

# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 12th STREET, S.W.

WASHINGTON, D.C. 20554

**DA 02-31**

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

**CABLE SERVICES BUREAU ACTION**

**January 8, 2002**

## **NATIONAL ASSOCIATION OF BROADCASTERS AND ASSOCIATION OF LOCAL TELEVISION STATIONS SEEK MODIFICATION OR CLARIFICATION OF BROADCAST CARRIAGE RULES FOR SATELLITE CARRIERS**

**CS DOCKET NO. 00-96**

**Comments due: January 23, 2002**

**Replies due: February 4, 2002**

On January 4, 2002, the Commission received an Emergency Petition from the National Association of Broadcasters (“NAB”) and the Association of Local Television Stations (“ALTV”) asking for modification or clarification of the Commission’s rules concerning carriage of local television broadcast stations by satellite carriers pursuant to the Satellite Home Viewer Improvement Act (“SHVIA”). NAB and ALTV ask the Commission to take prompt emergency action to address satellite carriage of certain local television broadcast stations in a manner that requires subscribers to obtain a second satellite dish antenna.

The Emergency Petition states that one of the satellite carriers subject to the carry-one-carry-all requirements, EchoStar Communications Corporation (“EchoStar”), has announced and undertaken a plan to place some local stations on satellites located at 61.5 degrees or 148 degrees. As a result, EchoStar subscribers are required to obtain additional equipment to receive and view these local stations, although the other local stations offered in the same markets are available on one dish antenna served by a satellite that provides service over the continental United States.

NAB and ALTV request that the Commission clarify or amend the rules governing satellite carriage of local television stations (47 C.F.R. § 76.66) to specify that carriage of some local stations in a manner that requires the subscriber to use a different dish antenna from the antenna used to receive other local stations is discriminatory and does not comply with the SHVIA or the Commission’s orders and rules.

The rules that are the subject of this Emergency Petition were promulgated to implement Section 338 of the Act.<sup>1</sup> Section 338 requires satellite carriers, by January 1, 2002, to carry upon request all local television broadcast stations’ signals in local markets in which the satellite carriers carry at least one television broadcast station signal pursuant to the statutory copyright license.<sup>2</sup> Without passing judgment

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<sup>1</sup> See 47 U.S.C. § 338.

<sup>2</sup> See 47 U.S.C. § 338. Until January 1, 2002, satellite carriers are granted a royalty-free copyright license to retransmit television broadcast signals on a station-by-station basis, subject to obtaining a broadcaster’s  
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on the merits of the Petition, we agree that the issues presented warrant speedy consideration and resolution to ensure proper implementation of the SHVIA requirements. We believe that the issues raised are narrowly focussed and may be susceptible of resolution by means of a declaratory ruling without the need for further rulemaking. Therefore, we will establish an expedited pleading cycle of fifteen days to submit comments on the substantive issues raised in the Emergency Petition, followed by ten days to file replies. We also ask that interested parties include in their comments whether the issues raised are appropriate for resolution by declaratory ruling or other means of clarification, rather than by rulemaking proceeding to consider amendment of the rules.

Interested parties may file comments no later than **January 23, 2002**. Replies to these comments may be filed no later than **February 4, 2002**. Apart from the expedited pleading cycle, parties should follow the procedures in Section 1.405 of the Commission's rules, 47 C.F.R. § 1.405. Given the expedited nature of the pleading cycle and recent changes in the mail delivery process, we strongly urge commenters to use the Commission's Electronic Comment Filing System (ECFS). Procedures for filing through ECFS are described below in the "General Information" section.

### **EX PARTE STATUS OF THIS PROCEEDING**

Because this proceeding involves rule interpretation issues of broad application, the proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216. As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.<sup>3</sup>

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>4</sup> More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206 (b) as well. We urge parties to use ECFS to file *ex parte* submissions. See "General Information" section below.

### **GENERAL INFORMATION**

Interested parties may file pleadings as indicated above regarding the issues raised in the Emergency Petition and this Notice. Parties are encouraged to file comments using ECFS. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally,

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retransmission consent. See *Report and Order*, 16 FCC Rcd at 1919. See also Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. ("*Conference Report*"), 145 Cong. Rec. H11769-01, H11795 (daily ed. Nov. 9, 1999).

<sup>3</sup> An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without an opportunity for all parties to be present. 47 C.F.R. § 1.1201.

<sup>4</sup> See *Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, FCC 00-358, 15 FCC Rcd 19945 (2000).

only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties submitting paper filings must file an original and four (4) copies of all pleadings, in accordance with Section 1.419 of the Commission's Rules, 47 C.F.R. § 1.419 with the Commission's Secretary, Magalie Roman Salas, 445 12<sup>th</sup> Street, S.W., TW-B204, Washington, D.C. 20554. All filings sent to the Commission by overnight delivery, *e.g.* Federal Express, must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. **20024**. All hand-delivered or messenger-delivered filings must be delivered at the Commission's new filing location in downtown Washington D.C.: 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002-4913.<sup>5</sup> The filing hours at this facility are 8:00 a.m. to 7:00 p.m.

We urge persons submitting written *ex parte* presentations or summaries of oral *ex parte* presentations in this proceeding to use ECFS in accordance to the Commission rules discussed above. Parties using paper *ex parte* submissions must file an original and one copy with the Commission's Secretary, Magalie Roman Salas. As applicable, please follow the procedures set forth in the paragraph above for sending your submission by mail, or for hand-delivery of your submission to the Commission's new filing location in downtown Washington, D.C.

In addition, interested parties must serve the following with either one electronic copy via e-mail or two paper copies of each pleading or *ex parte* submission: (1) Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at [qualexint@aol.com](mailto:qualexint@aol.com); (2) Eloise Gore, Cable Services Bureau, 445 12<sup>th</sup> Street, S.W., 4-A726, Washington, D.C. 20554, [egore@fcc.gov](mailto:egore@fcc.gov); and (3) Ben Bartolome, Cable Services Bureau, 445 12<sup>th</sup> Street, S.W., 4-A820, Washington, D.C. 20554, [bbartolo@fcc.gov](mailto:bbartolo@fcc.gov).

Copies of the applications and any subsequently filed documents in this matter may be obtained from Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, and will also be available through ECFS. Copies of the applications and documents are also available for public inspection and copying during normal reference room hours at the Commission's Reference Information Center, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C. 20554. The Cable Services Bureau's home page <<http://www.fcc.gov/csb>> will contain electronic versions of selected key documents, including applicants' public interest statement, public notices, and procedural orders.

Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or send an e-mail to [access@fcc.gov](mailto:access@fcc.gov).

For further information, contact Eloise Gore or Ben Bartolome (202) 418-7200 of the Cable Services Bureau. Press inquiries should be directed to Michelle Russo (202) 418-2358 of the Cable Services Bureau. TTY: (202) 418-7172 or (888) 835-5322.

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<sup>5</sup> See *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, DA 01-2919 (rel. Dec. 14, 2001)>