

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 02-145
Competition in the Market for the Delivery)	
of Video Programming)	

**COMMENTS OF THE
SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION**

Satellite Broadcasting and
Communications Association

July 29, 2002

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	2
A.	Terrestrial Interference	3
B.	Program Access	4
C.	Digital Transition.....	4
II.	SATELLITE TELEVISION SUBSCRIBER TRENDS	5
A.	Satellite Television Subscriber Counts	5
1.	Direct Broadcast Satellite Subscribers	6
2.	C-band Subscribers	7
B.	New Services Offered via Satellite	8
1.	Satellite Broadband	8
2.	Digital/HDTV	9
3.	Video-on-Demand/Subscription Video-on-Demand	10
4.	Interactive Services.....	10
C.	DBS Subscriber Analysis	11
D.	National Standards and Testing Program	12
III.	SPECTRUM SHARING	13
A.	FCC Spectrum Policy	13
B.	The Multichannel Video Distribution and Data Service (MVDDS) Order	14
IV.	PROGRAM ACCESS	16
V.	CONCLUSION.....	18

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The Satellite Broadcasting and Communications Association (“SBCA”) is pleased to submit to the Commission its comments in the above-referenced Notice of Inquiry.¹ SBCA is the national trade organization representing all segments of the satellite industry. It is committed to expanding the utilization of satellite technology for the delivery of video, audio, data, interactive and broadband services. The SBCA is composed of Direct Broadcast Satellite (“DBS”), C-band, broadband, satellite radio, and other satellite service providers, content providers, equipment manufacturers, distributors, retailers, encryption vendors, and national and regional distribution companies, that make up the consumer satellite services industry.

This year, SBCA is pleased to include in its comments information derived from two market research studies performed by The Taylor Group to analyze multichannel video subscribers. The first is a competitive market study that compares the interests of DBS and cable subscribers, and the second study reports the trends of new and current DBS subscribers (new

¹ *Notice of Inquiry (“Notice”) in the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (FCC 02-178), released June 14, 2002.

subscribers are defined as having DBS service for three months or less). The results of these studies will be referred to in these comments.

I. INTRODUCTION AND SUMMARY

These comments encompass the July 1, 2001-March 31, 2002² period of competition. This period has seen steady growth by the satellite television providers and distributors but the rate of growth is slowing and the cable industry is very effectively responding to the competitive threat of DBS. There are now over 18.4 million households (which equates to 48 million viewers) in the U.S. that receive their multichannel video television service via satellite (this number includes DBS and C-band subscribers), an increase of nine percent from March 31, 2001. Satellite now serves nearly eighteen percent of U.S. television households.³ Satellite television providers continue to entice customers with a high-quality digital picture and audio signal, as well as more advanced services such as subscription video-on-demand (“SVOD”), interactive television (“iTV”), and high-definition (“HD”) television broadcasts, although some cable companies have very effectively responded with digital and data offerings.

A significant contributing factor to DBS emerging as a stronger competitor to cable is that DBS providers are now permitted to offer their customers local broadcast stations. In 1999, Congress granted the DBS operators the authority to rebroadcast local broadcast signals into their market of origin (called “local-into-local”).⁴ Today, 67% of U.S. television households can receive their local stations from one or more DBS provider, in forty-nine Designated Market Areas (“DMAs”). This helps level the playing field with cable operators in those markets. (See

² March 31, 2002 is the latest date for which actual subscriber numbers are available for the entire satellite television industry. SBCA expects to file Reply Comments in this proceeding on August 30, 2002 that will include subscriber numbers through June 30, 2002.

³ According to Nielsen Media Research, there were approximately 105 million television households in the U.S. as of September 17, 2001.

⁴ Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113 (1999).

