

EXHIBIT 1



ECHOSTAR COMMUNICATIONS CORPORATION

September 12, 2001

Mr. Michael D. Wortsman
WHOT
6701 Center Dr W, 15th Fir
Los Angeles, CA 90045

Dear Mr. Wortsman:

Pursuant to the Order on Reconsideration, adopted by the FCC on September 4, 2001, the failure to prove your ability to deliver a good quality signal as a basis for rejection of your must-carry election for carriage is hereby rescinded. EchoStar will carry your signal pursuant to must carry regulations, assuming no grounds for rejecting your signal arise.

Although your off-air signal meets the minimum federal standards, your signal may experience intermittent impulse interference or ghosting which can be eliminated by your provision of your station's signal via fiber optic line to preserve signal quality comparable to other stations providing fiber delivery in your DMA.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Sahl". The signature is stylized and somewhat cursive.

Eric Sahl
Director of Programming



Signal Test Verification

DMA ATLANTA

Station Call Letters WHDY

Network FOX Kids

Broadcast Channel 34 Broadcast Frequency (Visual) 591.55 MHz

Test Date 10 Sept. 2001 Time of Test: 1400

Test Performed By: CURTIS DEER
(Please Print - Name, Title)

770-300-9128
(Company Represented, Telephone Number)

EchoStar Representative: THOMAS L. TYLER FIELD ENGINEERING
(Please Print - Name, Title)

I. Signal Test Results

a) Signal Strength (Objective Findings):

dBmV -3.5 dBu _____ dBuV _____

b). Picture Quality (Subjective Findings; Indicate None, Slight, Moderate, Severe):

Ghosting No

Interference No

Noise No

Vertical/Horizontal Banding No

Other comments or issues noted with signal or picture: _____

EXHIBIT 2



ECHOSTAR COMMUNICATIONS CORPORATION

VIA FACSIMILE & FIRST CLASS MAIL

December 28, 2001

Michael D. Wortsman
President
Univision Television Group, Inc.
5999 Center Drive, 4th Floor
Los Angeles, CA 90045

RE: WUVG Launch Delay

Dear Mr. Wortsman:

EchoStar's Field Engineering team has completed antenna installations and fiber connections for broadcasters in the Atlanta, GA market.

Although WUVG delivered good quality signal during testing on Sept. 19, 2001, its signal today presents with a picture that may be subjectively described as "pure snow."

As such, EchoStar rejects said station's election for must carry on the ground of failing to deliver a good quality signal. The signal delivery deadline for EchoStar to launch your station on or before Jan. 1, 2002 has expired. However, EchoStar shall launch your station within sixty (60) days of your delivery of a good quality signal in accordance with federal regulations.

Please notify must-carry@echostar.com when WUVG's good quality signal is available or mail notification to my attention at the address listed below.

Sincerely,

A handwritten signature in cursive script that reads "Nina Rey".

Nina Rey
Must Carry Compliance Specialist
Programming Department

EXHIBIT 3

In the Matter of:)
)
)
Implementation of the Satellite Home) CS Docket No. 00-96
Viewer Improvement Act of 1999)
)
Broadcast Signal Carriage Issues)
)
)
To: The Commission

**COMMENTS OF
UNIVISION COMMUNICATIONS INC.**

Scott R. Flick
Brendan Holland
Paul A. Cicelski

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037
(202) 663-8000

Dated: January 23, 2002

SUMMARY

Contrary to the Commission's Rules and the Satellite Home Viewer Improvement Act's clear anti-discrimination directive, EchoStar Communications Corporation ("EchoStar") is discriminating in the carriage of local broadcast stations by carrying some stations in a market on its primary satellites, where it is available to all subscribers, while relegating the signals of "disfavored" stations to EchoStar's inferior secondary satellites, which can only be received by installing additional subscriber equipment. In so doing, EchoStar has effectively managed to eliminate stations that it deems to be "disfavored" from the local market altogether by placing those stations "out of sight and out of mind" of EchoStar subscribers. Furthermore, EchoStar and its local dealers have made the disparity in carriage even worse by providing incorrect and misleading information to those wishing to receive all of their local stations from EchoStar. As a result, only the most knowledgeable and determined subscriber stands any chance of successfully navigating these obstacles to receive the stations to which they are legally entitled. Even those who succeed may find that they do not have a clear line of sight to the secondary satellites, and therefore cannot receive the local stations that have been segregated onto those satellites.

The discriminatory carriage scheme implemented by EchoStar is adversely affecting Univision Communications Inc. and other local broadcasters, while frustrating the ability of EchoStar subscribers to access the signals of all of their local broadcast stations. EchoStar's placement of Univision's local stations on its inferior secondary satellites puts those stations at a significant competitive disadvantage and out of reach of most EchoStar subscribers. Univision therefore urges the Commission to clarify that such a carriage arrangement is violative of the Satellite Home Viewer Improvement Act and the Commission's Rules, and to promptly issue a ruling compelling carriage of Univision's stations on the same satellite carrying the other stations in a particular local market.

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To: The Commission

**COMMENTS OF
UNIVISION COMMUNICATIONS INC.**

Univision Communications Inc. (“Univision”), the nation’s most-watched Spanish language television broadcaster, by its attorneys, hereby submits these comments in response to the Cable Services Bureau’s issuance of a Public Notice regarding the emergency petition to modify or clarify the Commission’s Rules filed by the National Association of Broadcasters (“NAB”) and the Association of Local Television Stations (“ALTV”) (hereinafter “Petition”).¹ By its Petition, NAB and ALTV request that the Commission act swiftly to clarify or modify its rules in order to stop EchoStar Communication Corporation’s (“EchoStar”) discriminatory treatment of certain broadcast television stations and to protect consumers’ right of equal access to the signals of all local television stations via satellite.²

¹ Emergency Petition of National Association of Broadcasters and Association of Local Television Stations to Modify or Clarify Rule, CS Docket No. 00-96 (submitted January 4, 2002); Public Notice, Cable Services Bureau, DA 02-31 (released January 8, 2002).

