

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

In the Matter of:

MB Docket No. 10-238

Report Required by STELA on In-State  
Broadcast Programming

**COMMENTS OF DIRECTV, INC.**

In this proceeding, the Commission seeks comment on the problem of so-called “orphan counties” in which cable and satellite viewers cannot receive in-state broadcast programming.<sup>1</sup> DIRECTV has long supported efforts to deliver in-state local programming to viewers in these areas. The approach proposed in the last Congress by Congressman Ross and others would allow cable and satellite operators, where technically feasible, to provide additional choices to thousands of viewers that can only receive programming from out-of-state broadcast stations. In exploring solutions, however, the Commission should recommend policies that balance the desire for more in-state local programming with the fact that satellite systems have been developed and deployed based on the existing designated market area (“DMA”) regime. Creating additional choices within the exiting regime would achieve that balance while also

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<sup>1</sup> Media Bureau Seeks Comment for Report Required by the Satellite Television Extension and Localism Act on In-State Broadcast Programming, Public Notice, MB Docket No. 10-238 (rel. Nov. 23, 2010) (“*Notice*”).

allowing subscribers in those counties to continue to receive the broadcast programming they now enjoy.

**I. Policy-Makers Should Improve Access To In-State Local Programming In Orphan Counties.**

One of the principal issues debated prior to passage of the Satellite Television Extension and Localism Act of 2010 (“STELA”)<sup>2</sup> last year concerned subscribers who live in “orphan counties” that have been assigned to a DMA with no in-state broadcast stations. Congressman Ross of Arkansas, many of whose constituents receive broadcast programming only from Louisiana, sought to help subscribers in such counties and introduced legislation that would have done so.<sup>3</sup> That effort ultimately became Section 304 of STELA. DIRECTV supports reform in this area because many of Congressman Ross’s constituents, and tens of thousands like them, are DIRECTV subscribers. They should have the opportunity to receive in-state local broadcast stations, where technically feasible.

Orphan counties are those counties located in a DMA in which all the local broadcast stations are licensed to another state.<sup>4</sup> The Communications and Copyright Acts permit an MVPD to provide a subscriber with broadcast stations located in his or her “local market,”

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<sup>2</sup> Pub. L. No. 111-175, 124 Stat.1218, 1245 (2010).

<sup>3</sup> *See Local Television Freedom Act of 2009*, H.R. 3216, 110<sup>th</sup> Congress (2009); Congressman Mike Ross: Ross Bill Would Give Arkansas Access to Local Channels, July 14, 2009, <http://ross.house.gov/News/DocumentSingle.aspx?DocumentID=170772>.

DIRECTV now airs certain news programming from Little Rock in those counties under a private copyright arrangement brokered during the SHVERA negotiations. Congressman Mike Ross: KATV Programming Now Available to DIRECTV Subscribers in Southern Arkansas, October 19, 2010, <http://ross.house.gov/News/DocumentSingle.aspx?DocumentID=212569>.

<sup>4</sup> *See Notice*, at 2.

generally defined as the DMA in which a subscriber resides.<sup>5</sup> DMAs, however, do not respect state boundaries.<sup>6</sup> Some counties are thus assigned to local markets with no in-state broadcasters at all.

In some cases, residents of orphan counties receive “local” service from out-of-state broadcasters. Viewers in Wyandotte County, Kansas, for example, are presumably well served by out-of-state local stations located directly across the Missouri River in Kansas City, Missouri. Because the DMA system is an anachronism dating from the early days of broadcast television, however,<sup>7</sup> subscribers in many orphan counties receive out-of state programming that is local in name only.

This is perhaps most acute where counties were originally assigned to particular DMAs because they lacked local broadcast stations of their own, or where they were unable to receive over-the-air signals of the closest network affiliates because of local topography, including mountain ranges. Residents in these counties often imported distant programming via translator or satellite station, preferring some broadcast programming to none. The result is counties with designated “local” stations from another state, hundreds of miles away.<sup>8</sup> Indeed, some orphan

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<sup>5</sup> *Id.* at n.8. In the satellite context, the statute requires that DMAs be used to define local markets. *See* 47 U.S.C § 338 (signal carriage rights) and 17 U.S.C. § 122 (copyright). The cable context is slightly more complicated. The statutory copyright license governing cable retransmissions provides that service in the “local service area of a primary transmitter” is generally royalty free. That term, in turn, is defined to *include* a station’s DMA. *See* 17 U.S.C. § 111(f).