Attachment A.) Even complying with the burden of the “carry one, carry all” satellite mandatory carriage regime, which went into effect on January 1, 2002, the DBS providers have added eight markets since last year’s report. DIRECTV currently offers local channels in 44 DMAs, and plans to offer local broadcast stations in 51 DMAs by year-end.⁵ Dish Network offers local channels in 41 DMAs.⁶

A. Terrestrial Interference

Despite its status as the most viable competitor to cable in the multichannel video market, DBS faces regulatory burdens that must be cleared if DBS is to reach its full potential as an effective competitor to cable. Most importantly, DBS consumers must be protected from harmful interference that would result if a terrestrial service is ultimately permitted to share the DBS spectrum. It has been proven that the introduction of Multichannel Video Distribution and Data Service (“MVDDS”), a terrestrial wireless cable service, into the 12.2-12.7 GHz band, will cause substantial interference to DBS service.⁷ The service rules adopted for MVDDS could cause an increase in the unavailability of service to current DBS consumers *of 20-30%, or more*.⁸ Additionally, competition is threatened because the MVDDS service rules released in May afford no protections to future DBS subscribers from an unlimited amount of interference to their service from MVDDS operations, despite the long-time status of DBS as the primary user of the spectrum band. If DBS subscribers are forced to bear the burden of increased service

⁵ See http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=07_11_2002A.

⁶ See <http://www.dishnetwork.com/content/programming/locals/index.shtml>.

⁷ See The MITRE Corporation’s *Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band* (“MITRE Report”), April 2001, at xvi.

⁸ See *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, ET Docket No. 98-206, FCC 02-166 (May 23, 2002) (“MVDDS Order”) at ¶84, note 210.

interruptions due to a new service operating in the DBS spectrum, DBS will offer less competition to cable.

B. Program Access

On a more positive note, the Commission recently voted to extend the program access law's prohibition on cable exclusivity for five years.⁹ This vote will increase competition and diversity in the multichannel video market. As a result of the extension, satellite television subscribers will continue to benefit from access to a wide variety of programming at competitive prices from vertically-integrated programmer/cable companies. However, leaving the "terrestrial loophole" open continues to allow vertically-integrated programmers to evade the program access rules.

C. Digital Transition

Recently, FCC Chairman Michael Powell asked several industries to assist in the transition from analog to digital broadcasting by accepting voluntary guidelines. The SBCA recently updated Chairman Powell and the Commissioners on the carriage of HD broadcasts by DBS providers,¹⁰ announcing the DBS industry's intention to meet and attempt to exceed the Chairman's proposals. An important issue related to the digital transition is the question of whether multichannel video providers can be forced to carry both the analog and digital signals of broadcasters during the transition. SBCA is firmly opposed to any forced-carriage regime for

⁹ See *Report and Order, In the Matter of: Implementation of the Cable Television Consumer Protection And Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628 (c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*; CS Docket No. 01-290; FCC 02-176; (rel. June 28, 2002), ¶5.

¹⁰ See Appendix B: Letter to FCC Chairman Powell from SBCA President Andy Wright, July 1, 2002.

both the analog and digital signals of broadcast stations.¹¹ Further, we support the Commission's sound conclusion in the *Dual Carriage FNPRM*¹² that dual carriage is inappropriate and would reduce competition in the multichannel video marketplace.

II. SATELLITE TELEVISION SUBSCRIBER TRENDS

A. Satellite Television Subscriber Counts

Satellite television providers gained 1.4 million net new subscriber households through March 31, 2002, since reporting to the Commission last year on the status of competition in the video marketplace (see Table 1). While this is a nine percent increase in the number of subscribers in nine months, the rate of growth is slower than we have reported in previous years.¹³ This includes both C-band (the number of which has declined) and DBS subscribers. Overall, as of March 31, 2002, there were 18.47 million television households (which translates to 48 million viewers)¹⁴ that receive television programming via satellite, including 17.7 million DBS subscribers and 750,000 C-band subscribers. Our analysis is based on reports from DIRECTV, Dish Network, and Motorola Access Control Center (which tracks C-band subscriptions).