² Prior to the submission of the NAB/ALTV Petition, Univision was preparing to file independently with the Commission to compel EchoStar to move Univision’s stations to EchoStar’s primary satellites. In light of the large number of stations affected by EchoStar’s actions, however, Univision supports the Commission’s tentative conclusion that a declaratory ruling is the most efficient and expeditious manner in which to resolve the issues raised by the NAB/ALTV Petition.

Univision, apparently because of its Spanish-language programming, is uniquely injured by EchoStar's actions, as EchoStar has placed Univision's local broadcast stations on its inferior, secondary satellites in every market in the country except three.³ In addition, in two cases Univision's local station is the *only* local station in the market that is relegated to a secondary satellite, resulting in that station's effective exclusion from the package of local channels offered in the market.⁴ EchoStar's actions serve to frustrate viewers' access to local Spanish-language programming via satellite, while tilting the local competitive playing field even further against stations that serve a minority audience. Although EchoStar apparently still believes in the notion that "separate but equal" facilities are adequate for those serving minority audiences, Congress clearly rejected such an approach in adopting the Satellite Home Viewer Improvement Act ("SHVIA"), and, as discussed herein, the satellite facilities being offered Univision are certainly not equal to those enjoyed by other local broadcast stations. Accordingly, Univision hereby

³ According to information currently available on EchoStar's website, the Univision stations that have been placed on secondary satellites separate from the main contingent of local stations include: WUTF(TV), Marlborough, Massachusetts (Boston DMA); WGBO-TV, Joliet, Illinois (Chicago DMA); WXFT(TV), Aurora, Illinois (Chicago DMA); WQHS-TV, Cleveland, Ohio (Cleveland DMA); KUVN(TV), Garland, Texas (Dallas-Fort Worth DMA); KSTR-TV, Irving, Texas (Dallas-Fort Worth DMA); KXLN-TV, Rosenberg, Texas (Houston DMA); KFTH(TV), Alvin, Texas (Houston DMA); KFTR(TV), Ontario, California (Los Angeles DMA); WAMI-TV, Hollywood, Florida (Miami-Ft. Lauderdale DMA); WFUO(TV), Melbourne, Florida (Orlando-Daytona Beach-Melbourne DMA); WUVP(TV), Vineland, New Jersey (Philadelphia DMA); KTVW-TV, Phoenix, Arizona (Phoenix DMA); KUVS(TV), Modesto, California (Sacramento-Stockton-Modesto DMA); KWEX-TV, San Antonio, Texas (San Antonio DMA); KDTV(TV), San Francisco, California (San Francisco DMA); KFSF(TV), Vallejo, California (San Francisco DMA); and WFDC(TV), Arlington, Virginia (Washington, DC DMA). See <<http://www.dishnetwork.com/content/programming/locals/index.shtml>> (visited Jan. 14, 2002 and Jan. 16, 2002).

⁴ According to the EchoStar website, the excluded stations are WQHS-TV, Cleveland, Ohio, which is located in the Cleveland television market, and KUVS(TV), Modesto, California, which is located in the Sacramento television market. See <<http://www.dishnetwork.com/content/programming/locals/index.shtml>> (visited Jan. 14, 2002, and Jan. 16, 2002).

submits its comments and urges the Commission to act swiftly to protect consumers and the continued existence of a competitive local broadcast service by preventing EchoStar from succeeding in its efforts to circumvent both the letter and spirit of SHVIA and the Commission's Rules.

BACKGROUND

Univision is the leading Spanish-language television broadcaster in the United States. Currently, it indirectly owns and operates 30 full-power television stations and 19 low-power television stations, located in the largest Hispanic markets, including nine of the top ten Hispanic markets. Univision also operates the Univision Network, the nation's most-watched Spanish-language network. The Univision Network is currently available to 95% of all Hispanic households, and is the fifth largest full-time television network, delivering larger prime time audiences than all broadcast and cable networks except ABC, CBS, NBC, and Fox.⁵ In addition, in the last two weeks, Univision has launched a new, separately programmed broadcast network called Telefutura, which is already carried by 44 full and low-power television stations in the largest Hispanic markets. As a result, markets served by Telefutura stations include approximately 70% of all Hispanic households. However, despite the growing audience and need for Spanish-language news and entertainment programming, EchoStar has chosen to exile local stations providing such programming to its difficult to access secondary satellites.

EchoStar provides Direct Broadcast Satellite ("DBS") service to the continental United States from a network of six satellites located in 4 orbital slots. Specifically, EchoStar is authorized to provide DBS service from orbital slots located at 61.5 degrees, 110 degrees, 119 degrees, and 148 degrees West longitude. EchoStar's main orbital slots are the 110 degrees and

⁵ Nielsen Hispanic Television Index and Nielsen Television Index (Adults 18-49, October 1, 2001 - December 30, 2001).

119 degrees slots, from which the satellites are able to provide service to the 48 contiguous United States. The satellites operating from these orbital slots are often referred to as contiguous U.S. (“CONUS”) satellites,⁶ and form the primary satellites in EchoStar’s service. The remaining orbital slots, located at 61.5 degrees and 148 degrees, are only able to effectively cover a portion of the United States and are therefore referred to as “partial-CONUS” or “secondary” satellites.