<sup>6</sup> Nearly half of DMAs cross state lines.

<sup>7</sup> *Cf.* Congressman Mike Ross: Legislative Update: Access to Arkansas News & Sports, May 17, 2010, <http://ross.house.gov/News/DocumentSingle.aspx?DocumentID=185867> (arguing against using 1950s business practices to deliver 21<sup>st</sup> century technology).

<sup>8</sup> The *Notice* points out that the Commission has statutory authority to include additional communities in a given station’s television market on request, but only for cable carriage, not for satellite. *Notice*, at 5-6 & n.17. But because many orphan counties tend to be isolated,

counties are not even contiguous with the licensing state from which they receive their programming.<sup>9</sup> Subscribers in such counties may not receive local news, weather, emergency alerts, political coverage, and sports from stations in their DMA. For example:

- Clay County, North Carolina, is part of the Atlanta DMA. It is the only North Carolina county in the Atlanta DMA:<sup>10</sup>



All of the network affiliates in the Atlanta DMA are licensed, and located, in Atlanta. Residents of Clay County therefore receive their “local” programming from Atlanta network affiliates, though they live farther from Atlanta than from Asheville, North Carolina.

- Johnson and Campbell Counties, in northern Wyoming, are part of the Denver DMA.<sup>12</sup> But those two counties do not border Colorado. They are not even

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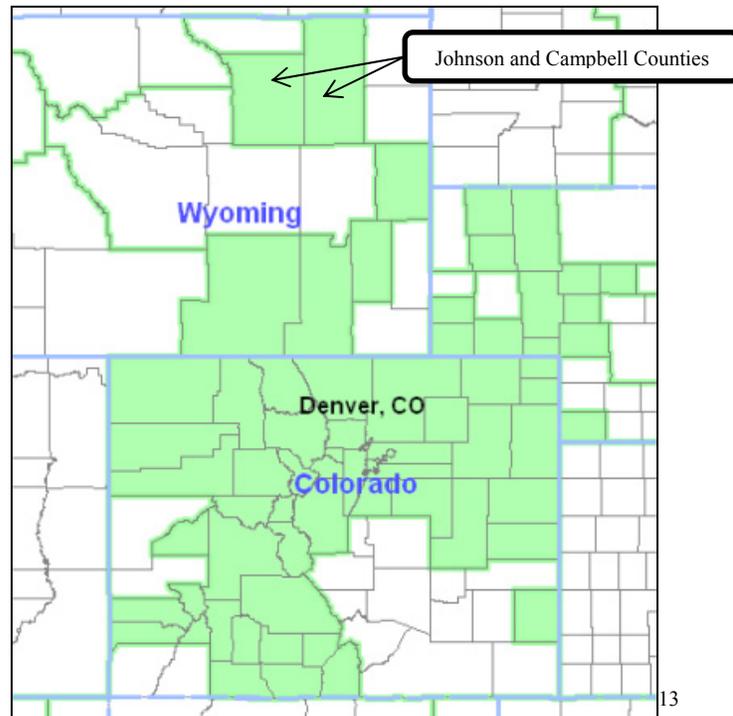
their residents tend to rely more on satellite than on cable for access to television programming.

<sup>9</sup> See Nielsen, *Designated Market Areas 2010-11*.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

contiguous with any other counties in the DMA (except each other). In fact, the Denver DMA not only crosses state lines but also leapfrogs several counties in Wyoming that are *not* part of the Denver DMA:



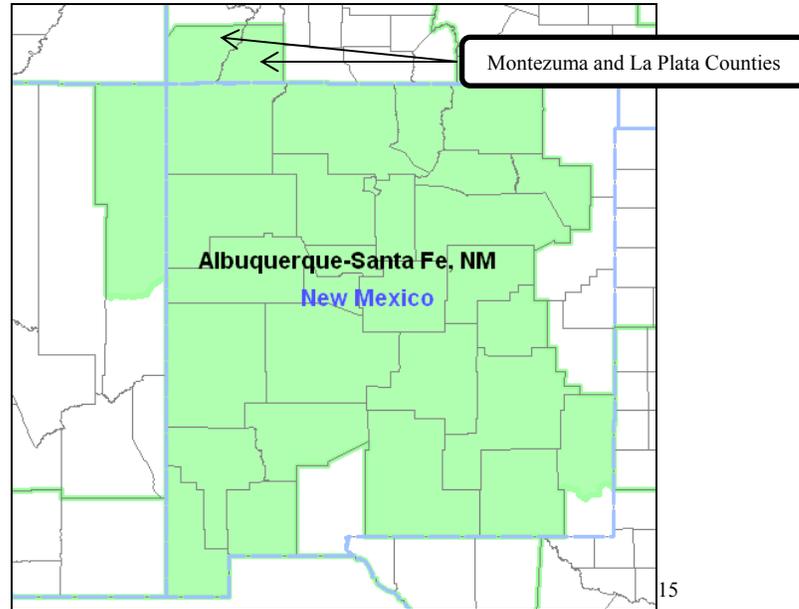
Residents of Johnson and Campbell Counties are limited to receiving programming from Denver network affiliates, though they are hundreds of miles away from Denver. Under the current regime, their cable and satellite providers cannot provide them with programming from Wyoming broadcast stations that presumably would be more relevant to them.

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<sup>12</sup> *See id.*

<sup>13</sup> *Id.*

- The Albuquerque-Santa Fe DMA includes two Colorado counties, Montezuma and La Plata:<sup>14</sup>



All network broadcast affiliates in the Albuquerque-Santa Fe DMA are licensed in New Mexico. Though Montezuma and La Plata counties border New Mexico, residents of those counties do not receive local programming, particularly with respect to state and local elections and legislative action. As one individual commenter in this docket has already noted, that lack of coverage is disrupting local elections and confusing local schoolchildren:

I served as an election judge during the last election and we actually had ballots with write-in candidates running in New Mexico where we now get our TV.... Some elementary students are currently so confused about who our governor is that when asked, answer with the name of New Mexico's governor since that's what they hear on TV.<sup>16</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Comment of Ann Flatten, MB Docket No. 10-238.

For federal law to deny additional in-state local choices to subscribers in places like Johnson and Campbell Counties, Wyoming; Clay County, North Carolina; and Montezuma and La Plata Counties, Colorado, strikes DIRECTV as unjustifiable, particularly now that viewers can access in-state local programming through a Slingbox<sup>17</sup> or through the Internet.<sup>18</sup>

## **II. Adjustments to the DMA System Should Increase Consumer Choice**

Though DIRECTV acknowledges that the existing DMA structure sometimes fails to align with residents' needs and interests in in-state local programming, it is concerned with suggestions to replace DMAs with some entirely different system.<sup>19</sup> Policy-makers should instead consider permissive and flexible solutions that afford options in addition to those already allowed by the existing regime. Such solutions could allow DIRECTV to import in-state local programming to orphan counties where it is technically feasible to do so, while also allowing subscribers in those counties to continue to receive the broadcast programming they now enjoy.

As the Commission notes, the widespread use of DMAs means that any replacement would affect “viewers, the advertising market, the number of stations carried by MVPDs in the redefined local markets, and ownership of broadcast stations.”<sup>20</sup> Most critically to DIRECTV and its subscribers, any such replacement would change the locations in which each broadcast station could (and in some cases, must) be carried. Any such change would therefore risk upsetting the legitimate expectations of millions of viewers. One possibility raised in the *Notice*

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<sup>17</sup> Slingbox is a device that allows consumers to “placeshift” their home television service by connecting to it over the Internet. The Slingbox allows users to remotely view content from their digital cable box, satellite receiver, and digital video recorder. Sling Media – About, <http://www.slingmedia.com/go/about>.

<sup>18</sup> Many local broadcast affiliates now provide videos of local news and weather coverage on the Internet. *See, e.g.*, <http://www.kcwy13.com/> (offering newscasts and weather reports online for KCWY, an NBC affiliate in Wyoming).

<sup>19</sup> *See Notice*, at 5.

<sup>20</sup> *Id.*

would change the definition of “local market” to match state boundaries.<sup>21</sup> But one could only imagine, for example, the reaction of Arlington, Virginia, residents to the news that Richmond stations are now “local” to them but Washington, D.C., stations are not.