¹¹ See SBCA Comments, June 4, 2001 CS Docket 00-96.

¹² See In the Matter of Carriage of Digital Television Broadcast Signals, *Further Notice of Proposed Rulemaking*, CS Docket No. 98-120, FCC No. 01-22.

¹³ For example, from June 30, 2000 to June 30, 2001, there was an eighteen percent increase in the number of satellite television subscribers (14.4 million to 17 million). See SBCA Comments *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket 01-129, August 3, 2001, at 2.

¹⁴ Using U.S. Census figures of 2.59 residents per U.S. household (U.S. Census Bureau, Census 2000).

1. Direct Broadcast Satellite Subscribers

The DBS providers gained 1.7 million subscribers from July 1, 2001 to March 31, 2002, to bring the current total of DBS customers to 17.7 million. Market research conducted this year for SBCA indicates that more DBS subscribers than ever before are former cable subscribers. Fifty-seven percent of DBS households have subscribed to cable previously, an increase from forty-eight percent in 2000. Three percent of DBS households also concurrently subscribe to cable, the most common reason being to have access to local broadcast stations are not offered via satellite.¹⁵

The expansion of the retransmission of local broadcast signals continues to contribute to the growth of DBS subscribers. The DBS operators currently offer local-into-local in forty-nine DMAs,¹⁶ which is eight more markets than last year, reaching 67% of U.S. television households. On January 1, 2002, satellite mandatory carriage went into effect and the DBS operators are operating in compliance with the law, offering every qualified local channel in the markets in which even one local channel is available. SBCA's constitutional challenge to the satellite mandatory carriage regime was effectively ended on June 17, 2002 when the U. S. Supreme Court denied a Petition for a Writ of Certiorari.

Consumers in certain DMAs must use special or additional equipment in order to receive their local broadcasts. DIRECTV customers in the Hartford, CT, Las Vegas, NV and Providence, RI markets need a special set-top receiver and an 18x24-inch, oval-shaped satellite dish to access local channels delivered from the 119° W.L. orbital locations, and Dish Network customers in 27 of the 40 markets that can receive local-into-local broadcasts must get a second

¹⁵ See SBCA 2002 Competitive Market Study.

¹⁶ See Appendix A.

¹⁸ See Appendix C, *EchoStar's Local Station Carriage Compliance Plan: 90-Day Report*, CSR-5865-Z, filed July 3, 2002.

dish to receive their local channels. As of June 28, 2002, 75,775 Dish Network customers requested a second dish, which is provided and installed free of charge, and 54,002 installations have been completed.¹⁸

2. C-band Subscribers

C-band remains the delivery vehicle for a contingent of satellite subscribers. As of March 31, 2002, there were 752,942 C-band subscribers in the U.S., a 25 percent decrease from the one million we reported a year ago. Although 25 percent of C-band subscribers in 2001 deauthorized the service, the pace of deauthorization is slowing. Satellite programmers are committed to offering programming to this sector of the industry, and SBCA believes that a small but dedicated C-band subscriber base will remain in the future.