Since January 1, 2002, EchoStar, with very few exceptions, has been using its primary CONUS satellites to deliver the signals of local broadcast stations affiliated with ABC, CBS, Fox, NBC, UPN, WB, and PBS to subscribers. In order to receive these stations, an existing EchoStar subscriber can simply call EchoStar and order the local signals package. No additional equipment is necessary for subscribers to obtain these local stations, and the signals can be made available to subscribers almost instantaneously. In contrast, any remaining stations in a market that are not affiliated with those networks are typically carried on EchoStar’s secondary satellites, operating from the 61.5 degrees and 148 degrees orbital slots located over the Pacific and Atlantic Oceans, respectively.

Based on the information contained in EchoStar’s website, the local stations that EchoStar carries on its secondary satellites tend to be Spanish-language stations, certain non-commercial stations, and independent stations. In order for subscribers to receive these “disfavored” local stations from EchoStar’s secondary satellites, subscribers must obtain and install additional equipment, including a second dish capable of receiving signals from those satellites. EchoStar has not even feigned an effort at treating local station signals equally, announcing publicly that “if the customer wants *the less popular channels*, they will need a

⁶ CONUS orbital slots are defined as 70 degrees W.L. to 125 degrees W.L.

second dish.”⁷ It is apparently not enough that EchoStar has generally relegated Spanish-language stations to a technological ghetto; it also finds it necessary to disparage them even though they frequently draw larger audiences than the stations EchoStar has placed on its CONUS satellites.

I. CONGRESS HAS MADE CLEAR THAT SATELLITE TELEVISION PROVIDERS WISHING TO TAKE ADVANTAGE OF THE COMPULSORY LICENSE TO CARRY LOCAL STATIONS MUST MAKE ALL LOCAL SIGNALS AVAILABLE TO SUBSCRIBERS IN A NON-DISCRIMINATORY MANNER

On November 29, 1999, Congress enacted the Satellite Home Viewer Improvement Act, which, *inter alia*, authorized satellite carriers to retransmit the programming of local broadcast stations to viewers in the stations’ local market, known as “local-into-local” service.⁸ SHVIA gave satellite providers a cost-free compulsory copyright license to retransmit local broadcast signals to subscribers in those stations’ local broadcast market. In return for availing themselves of this free copyright license, satellite carriers are required to carry upon request all local television stations in any market in which the DBS carrier provides local broadcast signals. 47 U.S.C. § 338. In addition to this “carry-one, carry-all” requirement, SHVIA requires that

the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations’ local market on contiguous channels and provide access to such station’s signals at a *nondiscriminatory price and in a nondiscriminatory manner* on any navigational device, on-screen program guide, or menu.

⁷ “EchoStar Subs Will Need Second Dish for Some New Local Stations,” Satellite Business News, Fax Update, Vol. 7 No. 139, December 17, 2001 (quoting EchoStar Executive Vice President Jim DeFranco).

⁸ Satellite Home Viewer Improvement Act, enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (IPACORA), Pub.L. No. 106-113 (Nov. 29, 1999).

47 U.S.C. § 338(d) (italics added). Particularly emphasizing the absolutely equal treatment that Congress demanded be given to local stations are the requirements that they be carried on contiguous channels and be given equal prominence in program guides.

As required by SHVIA, the Commission subsequently conducted rule making proceedings and promulgated rules to effectuate the changes made by the Act. Following the release of a Notice of Proposed Rule Making,⁹ and the submission of comments and reply comments, the Commission issued its Report and Order *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues*,¹⁰ promulgating rules governing the carriage of local broadcast television stations on DBS systems. The Commission subsequently issued its Order on Reconsideration in this proceeding,¹¹ responding to petitions for reconsideration filed by various parties.

In enacting SHVIA, Congress intended that satellite carriers provide service to the public “in a way that is convenient and practically accessible for consumers.”¹² Congress intended to make local stations conveniently available via satellite in a nondiscriminatory manner, thereby promoting the continued service and existing competitive balance of local broadcast stations. EchoStar’s actions offend both of these goals. EchoStar has segregated Univision’s stations on secondary satellites, thereby placing the stations “out of sight and out of mind” among EchoStar

⁹ *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Notice of Proposed Rule Making, 65 FR 40564 (June 9, 2000).

¹⁰ *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues; Retransmission Consent Issues*, Report and Order, 16 FCC Rcd 1918 (November 30, 2000).

¹¹ *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544 (September 5, 2001).

¹² Joint Explanatory Statement of the Committee of Conference, 145 Cong. Rec. S14708, 14711 (November 17, 1999) (“Conference Report”).

subscribers. Moreover, as is discussed below, while retransmission from a secondary satellite is inherently discriminatory from a technical standpoint, EchoStar's bad faith treatment of these stations in its marketing of local station packages, as well as its treatment of subscribers specifically requesting access to stations on these secondary satellites, has created a severe inequity in the treatment of local stations isolated on the secondary satellites. This inequitable treatment was prohibited by Congress in enacting SHVIA, and should be remedied promptly by the Commission. Otherwise, one of the most fundamental goals of SHVIA -- ensuring the continued availability of free over-the-air broadcasting -- will be severely undermined.

