



November 9, 2010

BY ELECTRONIC FILING

Marlene H. Dortch
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA), MB Docket No. 10-148

Dear Ms. Dortch:

Stacy Fuller, DIRECTV's Vice President, Regulatory Affairs, and outside counsel Michael Nilsson met yesterday with Dave Grimaldi, Commissioner Clyburn's Chief of Staff and Media Legal Advisor, to discuss the STELA "significantly viewed" proceeding. This discussion reflected DIRECTV's prior submissions in this proceeding, as set forth in the attached talking points. DIRECTV also distributed the attached "redline" superimposing STELA's changes over prior law, as well as the attached illustrative maps prepared by counsel depicting significantly viewed service.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/
Michael Nilsson

Attachment
cc: Dave Grimaldi

SIGNIFICANTLY VIEWED TALKING POINTS

- **Congress wanted to give satellite the same rights to carry these local stations that cable has always had.**
 - FCC implementation decisions made satellite carriage essentially impossible, so satellite did not offer service.
 - Congress made changes to encourage SV service and to put satellite on the same footing as cable. Broadcasters' implementation proposals are designed to preserve the *status quo* and prevent SV service.
- **Significantly viewed stations are “local” stations.**
 - The only way a station can become SV in the first place is through off-air viewing patterns.
 - They are now governed by the local copyright license and are copyright free. But the important thing is that viewers *think* of them as local.
- **Significantly viewed service will not upset retransmission consent negotiations.**
 - Even in the outlying markets the broadcasters cite, SV stations are *not* available throughout the DMA, or even in key parts of the DMA.
 - In the vast majority of DMAs, SV stations cover only a small sliver of the DMA.
- **The broadcasters' proposed “same network service” requirement *would* upset retransmission consent negotiations.**
 - It is bad enough that viewers can lose one station where a broadcaster demands exorbitant price increases.
 - It is completely unfair for that viewer to also lose a second *completely unrelated* local station.
 - *No station should have the right to block viewing of another station.*
- **Congress made specific changes to prevent station blocking.**
 - It removed the language upon which the Commission had relied to create the “same network service” requirement in the first place.

- Former interpretation of remaining language as *also* containing a requirement was specifically based on now-removed language.
 - There is *no* textual basis for broadcasters' interpretation, which is why they rely on "legislative enactment" theory—a theory that does not apply in the administrative law context anyway.
- It included "made available" in the new HD formatting requirement, which means "made available to the satellite carrier."
 - If a broadcaster denies retransmission consent, the signal is *by law* no longer available to the satellite carrier.
 - Congress used the concept of "availability" elsewhere in the statute for a different purpose – to ensure that subscribers outside of the spot beam can receive distant signals. (Thus the use of zip codes.) It makes perfect sense for Congress to use the term differently here.
 - Broadcasters would make the term "made available" redundant.
 - Section 340(b)(3) has always provided that the limitations preceding it are "not applicable where no network affiliates."
 - This *already* makes clear that the restrictions do not apply, in the broadcasters' words, where no local station is "in fact, broadcasting the relevant network programming."
 - Our interpretation—that "made available" means *available to the satellite carrier*—gives each provision separate effect.

Appendix
Redline of 47 U.S.C. § 340(b)

(b) Limitations.

(1) ~~Service analog service~~ limited to subscribers taking local-into-local service. ~~With respect to a signal that originates as an analog signal of a network station, this~~ section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal ~~that originates as an analog signal of a local network station~~ from that satellite carrier pursuant to section 338.

(2) ~~Digital s~~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. With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—~~

~~(A) the subscriber receives from the satellite carrier pursuant to section 338 the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and~~

~~(B) either—~~

~~(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.~~

(3) Limitation not applicable where no network affiliates. The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network station affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

(4) Authority to grant station-specific waivers. Paragraphs (1) and (2) shall not prohibit a retransmission of a network station in a local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

Lansing and Flint CBS Significantly Viewed in Detroit