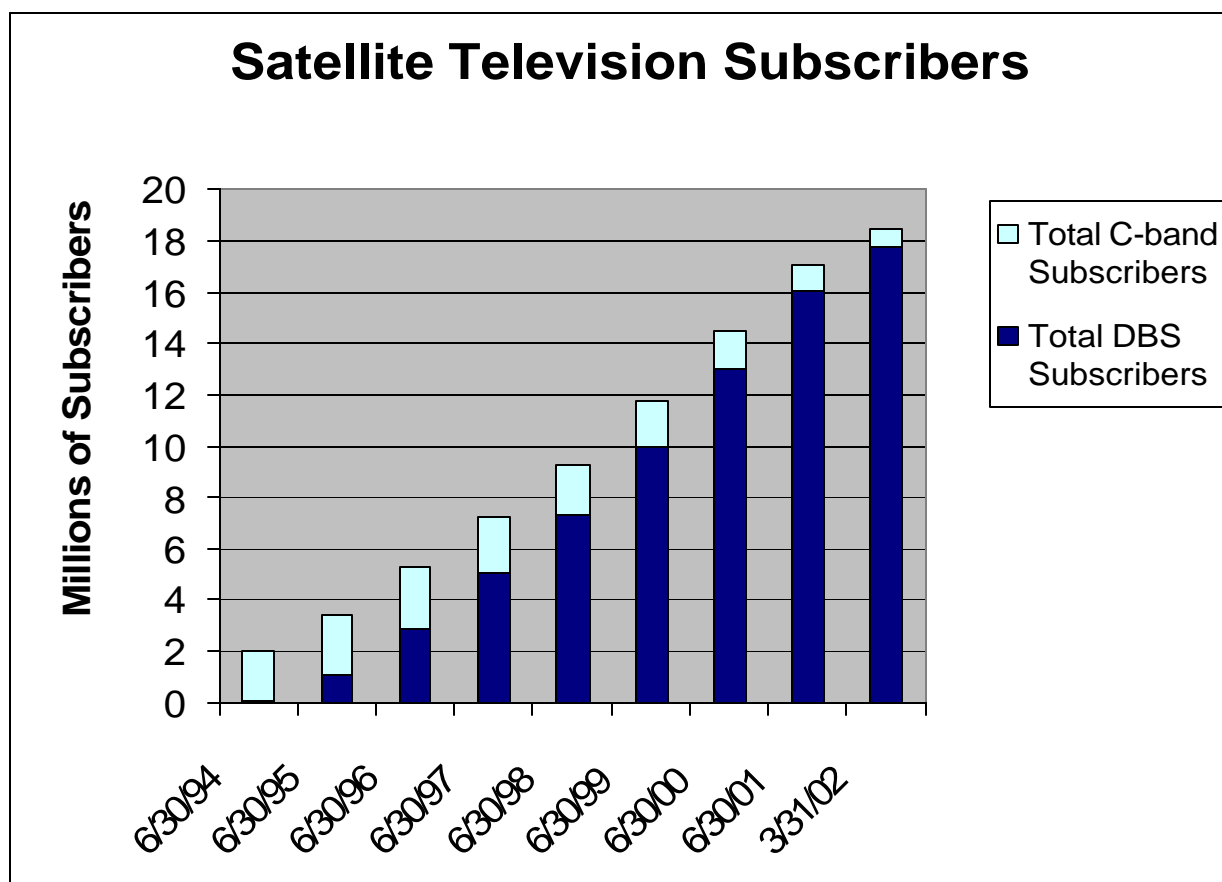


Table 1
Satellite Television Subscriber Base¹⁹

	<u>Total DBS Subscribers</u>	<u>Total C-band Subscribers</u>	<u>Total Satellite Television</u>
June 30, 1994	70,000	1,922,808	1,992,808
June 30, 1995	1,103,000	2,321,349	3,424,349
June 30, 1996	2,901,000	2,336,933	5,237,933
June 30, 1997	5,047,000	2,184,472	7,231,472
June 30, 1998	7,254,169	2,028,225	9,282,394
June 30, 1999	9,967,000	1,783,411	11,750,411
June 30, 2000	12,987,000	1,476,717	14,463,717
June 30, 2001	16,070,000	1,000,074	17,070,074
March 31, 2002	17,720,000	752,942	18,472,942

B. New Services Offered via Satellite

The DBS industry must continue to innovate in order to remain competitive with cable's digital and broadband service offerings. DBS providers hope to remain competitive with cable by offering new consumer technologies via satellite, including two-way high-speed Internet ("broadband") service, SVOD, iTV, and HD. Due to the infancy of these services, aggregated subscription data is not yet available. However, SBCA's survey revealed that twenty-seven percent of DBS subscribers would be very or somewhat likely to purchase an advanced service such as SVOD.²⁰

1. Satellite Broadband

Satellite broadband transmissions can, in most cases, be delivered to and from the same dish as video programming, making it an extremely convenient bundled service for subscribers.