II. ECHOSTAR'S SEGREGATION OF "DISFAVORED" LOCAL STATIONS ON ITS SECONDARY SATELLITES IS BOTH INHERENTLY AND INTENTIONALLY DISCRIMINATORY

In direct contravention of SHVIA's anti-discrimination directive, EchoStar has relegated most of Univision's local stations to inferior, secondary satellites, thereby placing them at a significant competitive disadvantage while misleading subscribers as to which local stations they are entitled to receive. EchoStar has effectively managed to eliminate stations that it deems to be "disfavored" from the local market altogether. EchoStar's packages of local stations being offered in markets across the country generally consist of a local ABC, CBS, Fox, NBC, UPN, WB, and PBS station being transmitted from the primary, CONUS satellites, and completely exclude stations on the secondary satellites. According to EchoStar's current website, *there is not a single market in the country* where EchoStar has placed even one ABC, CBS, NBC, Fox, UPN, or WB station on a secondary satellite.¹³

This glaring discrepancy in the treatment of stations based on program content amply demonstrates that being located on the primary CONUS satellites is vastly superior to being

¹³ See <<http://www.dishnetwork.com/content/programming/locals/index.shtml>> (visited Jan. 14, 2002 and Jan. 16, 2002).

banished to the secondary satellites. EchoStar has openly admitted its strategy of placing disfavored stations on secondary satellites, stating that “[i]f the customers want those more obscure local channels, we will provide them the second dish.”¹⁴ By placing the burden on subscribers to demand *all* of the local stations they are entitled to, EchoStar ensures that those stations it deems “obscure” will be found in far fewer homes than those stations located on the primary satellites.

A. Local Stations Carried on Secondary Satellites Are Inherently Disadvantaged in Reaching EchoStar Subscribers

1. Only the Most Well-Informed and Determined Subscriber Will Even Be Aware That the Stations Carried on the Secondary Satellites Are Available From EchoStar

Because EchoStar does not automatically provide the signals of all local stations when a customer requests the local station package, the subscriber must be sufficiently well-informed to know that (i) other over-the-air signals are licensed to a community within the designated market area; (ii) as a result, they are considered “local” and are therefore eligible for carriage by EchoStar in the market; (iii) the stations elected must-carry status; and (iv) subscribers in the market are entitled to receive those stations as part of the local stations package. Few subscribers are this knowledgeable and determined. Moreover, to ensure that subscribers are misinformed as to their rights, newspaper advertisements by local EchoStar dealers for local station packages list only those stations carried on the primary satellites as being part of the local station package.¹⁵ Thus, even the well-informed subscriber has to be so sure of his or her right

¹⁴ “DBS to Keep \$5.99 Local-TV Prices,” Multichannel News, December 24, 2001 (quoting EchoStar spokesman Eric Lumpkin).

¹⁵ See Exhibit 1 hereto, which contains a typical EchoStar dealers’ newspaper advertisement touting its local station package, but listing only stations carried on the primary satellites as being in the package. Similarly, for an example of a typical EchoStar dealers’ website listing only ABC, CBS, Fox, NBC, UPN, WB, and PBS as the local stations carried in the market, see <<http://www.dishview.com/packages.html>>.

to receive stations not listed in the “package” that local station package advertisements neither confuse nor dissuade the subscriber from pursuing access to those stations. This will be a rare (and determined) person indeed.

Moreover, EchoStar’s approach may quite literally leave many subscribers unaware of what they are missing. For example, because Telefutura was only launched in the last two weeks, and because the majority of stations now airing Telefutura were previously home shopping stations, EchoStar subscribers that rely upon EchoStar for their local station signals will be completely unaware that EchoStar’s single dish “local station package” is robbing them of access to a new Spanish-language network. EchoStar’s discriminatory carriage approach therefore places Telefutura stations at an enormous competitive disadvantage among EchoStar viewers, while leaving those viewers completely in the dark as to what programming services they are actually entitled to receive.

2. For Those Subscribers Actually Aware of the Availability of Additional Local Signals, the “Hassle Factor” of Installing a Second Dish Is High, Particularly If Only a Few Additional Stations Can Be Obtained Through the Effort

Even assuming that we have located that hardy subscriber who knows his or her Nielsen markets, has memorized the requirements of SHVIA, and is not fooled by misleading advertising, that subscriber’s quest to receive all of the local signals that he or she is entitled to has just begun. Such a subscriber, at a minimum, must take the following affirmative steps: (1) contact EchoStar and request the local stations, specifically asking for the complete lineup of local channels, including those transmitted from secondary satellites; (2) schedule an appointment for a technician to come to the subscriber’s home; (3) take time off work to wait for the technician and be subject to penalty fees if they miss the technician’s visit; (4) provide access (both inside and outside the residence) to the technician; and (5) permit installation of a second dish on their home.

Only the most fervent subscriber is likely to endure the burden and lost work time necessary for such an installation, particularly when the bulk of local stations are available at the flip of a switch. In addition, it continues to be unclear whether a subscriber will be charged installation fees, or whether *all* of the equipment necessary to receive signals from the secondary satellite (as opposed to just the second dish itself) will be provided free of charge. Finally, the subscriber has to be willing to wait for as long as it takes to get an EchoStar technician to arrive and install the second dish, and then must endure the added hassle and aesthetic impact of bolting a second receiving dish to his or her home.