DIRECTV’s satellite system, moreover, is simply not equipped to accommodate such changes. DIRECTV has invested billions of dollars in spot-beam satellites that now deliver local programming to nearly 98 percent of Americans. By carefully matching the design of each spot beam to the location and needs of each local market, DIRECTV has been able to maximize the spectral efficiency of its system and thus maximize the number of markets served. Those spot beams, however, cannot be changed. If Congress were to replace DMAs with another constitution of “local market,” DIRECTV’s existing system could neither deliver “local” stations to their new “local” subscribers nor comply with statutory local broadcast requirements and contractual obligations. Abolishing DMAs would simply exchange one problem for another. Many more subscribers than are already affected would face a dearth of adequate local programming. A more flexible solution would avoid these negative consequences, while addressing the orphan county problem where feasible.

### **III. DIRECTV Agrees With Many Of The Commission’s Conclusions For Providing Data To Congress And Submits The Requested Information**

DIRECTV generally supports the Commission’s proposed methodology for reporting data on orphan counties to Congress. That said, DIRECTV believes the Individual Location Longley-Rice (“ILLR”) model has flaws, which it has previously articulated.<sup>22</sup> Any improvements to the ILLR model should, of course, be used in this context as the Commission revisits and updates data with respect to orphan counties.

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<sup>21</sup> *Id.* (seeking comment on a state-based geographic market alternative to DMAs).

<sup>22</sup> *See* comments and ex parte filings of DIRECTV in ET Docket Nos. 06-94 & 10-152.

In addition, with respect to the Commission's requests for specific data,<sup>23</sup> DIRECTV has already submitted information related to the broadcast stations it carries in each market.<sup>24</sup>

DIRECTV carries each local station throughout that portion of the local market covered by the spot beam on which it is carried. In many cases, the spot beam covers the entire local market, but in some cases the spot beam does not cover relatively small and less populated portions of a market. DIRECTV now carries very few stations pursuant to the rules governing "significantly viewed" carriage, for the reasons it had outlined in the Commission's recent proceeding to update those rules. Those stations now carried by DIRECTV are listed in Appendix A.

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DIRECTV commends the Commission for thoroughly investigating the problem of orphan counties. This issue has been a problem for many communities whose residents have been deprived of in-state local programming, including local news, weather, and emergency information. DIRECTV supports the Commission's efforts to seek out an appropriate solution that is permissive and flexible.

Respectfully Submitted,

/s/

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<sup>23</sup> Notice, at 4.

<sup>24</sup> DIRECTV, Inc. STELA Report (filed Nov. 23, 2010; revised version filed Jan. 3, 2011).

# **APPENDIX A**

Station	Network	Originating DMA Name	SV DMA Name
WBRC	FOX	Birmingham AL	Atlanta GA
WVTM	NBC	Birmingham AL	Atlanta GA
WBZ	CBS	Boston MA	Hartford-New Haven CT
WSOC	ABC	Charlotte NC	Greensboro - Winston-Salem NC
WFMY	CBS	Greensboro NC	Raleigh-Durham NC
WGHP	Fox	Greensboro NC	Raleigh-Durham NC
WFMY	CBS	Greensboro-Winston-Salem NC	Roanoke-Lynchburg VA
WGHP	FOX	Greensboro-Winston-Salem NC	Roanoke-Lynchburg VA
WXII	NBC	Greensboro-Winston-Salem NC	Roanoke-Lynchburg VA
WCBS	CBS	New York NY	Hartford-New Haven CT
WNBC	NBC	New York NY	Hartford-New Haven CT
WNYW	FOX	New York NY	Hartford-New Haven CT
WJAR	NBC	Providence RI-New Bedford MA	Hartford-New Haven CT
WPRI	CBS	Providence RI-New Bedford MA	Hartford-New Haven CT
WTVD	ABC	Raleigh-Durham NC	Greensboro - Winston-Salem NC
WRIC	ABC	Richmond-Petersburg VA	Raleigh-Durham NC
WDBJ	CBS	Roanoke VA	Greensboro - Winston-Salem NC
WDBJ	CBS	Roanoke VA	Raleigh-Durham NC
WSET	ABC	Roanoke VA	Raleigh-Durham NC
WSET	ABC	Roanoke VA	Greensboro - Winston-Salem NC
WSLS	NBC	Roanoke VA	Greensboro - Winston-Salem NC