¹⁹ Figures may change slightly due to updating.

²⁰ See SBCA 2002 Competitive Market Study, The Taylor Group.

In theory, broadband satellite companies can build on the success of satellite television platforms that currently provide service to rural, suburban and urban communities throughout the U.S. Satellites provide instant communications at competitive prices to any consumer who is located inside the national footprint. For many rural and underserved areas, satellites will be the only realistic source for broadband services.

However, economic realities have hindered the development of consumer-based satellite high-speed services. Starband Communications, which provides consumer satellite broadband services, recently declared bankruptcy. Cable operators, meanwhile, have been rolling out a bundled high-speed Internet cable modem service with their video offerings for over three years. This has afforded the cable industry a significant competitive advantage over satellite in the bundled video-broadband market in areas where cable modem service is available. Another satellite broadband service, DIRECWAY, has experienced a slow consumer adoption rate due to the high cost of consumer equipment. As of June 30, 2002, DIRECWAY had over 123,000 residential, and small office and home office subscribers in North America, compared to 74,000 one year ago.

2. Digital/HDTV

The DBS providers are working to meet the voluntary milestones set by Chairman Powell on April 4, specifically to offer up to five digital programming services that are providing “value-added digital programming” (which includes HD) during at least 50% of their prime-time schedule by January 1, 2003. Today, DBS providers offer movies, sporting events, documentaries, concerts, public affairs programming and original series in HD from HBO HD, HDNet, CBS, SHO (Showtime) HD, Discovery HD Theater and certain pay-per-view movies. Depending on the availability of capacity, DBS providers intend to continue increasing the

number of HD channels they offer, enhancing the television viewing experience for consumers nationwide.

DBS providers also are addressing the digital transition from the hardware side of the equation. Currently, DBS providers offer set-top boxes designed to receive HD signals in any of the ATSC digital formats (*e.g.*, 720p and 1080i). Both the DIRECTV and EchoStar consumer equipment bring the added public interest benefit of contributing to the statutory 85 percent digital television receiver penetration benchmark that must be met before the broadcasters are required to return their valuable analog broadcast spectrum to the Commission, an event that will free up spectrum for new wireless and other services.

3. Video-on-Demand/Subscription Video-on-Demand

SVOD technology allows viewers to have constant access to a library of programming without paying an upfront fee for each program. In May 2002, DIRECTV announced that customers with a DIRECTV® Receiver with TiVo technology who subscribe to the Starz Super Pak would be able to test SVOD this summer. Feature films will be available with the full DVD-like capabilities of the TiVo service such as pause, fast forward and rewind.

The library of programming will be stored in each DBS customer's personal video recorder (PVR) that is built into the receiver. SVOD services on DBS do not require satellite providers to incur large start-up expenses for the rollout of the technology. As PVR technology expands to allow for greater capacity, so will SVOD and VOD offerings to DBS customers.

4. Interactive Services

Today, DBS subscribers have access to interactive television services, such as Electronic Program Guides ("EPGs"); up-to-the-minute news headlines, weather forecasts, stock quotes, sports scores and horoscopes; shopping (for example, consumers can purchase compact discs

while watching music channels); and interactive gaming are available to DBS consumers. These services are available through partnerships between DBS operators and iTV providers, and subscribers must have specially-equipped receivers to utilize iTV services.

C. DBS Subscriber Analysis

Despite cable's prolonged dominance of the MVPD market, DBS continues to rate well with consumers. The SBCA 2002 Consumer Market Research showed that DBS outscores digital cable for customer satisfaction in a number of specific performance measures. On value for the money, DBS earns a 68 percent approval rating, while analog cable scores 37 percent, and customer satisfaction with digital cable is lower than that at just 36 percent. On signal transmission quality, DBS earns a 79 percent approval rating, while analog cable scores 67 percent and digital cable just 66 percent. Finally, on making customers feel valued, DBS earns a 64 percent approval rating, while analog cable scores at 46 percent and digital cable at just 44 percent.