To fully appreciate the disparate treatment being offered local stations by EchoStar, imagine two packages of movie channels to be carried by EchoStar. The first movie package is on the primary satellites and can be obtained instantly by making a single telephone call to EchoStar. The second movie package is available only on the secondary satellites and subscribers must go through the process described above to install a second dish in order to receive it. EchoStar would have us believe that this difference is of no significance and that, all other things being equal, subscribers will sign up for the two services in equal numbers. That assertion is ludicrous on its face, and the greater difficulty faced by those on the secondary satellites is the very essence of what Congress intended to prevent in enacting SHVIA. It is safe to say that if these movie packages were produced by third parties, EchoStar would certainly charge the third party programmer more for channel capacity on the primary satellites than it would charge for channel capacity on the secondary satellites. To assert to local stations being carried on the secondary satellites that their signal is equally accessible to subscribers as that of stations on the primary satellites is to ignore reality.

3. Even for Those Subscribers Who Are Knowledgeable of Their Reception Rights, Not Confused by Misleading Advertising, and Immune to the Hassles and Potential Cost of Equipment Installation, Reception of Local Signals From Secondary Satellites May Still Be Physically Impossible Due to Ground Obstruction and Other Limitations of Secondary Satellites

Because EchoStar's secondary satellites operate from orbital slots that are located either Southeast or Southwest of the continental U.S., they are unable to cover the entire United States and are generally very low on the horizon compared to EchoStar's primary satellites. According to the program provided on EchoStar's website for calculating the azimuth and angle of elevation for the installation of a new dish,¹⁶ the angle of elevation to secondary satellites is almost always significantly lower than the angle of elevation to the primary satellites. For example, in the Dallas, Texas market, where Univision station KUVN(TV) is carried on a secondary satellite, the angle of elevation above horizontal for the primary satellite is 49 degrees, whereas the angle of elevation for the secondary satellite is a meager 24 degrees. As a result, even subscribers willing to install a second dish to receive signals from a secondary satellite will often discover that trees, buildings, or other obstacles that do not block a subscriber's line of sight to the primary satellites will absolutely block line of sight to the far-lower-in-the-sky secondary satellites. Moreover, because the secondary satellites are necessarily located at different azimuths than the primary satellites, a subscriber with a line of sight to the primary satellite from his house or apartment may not have a clear line of sight along the azimuth on which the secondary satellite is located. Because obtaining a clear line of sight (in both azimuth and elevation) is essential to receiving the signals of local stations from the secondary satellites, many subscribers will find reception of these local stations impossible, despite having easy access to the stations carried on EchoStar's primary satellites.

¹⁶ See <<http://www.dishnetwork.com/content/technology/installation/azimuth/index.shtml>> (visited Jan. 21, 2002).

In addition, because of the often greater physical distance to the secondary satellites, as well as the fact that many subscribers may be near the fringe of the secondary satellite's signal coverage area, the signal may often be weaker and therefore more difficult to receive. This in turn makes the signal even more vulnerable to blockage from what might otherwise be minor ground obstructions.

Finally, as any satellite subscriber is aware, even the primary satellites' signals are sometimes sufficiently attenuated by rain and other weather conditions to intermittently block reception. By segregating Spanish-language stations on the secondary satellites, EchoStar has not only made them far more difficult to receive in the first place (because of their weaker, more obstructed signal), but far more susceptible to service interruption as a result. Thus, when they need it most, during adverse weather conditions, Spanish-speaking EchoStar subscribers may lose access to all of their local television weather information while English speaking subscribers can continue to get their weather information from local stations on EchoStar's primary satellites. Thus, EchoStar's discriminatory placement of certain local stations on secondary satellites is not just inconsistent with SHVIA, but a threat to public safety in the Hispanic community.

B. The Conduct of EchoStar and Its Dealers Have Greatly Exacerbated the Unequal Treatment Already Faced by Stations Relegated to the Secondary Satellites

Up to this point, Univision's comments have focused almost entirely on the fundamental inequities faced by stations carried on EchoStar's secondary satellites. These inequities are inherent in EchoStar's two-satellite approach, and cannot be remedied by any action of the Commission short of a prohibition on the use of both primary and secondary satellites to serve a particular local market. In this regard, Univision strongly disagrees with any suggestion that requiring EchoStar to better publicize the facts surrounding its local station packages is an

adequate solution to the problems Univision and other broadcasters on the secondary satellites are facing.

Confirming that reliance upon such an approach would be horribly misplaced, the current efforts of EchoStar and its dealers at informing the public can be described as “harmful,” at best, and in some cases, appear to constitute unfair business practices. In order to be able to continuously monitor their signal quality on EchoStar, Univision and Telefutura stations carried by EchoStar have attempted to sign up for a local service package that includes the local Univision and/or Telefutura station signal. The responses they have received to these requests are staggering in both their inconsistency and inaccuracy, leaving little doubt that most consumers have little chance of navigating these waters successfully. For example:

- When subscribers ask about the availability of local stations, the stations being transmitted from the secondary satellites *are often not even mentioned as being available in the market*. For example, when specifically requesting the local Univision stations in Chicago, Sacramento, Washington, D.C., and San Antonio, callers were wrongly told that the local Univision stations in those markets were not carried by EchoStar, or that the “Local Package” only included ABC, CBS, Fox, NBC, UPN, WB and PBS stations. *See Exhibits 2, 3, 4, and 6*. This response, while completely false, is consistent with a newspaper advertisement by an EchoStar dealer touting the availability of the local station package, but listing only those local stations carried on the primary satellites.¹⁷
- In Sacramento, Washington, D.C., and San Antonio, where Univision has a local station that callers specifically asked to receive from EchoStar, the callers were told that no local Univision stations were available, and that Univision could not possibly have a local station available on EchoStar because that programming was broadcast from “Mexico,” or “Mexico and Venezuela,” or “an international satellite.” *See Exhibits 3, 4, and 6*.
- While callers in numerous markets were told, despite specifically asking by call sign for the Univision station in the market, that the station was either not local or was not carried by EchoStar for some other fanciful reason, of greater concern are the markets where EchoStar or its dealers attempted to trap callers in what can only be described as classic “bait and switch” maneuvers. For example, a caller in San Antonio specifically asked an EchoStar Dish Network sales person if he could obtain from

¹⁷

See Exhibit 1.

