirement would allow local stations to force satellite carriers to drop neighboring stations in retransmission consent disputes—a power they did not have vis-à-vis cable operators. (This, in turn, would make those neighboring stations less likely to agree to be carried in the first place.) We also argued that satellite carriers could not comply with a minute-by-minute “equivalent bandwidth” requirement, which would require the blacking-out of a significantly viewed station at any moment the station happened to be showing programming in higher definition (*i.e.*, delivering higher “bandwidth”) than the same-network local station. We feared that these two rules would effectively prevent us from offering significantly viewed stations at all—a result contrary to the will of Congress in adopting the significantly viewed language in the first place.

The fears DIRECTV expressed to the Commission, unfortunately, turned out to be well-founded. In the five years since Congress first permitted DIRECTV to offer significantly viewed stations, we have offered only a handful of them—in nearly all cases, where the local station has agreed to waive the equivalent bandwidth rule. DIRECTV testified to these concerns before

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<sup>4</sup> See *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, 20 FCC Rcd. 17278 (2005) (“*SHVERA SV Order*”).

<sup>5</sup> See, e.g., Comments of DIRECTV, Inc., MB Docket No. 05-49 (filed Apr. 8, 2005); Petition for Reconsideration of DIRECTV, Inc. and EchoStar Satellite L.L.C., MB Docket No. 05-49 (filed Jan 26, 2006).

Congress when the satellite home viewer statute came up for renewal last year.<sup>6</sup> We asked Congress to revisit the two key statutory provisions in question. Congress ultimately amended both of them.

***STELA's Changes to the Significantly Viewed Language.*** First, Congress eliminated Section 340(b)(2)(A), which contained the “same network service” language.<sup>7</sup> To be more precise, it struck language that, on its face, applied only to *digital* programming, leaving in place less restrictive language that applied only to analog signals. The Commission had (mistakenly, in our view) read the two sections in parallel, applying the more restrictive digital standard to both analog and digital signals.<sup>8</sup> Following the 2010 amendments, however, it is now clear that the remaining language applies to *all* signals. It states: “This section [authorizing carriage of significantly viewed stations] shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal from that satellite carrier pursuant to section 338 [authorizing carriage of local stations].”<sup>9</sup> DIRECTV believes the Commission’s tentative conclusion “requir[ing] only that a subscriber receive the satellite carrier’s local-into-local service as a pre-condition for the subscriber to receive SV stations” is consistent with Congressional intent.<sup>10</sup>

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<sup>6</sup> *E.g.*, Testimony of Derek Chang before the House Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet (June 16, 2009) (“Chang Testimony”), *available at* [http://energycommerce.house.gov/Press\\_111/20090616/testimony\\_chang.pdf](http://energycommerce.house.gov/Press_111/20090616/testimony_chang.pdf).

<sup>7</sup> *See* 47 U.S.C. § 340(b)(2)(A) (2005) (superseded) (“With respect to a signal that originates as a digital signal of a network station, this section shall apply only if . . . the subscriber receives from the satellite carrier pursuant to section 338 of this title the retransmission of the digital signal of a network station in the subscriber’s local market *that is affiliated with the same television network . . .*”) (emphasis added).

<sup>8</sup> *SHVERA SV Order*, ¶¶ 70, 76.

<sup>9</sup> 47 U.S.C. § 340(b)(1).

<sup>10</sup> *Notice*, ¶ 17.

Second, Congress eliminated Section 340(b)(2)(B) of the Act, which had contained the “equivalent bandwidth” language,<sup>11</sup> and replaced it with the following language:

SERVICE LIMITATIONS.—A satellite carrier may retransmit to a subscriber in high definition format the signal of a station determined by the Commission to be significantly viewed under subsection (a) only if such carrier also retransmits in high definition format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station.<sup>12</sup>

The Commission now proposes striking the “equivalent bandwidth” requirement from its rules and replacing it with a rule tracking the new statutory language.<sup>13</sup> Again, this seems consistent with Congressional intent.

***Harmonizing Congress’s Two Significantly Viewed Provisions.*** The two provisions are themselves relatively straightforward. When taken together, however, they present a new interpretive problem for the Commission. In eliminating the “same network service” requirement, Congress intentionally delinked carriage of a significantly viewed station from carriage of *any particular* local station—thus removing a local network affiliate’s ability to force the satellite carrier to drop a neighboring station during retransmission consent disputes. But the new “high definition format” language could be read as doing precisely the opposite. Read in isolation, it could mean that a satellite carrier must retransmit a particular local station’s high definition feed as an absolute precondition of carrying a significantly viewed station’s high definition feed. Under such a reading, if a local station were to withhold retransmission consent, we would have to either “downrez” the neighboring station into standard definition format or

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<sup>11</sup> See 47 U.S.C. § 340(b)(2)(B) (2005) (superseded) (providing that, with respect to a signal that originates as a digital signal of a network station, this section shall apply only if “(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section or (ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station”)

<sup>12</sup> 47 U.S.C. § 340(b)(2).

<sup>13</sup> Notice, ¶ 12

drop it as well. Likewise, if a new, high-definition network affiliate suddenly appeared on the multicast stream of an existing station, we would have to drop or downrez the neighboring station until we could negotiate carriage and make room for the “new” local station.<sup>14</sup>

Applying standard canons of statutory construction, one must conclude that Congress did not intend one provision to cancel out the other. “It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”<sup>15</sup> Having removed the “same network service” requirement in one section, Congress surely did not intend to render that removal “superfluous, void, or insignificant” in another section.

A better interpretation would harmonize the two sections by reading them in parallel. Under this reading, Section 340(b)(1) sets forth which subscribers are qualified to receive significantly viewed stations (those who receive local service), while Section 340(b)(2) sets forth comparative format requirements *where both local and significantly viewed stations are carried*. Thus, once a satellite carrier carries a local network affiliate (primary or multicast) it must carry that affiliate in high-definition format in order to carry the corresponding significantly viewed signal in that format.<sup>16</sup> If a satellite carrier does not carry the local affiliate (because, for example, the local affiliate has withheld consent), the local affiliate cannot use the “high definition” requirement to affect carriage of the significantly viewed signal.

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<sup>14</sup> See Notice, ¶ 13 (asking “[w]hat is required by [the statutory] language in the event a satellite carrier wants to retransmit an SV network affiliate and there is an in-market (local) station that is multicasting in HD format and airing programming affiliated with the same network in HD on a secondary stream?”). [As discussed below, we believe the statutory language requires that, *if* a satellite carrier offers the in-market multicast at all, it must do so in HD in order to deliver the significantly viewed station in HD.]

<sup>15</sup> *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citing *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotation marks omitted)). See also Eskridge *et al.*, *Cases and Materials on Legislation Statutes and the Creation of Public Policy* 835 (3d ed. 2001) (“An important corollary of the whole act rule is that one provision of a statute should not be interpreted in such a way as to derogate from other provisions of the statute (to the extent this is possible).”).

<sup>16</sup> Of course, the vast majority of local network affiliates have must-carry rights.