When new DBS subscribers were asked their reasons for subscribing to DBS:

- ? **43 percent stated that it was because DBS offered more channels.**
- ? **39 percent of those who have access to analog cable, and 40 percent of those with access to digital cable, said that the fact cable television is too expensive contributed heavily to their decision to subscribe to DBS.**
- ? **18 percent said that they subscribed to DBS because of DBS' clearer picture and sound.**
- ? **13 percent indicated their decision to subscribe to DBS was motivated by their dissatisfaction with cable.**

The research also shows that digital cable is far more susceptible to consumer defection than DBS, with 21 percent of digital cable subscribers expressing an interest in switching to satellite television. Conversely, only 5 percent of DBS subscribers would consider switching to

digital cable. Overall, 57 percent of the surveyed DBS subscribers reported that they had subscribed to cable in the past.

The competitive market study surveyed via telephone 1,006 randomly selected U.S. households; these households were equally divided among cable and DBS subscribing households. The results of the competitive market study were weighted to reflect total U.S. households. The new and current satellite television subscriber study surveyed via telephone 1,517 DBS subscriber households; roughly half of these households had subscribed to a DBS service for less than 3 months. The results of the satellite television subscriber study were weighted to reflect the DBS universe at the time of the study.

D. National Standards and Testing Program

In order to maintain the high level of DBS consumer satisfaction, SBCA has trained and certified thousands of installers in the past year through its National Standards and Testing Program (“NSTP”). Currently, there are two levels of certification available (Small Dish and Multiple Satellite), and next month, SBCA will begin teaching courses in Commercial and Satellite Radio Installation. The NSTP program is designed to ensure that through continued professional education and a nationally-accepted set of training standards and testing, the satellite industry will continue to remain the leader in the critically-important area of servicing the customer.

In addition to the DBS providers (DIRECTV and Dish Network), companies agreeing to the standards and participating in the program currently include: All Systems Distributing, Apex Digital, Circuit City, CVS Systems, DigiVision, Dow Electronics, DSI Systems, JVI Parts, Metron North America, the National Rural Telecommunications Cooperative (NRTC), O’Rourke

Bros., Perfect-10, Pegasus Communications, Radio Shack Installation Services, Saturn Distributing, Sirius Satellite Radio, XM Satellite Radio, and numerous independent retailers.

III. SPECTRUM SHARING

Consumers of satellite-delivered services are the most satisfied multichannel viewers in terms of value, quality and customer service. This has enabled DBS to become the most viable competitor to cable. The Commission's spectrum management policy must protect this competition and the subscribers who have already made the choice to receive multichannel video programming via satellite, as well as consumers who will select DBS as their multichannel video provider in the future, from harmful interference. The SBCA feels strongly that the Commission's departure from its past spectrum management practice that held that spectrum sharing between the DBS service and point-to-multipoint terrestrial services is not feasible seriously threatens the goal of true competition.

A. FCC Spectrum Policy

Radio frequency spectrum is a finite resource. As innovation continues and new technologies emerge, the demands on that spectrum increase accordingly. Spectrum management is one of the Commission's most important and difficult tasks. The Commission must balance the benefits of authorizing new services to operate (such as increased competition and further innovation) against the potential of harmful interference to incumbents that actively provide services to the government, businesses, or directly to consumers. Many times, the spectrum bands in which the new industries propose to operate are already used by another service.

When the Commission considers allocating spectrum that is used by a primary service to a new licensee, it must not do so unless it can ensure that the incumbent operations and the

consumers of those services will be protected from harmful interference caused by the new service. A new service must not be allowed to share a spectrum band with the existing providers using that spectrum unless the Commission is able to ensure that the band's current inhabitants do not suffer an interruption or diminution in the quality of the service that they provide.