EchoStar the local Univision station, KWEX(TV). Not only was the caller falsely told that KWEX(TV) was not available, but the representative then attempted to “upsell” the caller by stating that if the caller wanted Spanish-language programming, he should purchase EchoStar’s “Latino Dish Package for only \$19.99 a month.” See Exhibit 6. As shown in the attached declarations, this was hardly an isolated incident. In nearly every instance where the caller was falsely told that the local Univision station was not carried on EchoStar’s system, they were told that if they wanted Spanish-language programming they should purchase EchoStar’s far more pricey Latino package. See Exhibits 2, 3, and 4 for descriptions of the calls that occurred in Chicago, Sacramento, and Washington, D.C.¹⁸

- In responding to an inquiry in Atlanta regarding the local must-carry Univision station, an EchoStar dealer stated that EchoStar was not carrying the station. When asked for clarification as to why the station was not being carried, the representative falsely responded that the station “requested not to be carried.” See Exhibit 7.
- With regard to EchoStar’s claim that it will make the second dish available free of charge, in multiple markets, EchoStar sales personnel and dealers told the callers that there would be additional costs associated with the second dish ranging from \$99.00 to \$289.00. See Exhibits 4 and 5. A caller in Phoenix was told by a Dish Network customer service representative that the second dish would be free, but “only if purchased within 90 days.” When the caller called back on the Spanish-speaking sales line, a second EchoStar representative told the same caller that the second dish would be “free until March.” When asked what the total charge would be for the second dish in March, the representative responded that he was not certain, but because separate fees would be required for the dish and installation, he imagined the cost for the second dish would be “caro” (expensive). See Exhibit 5.

In short, consumers have little chance of getting consistent, accurate information from EchoStar and its dealers regarding the availability and cost of receiving stations carried on secondary satellites, and seem to have a better chance of being misled in order to be sold a higher priced non-broadcast programming package, or to be rushed into purchasing service by claims that the federally-mandated free second dish is “available for a limited time only.” Given that the callers that received these incredible responses were familiar with the local broadcast market

¹⁸ Tellingly, the only place the Univision logo is listed in the newspaper advertisement attached as Exhibit 1 hereto is as part of the “Dish Latino Dos” package, which does not include local Univision programming and which is priced in the advertisement at an additional \$30.99 a month.

and the requirements of SHVIA, it is difficult to imagine the tall tales EchoStar's sales representatives are spinning for less informed consumers.

Thus, in addition to the numerous technical and other obstacles discussed above that subscribers must be both willing and capable of overcoming in order to receive local stations carried on the secondary satellites, the Commission must add to that list the need to ignore explicit statements from EchoStar and its dealers that such stations are not available on EchoStar, and false statements regarding the costs involved. EchoStar's claim that local stations carried on the secondary satellites are readily available to subscribers, and that it offers all must-carry stations on a non-discriminatory basis, is preposterous.

III. ECHOSTAR'S INTENTIONAL DISCRIMINATION IN CARRIAGE AMONG LOCAL BROADCAST STATIONS IS CONTRARY TO THE ANTI-DISCRIMINATION PROVISIONS FOUND IN SECTION 338 OF SHVIA

In enacting SHVIA, Congress sought to ensure consumers' access to local broadcast stations, and to prevent satellite carriers from discriminating against some local broadcast stations while favoring others. Congress therefore imposed the carry one, carry all requirement, as well as included several anti-discrimination provisions in SHVIA. Specifically, Section 338(d) contains prohibitions against discriminating among local stations in terms of placement in a channel lineup, in terms of the price that the satellite carrier can charge for access to those signals, and in terms of the manner in which the stations are presented on any navigational device, on-screen program guide, or menu.¹⁹ EchoStar's actions violate both the spirit and letter of these anti-discrimination provisions.

¹⁹ 47 U.S.C. § 338(d).

A. Section 338(d) Prohibits Discrimination Against Local Broadcast Stations, and Requires Satellites Carriers to Provide the Signals of Local Stations on Contiguous Channels

Prompted by concerns that satellite carriers would discriminate between local stations, Section 338(d) of SHVIA requires a satellite carrier to “present local broadcast channels to subscribers in an uninterrupted series.”²⁰ Further, the statute dictates that “the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations’ local market on contiguous channels.”²¹ Despite this very clear statutory directive, EchoStar is in fact doing the opposite. Most subscribers who purchase a local station package will find that the local stations are not provided on contiguous channels because some of the local stations are not provided to them by EchoStar *at all*.

However, even if the Commission were to ignore (as EchoStar does) this specific requirement, it is nonetheless highly instructive for determining what Congress considered a sufficient burden on consumers to present a prohibited level of discrimination among local stations. According to Congress, requiring a consumer to hit the “up channel” or “down channel” button more than once to reach the next local station creates a sufficient burden on consumers as to create a prohibited likelihood of discrimination in carriage of local broadcast stations. It strains credulity to argue, as EchoStar must, that hitting the “up channel” button twice to find a local station in the channel lineup is a discriminatory burden, but that installing a second dish and overcoming the numerous obstacles EchoStar has placed in the path of those seeking to do so is not. More to the point, Congress made clear in its contiguous channel requirement that there need be no financial component to a burden on consumers in order to create a prohibited likelihood of a discriminatory result. Thus, EchoStar’s claim that it will

²⁰ Id.

²¹ Id.

provide the second dish for free, even if true, fails to negate the fundamental burden on consumers wishing to view all local stations, and the discriminatory effect on those local stations for which a second dish is necessary.

B. Contrary to EchoStar’s Public Assertions, Section 338 Did Not Grant Satellite Carriers the Right to Discriminate Against Local Stations

EchoStar has publicly claimed that its actions comply with the letter and spirit of SHVIA, arguing that Congress declined to include an explicit prohibition in Section 338 against the use of multiple satellites to provide local-into-local service. However, as the Commission articulated in its *Order on Reconsideration*:

The legislative drafting change, at most, indicated that Congress did not want to prohibit satellite carriers from requiring additional dishes generally, but the change does not imply that Congress wanted to allow satellite carriers to require additional dishes if such a requirement created discriminatory effects.²²

However, this is precisely what EchoStar has done, using satellite placement to favor some stations, and discriminate against others, based not on technical grounds, but purely on content. While the deletion of language from Section 338(d) prohibiting use of multiple satellites may have granted satellite carriers the flexibility to put entire markets on a secondary satellite, it is illogical to think that, despite the numerous anti-discrimination provisions in SHVIA, Congress intended to grant satellite carriers carte blanche to cherry-pick the big four networks and segregate “disfavored” stations to a technical Siberia. In earlier rejecting such a notion, the Commission specifically discounted a satellite carrier’s strained interpretation of Section 338, stating that the carrier “misinterprets the legislative history of SHVIA in arguing that it should be

²² *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544, at ¶ 41 (September 5, 2001).

permitted to require subscribers to use two separate dishes to receive the full package of local channels.”²³

IV. SECTION 76.66(i)(4) OF THE COMMISSION’S RULES DOES NOT PERMIT SATELLITE PROVIDERS TO DISCRIMINATE AGAINST LOCAL BROADCAST STATIONS BY PLACING SOME LOCAL SIGNALS ON A SECONDARY SATELLITE REQUIRING A SECOND DISH

In adopting rules to implement SHVIA, the Commission recognized the potential for satellite providers to discriminate between local broadcast stations, and sought to prevent the practice of using multiple satellites to provide the signals of local stations in a particular market. It sought to do so by prohibiting satellite carriers from requiring subscribers to purchase additional equipment to gain access to some, but not all, of the local signals in a market. In its *Report and Order* promulgating rules regarding carriage of local broadcast stations, the Commission adopted Section 76.66(i)(4), which states:

Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment at their own expense or for an additional carrier charge in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.²⁴

In an attempt to circumvent the Commission’s prohibition against segregating stations within a market, however, EchoStar has seized on the Commission’s use of the phrase “at their own expense,” effectively claiming that it can discriminate among stations as long as it offers to provide viewers the necessary equipment for free.²⁵ As discussed above, such an offer has little

²³ Id.

²⁴ 47 C.F.R. § 76.66(i)(4).

²⁵ See Letter from Charles W. Ergen, CEO of EchoStar Communications Corporation to Edward O. Fritts, National Association of Broadcasters, dated December 27, 2001, stating:

EchoStar’s plan complies with the law. By providing any necessary additional equipment free of charge, we meet the statutory and regulatory prohibitions against price discrimination. By locating must carry and retransmission consent stations together on central satellites, we do not discriminate against stations based on

Footnote continued on next page

meaning given the lengths to which EchoStar has gone to dissuade subscribers from seeking a second dish. Only those with the knowledge, determination, and skill to navigate the obstacle course created by EchoStar will have a chance at getting a second dish, and even those individuals are as likely as not to be told that there is a charge for the second dish.

It is also clear that the Commission's concern in adopting Section 76.66(i)(4) was in no way merely limited to the financial cost of a second dish. As the Commission reiterated in its

Order on Reconsideration:

a limited prohibition on requiring subscribers to *obtain* a separate dish to receive some local signals when other local signals are available without the separate dish is necessary to give full effect to local station carriage requirements. Otherwise, as Public Television Stations argue, satellite carriers could structure local station packages and separate dish requirements to discourage consumers from subscribing to certain local stations, including local noncommercial stations. For the foregoing reasons, we affirm our rule prohibiting satellite carriers from requiring subscribers to purchase additional equipment to gain access only to some, but not all of the local signals in the market.²⁶

Despite this admonition, EchoStar has engaged in the precise conduct the Commission clearly intended to prevent -- namely, using a separate dish requirement to disfavor certain stations.

While the course of conduct in which EchoStar is currently engaged is certainly contrary to the Commission's intent in adopting its rules, EchoStar appears to be gleefully claiming that it has found a loophole in the Commission's rule resulting from somewhat imprecise drafting.

However, even assuming that the "purchase" language in the rule failed to cover EchoStar's current discriminatory carriage arrangement, that would be of little consequence for

Footnote continued from previous page

whether they elected must carry or retransmission consent. We have been careful to construct an interim plan that meets the letter and spirit of the law (footnote omitted).