B. The Multichannel Video Distribution and Data Service (MVDDS) Order

The MVDDS Order, released on May 23, 2002,²¹ indicates that the service rules for MVDDS allow for power limits that will subject DBS consumers to *a 20-30 percent increase in the unavailability of their service.*²² This can hardly be considered “non-harmful” to the DBS consumers who will suffer as a result. Additionally, the increase in unavailability may exceed 30 percent for existing DBS subscribers if they are located outside the predictive contour. Further, the decision does not protect from harmful interference DBS subscribers receiving service from satellites located at 61.5° W.L., 148° W.L. and 157° W.L.. Even more egregiously, the Order leaves no doubt that *new subscribers are not protected from harmful interference at all.*

On July 22, 2002, SBCA filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia Circuit,²³ arguing that the FCC's decision in the Memorandum Opinion and Order to allow spectrum sharing between DBS and MVDDS was arbitrary and capricious, and asking the Court to hold unlawful, vacate, enjoin and set aside the Order. In addition, SBCA filed a Petition for Reconsideration²⁴ of the MVDDS service rules in the Second Report and Order, which will allow an unacceptable amount of interference to DBS customers. As Commissioner Martin correctly observed in his compelling statement dissenting in part and

²¹ See *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, ET Docket No. 98-206, FCC 02-166 (May 23, 2002) (“MVDDS Order”).

²² *Id.* at ¶84, note 210.

²³ See Appendix E.

²⁴ See Appendix F.

approving in part, the MVDDS technical and service rules adopted by the majority are arbitrary, capricious and contrary to law because they (i) fail to protect DBS service providers and existing and new DBS subscribers from harmful interference, as required by law; (ii) fail to provide clear standards for distinguishing between “permissible” and “harmful” interference caused to DBS subscribers; (iii) fail to impose entry requirements on MVDDS operators that have any realistic likelihood of identifying and adequately protecting DBS subscribers from harmful interference; and (iv) fail to place the burden of mitigation where it squarely belongs – on the MVDDS operators.

The Commission’s decision appears to ignore the results of an independent test—conducted by the MITRE Corporation for the FCC— and will allow interference to millions of satisfied DBS subscribers. The very first finding of the MITRE report is that “MVDDS sharing of the 12.2-12.7 GHz band currently reserved for DBS poses *a significant interference threat* to DBS operation in many realistic operational situations.”²⁵ SBCA and the DBS providers have previously addressed the findings of the MITRE Report with the Commission, which highlight that harmful interference to DBS operations exists as an elemental aspect of MVDDS design.²⁶

In a spirit of constructiveness, not obstruction, the DBS operators suggested the Commission consider housing MVDDS in one of several suitable frequency bands, including the Cable Television Relay Service (“CARS”) band, and the Multichannel Multipoint Distribution

²⁵ See MITRE Report at xvi.

²⁶ See FCC Public Notice, *Comments Requested on the MITRE Corporation Report on Technical Analysis of Potential Harmful Interference to DBS from Proposed Terrestrial Services in the 12.2-12.7 GHz Band* (ET Docket 98-206), DA 01-933 (April 23, 2001) SBCA, DIRECTV, EchoStar Communications Corp. comments (filed May 15, 2001) and reply comments (filed May 23, 2001).

Service (“MMDS”) band. The Commission has already found, for example, that the LMDS band is suitable for wireless cable operations and has auctioned it on that basis.²⁷

The CARS spectrum is *not* currently used directly by consumers.²⁸ It therefore does not present the virtually insurmountable interference problems that the Commission has repeatedly recognized when it comes to sharing between two ubiquitous consumer services. SBCA urges the Commission to consider that satellite-delivered services have unique technical characteristics. Specifically, the signal received by consumers of satellite-delivered services has traveled thousands of miles, which makes it more susceptible to interference from other spectrum users. This makes the FCC’s decision to reallocate the DBS band for use by MVDDS even more troubling.