²⁶ *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544, at ¶ 41 (September 5, 2001) (italics added).

two reasons. First, Section 76.66(i)(4) does not establish the boundary between permitted and prohibited activities. Instead, it merely prohibits a specific activity; namely, requiring subscribers to purchase a second dish to receive certain local stations. That is not to say that requiring subscribers to install a second dish – even where the dish is free – is permissible under SHVIA, only that the Commission has not yet adopted a specific rule codifying such a prohibition. Second, even if the Commission had actually written the rule that EchoStar desires – a rule stating that so long as subscribers do not have to pay for the second dish, anything goes – the Commission has no power to override the clear statutory anti-discrimination provisions included in SHVIA by Congress. In either case, EchoStar’s reliance on Section 76.66(i)(4) as authority for it to engage in discriminatory carriage of local stations is severely misplaced.

V. ECHOSTAR’S DISCRIMINATORY POSITIONING OF “DISFAVORED” LOCAL STATIONS UNDERMINES THE WELL-ESTABLISHED GOAL OF CONGRESS TO PRESERVE THE AVAILABILITY OF LOCAL OVER-THE-AIR BROADCASTING

One of the most fundamental goals of Congress in promulgating laws requiring cable systems and satellite providers to carry the signals of local broadcast stations has been to preserve the availability of local broadcast television stations.²⁷ In the 1992 Cable Act, Congress articulated its belief that there is a substantial governmental interest in ensuring the continuation of the local origination of television programming, and that broadcast television stations are “an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.”²⁸ Moreover, Congress stated that “[t]here is a

²⁷ See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (“1992 Cable Act”); Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180 (1997) (upholding must-carry provisions of 1992 Cable Act); Joint Explanatory Statement of the Committee of Conference, 145 Cong. Rec. S14708, 14711 (November 17, 1999); Satellite Broadcasting and Communications Ass’n v. FCC, No. 01-1151, 2001 U.S. App. LEXIS 26120 (4th Cir. Dec. 7, 2001) (upholding carry one, carry all provisions of SHVIA).

²⁸ 1992 Cable Act, 102-385 at Section 2 (a)(11).

substantial governmental interest in promoting the continued availability of such free television programming.”²⁹ Accordingly, the cable “must-carry” rules were designed to require the carriage of all qualified local broadcast television stations in order to preserve local broadcast stations and to prevent cable systems from carrying only select local stations (i.e., the more “popular” network affiliates).³⁰

This same rationale formed the basis for enactment of the carry-one, carry-all provisions found in SHVIA. As stated in the Conference Report, “Congress’ interest in maintaining free over-the-air television will be undermined if local broadcasters are prevented from reaching viewers either by cable or satellite distribution systems.”³¹ Congress was “concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals.”³² Recently, the U.S. Court of Appeals for the Fourth Circuit upheld the carry-one, carry-all provisions of SHVIA stating:

We conclude, then, that both the satellite industry’s track record and its economic incentives provide substantial evidence supporting Congress’s predictive judgment that satellite carriers will deny carriage to significant numbers of independent broadcast stations if the carriers are not bound by the carry one, carry all rule.³³

²⁹ 1992 Cable Act, 102-385 at Section 2 (a)(12).

³⁰ Moreover, in *Turner Broadcasting System, Inc. v. FCC*, the United States Supreme Court validated the congressional desire to preserve the benefits of free, over-the-air local broadcast television, to promote widespread dissemination of information from a multiplicity of sources, and to promote fair competition in the market for television programming, finding that it was an important governmental interest under the First Amendment. See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994); *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997).

³¹ Conference Report at S14711.

³² *Id.*

³³ *Satellite Broadcasting and Communications Ass’n v. FCC*, No. 01-1151, 2001 U.S. App. LEXIS 26120, at 54 (4th Cir. Dec. 7, 2001).

In so ruling, the Court explicitly upheld the congressional goal of protecting “independent broadcasters from the harmful effects of satellite cherry picking” in order to preserve a “multiplicity of local broadcast outlets for over-the-air viewers,” and to prevent the grant of “a statutory copyright license to satellite carriers from undermining competition in local markets for broadcast television advertising.”³⁴

As Congress feared, by isolating Univision’s local stations on secondary satellites away from the other major stations in their markets, EchoStar threatens to undermine the goal of preserving local broadcast television service and a multiplicity of local broadcast outlets. EchoStar’s isolation of stations it deems “less popular” places those stations at a competitive disadvantage in competing for both advertising revenue and viewer audience share, which together form the lifeblood of local broadcast television stations. The requirement that viewers acquire a second dish in order to receive Univision’s stations frustrates consumer choice, discourages viewers from watching those stations that provide the greatest contribution to local program diversity, and effectively “hides” certain local stations from viewers, thereby hindering the launch of new programming services such as Telefutura. EchoStar’s carriage scheme is creating precisely the discriminatory impact that Congress sought to prevent in enacting SHVIA.

³⁴ Id. at 44 .

CONCLUSION

The discriminatory carriage scheme implemented by EchoStar is a clear violation of SHVIA that is adversely affecting Univision and other local broadcasters, while frustrating the ability of EchoStar subscribers to access the signals of all of their local broadcast stations. Univision therefore urges the Commission to clarify that such a carriage arrangement is violative of SHVIA and the Commission's Rules, and to promptly issue a ruling compelling carriage of Univision's stations on the same satellite that is carrying the other stations in a particular market. This clarification does not preclude a satellite provider from using different satellites to provide local signals in markets across the country, nor does it preclude a satellite provider from requiring a second dish to receive *all* of the local signals in a given market. However, it will prevent a satellite carrier from discriminating against certain local stations by placing those stations on inferior satellites that are more difficult for viewers in their market to receive. For the reasons stated above, the Commission should clarify its rules to prevent EchoStar's continued discrimination against "disfavored" local broadcast stations.

Respectfully submitted,

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