In the past, incumbent fixed service (“FS”) operators that caused interference to DBS operations were required to be relocated to other spectrum.²⁹ The decision to reallocate the DBS band for use by MVDDS is an unprecedented effort to shoehorn an unproven consumer service into the frequency band of a primary user, which ultimately will harm consumers and limit competition in the multichannel video marketplace.

IV. PROGRAM ACCESS

The June 13, 2002, FCC decision to grant the SBCA and DBS providers’ request to extend the exclusivity provision of the program access rules for an additional five years was a

²⁷ See, e.g., *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and For Fixed Satellite Services*, 11 FCC Rcd. 19005 (1996), at ¶ 14 (“LMDS Order”) (discussing range of potential video services to be provided in LMDS spectrum).

²⁸ See *id.* at ¶ 2 n. 8 (describing the current CARS service as not including “transmissions to multiple, unspecified receiving locations”).

²⁹ See *DBS Order* at 691-692, 700. See also *DBS NPRM* at 732; FCC Public Notice, *Initiation of Direct Broadcast Satellite -- Effect on 12 GHz Terrestrial Point-to-Point Licensees in the Private Operational Fixed Service*, 10 FCC Rcd 1211(1994).

major accomplishment in the effort to create a more competitive multichannel video marketplace.³⁰ SBCA strongly believes that the five-year extension will result in increased competition and continued growth of consumer choice. Industry observers credit the program access rules, which require vertically-integrated programmer/ cable companies to sell their programming to all multichannel video programming distributors (“MVPDs”) at similar prices, terms and conditions, as one of the most important factors in the rise of DBS as a successful consumer service and competitor to cable.

However, the program access rules only cover vertically-integrated programming that is distributed via satellite by cable companies. Unfortunately, the FCC did not extend the provision to terrestrially-delivered programming.³¹ This determination by the Commission leaves the door open for vertically-integrated cable companies to continue to circumvent the program access rules by switching the delivery of their programming away from satellite to terrestrial-only means. It is our hope that Congress revisit this issue and close this loophole for the benefits of increased diversity and competition in the multichannel video marketplace.

Forty-three percent of new DBS subscribers named “more channels” as an important reason for choosing DBS as their multichannel video provider. Without vertically-integrated companies withholding highly-desirable regional programming, DBS could become an even stronger competitor to cable. For example, in Philadelphia, where the incumbent cable operator (Comcast) owns sports teams and related programming properties, Comcast uses this loophole to prevent DBS companies from showing local team sports programming. This has resulted in a

³⁰ See *Report and Order*, In the Matter of: *Implementation of the Cable Television Consumer Protection And Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628 (c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*; CS Docket No. 01-290; FCC 02-176; (rel. June 28, 2002), ¶5.

³¹ *Id.* at ¶73.

less competitive market in Philadelphia, whose DBS penetration rate (3.9%) is less than half of the rest of the top twenty DMAs (9.3%).³²

V. CONCLUSION

These comments, as with those submitted to the Commission in the past, clearly show that the DBS industry is becoming an increasingly effective competitor to cable. The continuing growth in the number of satellite television subscribers over the past year and the recently-documented outstanding DBS customer satisfaction give much promise to realizing the goal of a more competitive multichannel video market. The Commission's recent decision to extend the cable exclusivity provision of the program access rules will certainly play a major role in satellite television's continued growth. Additionally, the roll out of advanced services to DBS subscribers is promising. However, this growth and promise is contingent on the Commission's implementation and retention of sound spectrum management policies designed to protect current and future DBS subscribers from harmful interference.

Respectfully submitted,

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³² See Exhibit G, "An Economic Assessment of the Exclusive Contract Prohibition Between Vertically Integrated Cable Operators and Programmers," Table 1, filed in Conjunction with Reply Comments of DIRECTV and EchoStar, CS Docket 01-290, January 7, 2002.