

[US] Direct Broadcast Satellite (DBS) Provider and Television Networks Reach Settlement To Dismiss Lawsuit, Implement Sunset Date for DBS' Illegal Retransmission of Network Signals

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The settlement dismisses a lawsuit filed by the four major U.S. networks (ABC, NBC, CBS and FOX) and their affiliates against DirecTV, a DBS provider. The lawsuit was filed as a result of a decision by the United States District Court for the Southern District of Florida, in which the court determined that DirecTV's provision of network broadcast signals violated the Satellite Home Viewers Act (SHVA), and required the DBS provider terminate the provision of network broadcast signals to approximately 700,000 -1,000,000 subscribers by 28 February 1999 and an additional 1,200,000 -1,500,000 subscribers by 30 April 1999.

While several bills pending in the U.S. Congress propose to modify the SHVA, presently, the SHVA grants a limited exception to the exclusive programming copyrights enjoyed by television networks and their affiliates, permitting DBS carriers to provide network signals only to households which are "unserved," or unable to receive network station signals over the air. Under the SHVA, television signal reception is the key element in determining whether a consumer is unserved by network television broadcast stations, and thus, is eligible to receive network service using a satellite dish.

Whether a household is "unserved" is determined by measuring that household's ability to receive over-the-air broadcast signals. Predicted "Grade A" and "Grade B" are signal intensity standards, defined by the Federal Communications Commission (FCC) to measure the strength of a given television station's over-the-air signal. Grade A service generally is in urban and suburban areas, where population density is greatest. Grade A contour is found when a quality acceptable to the median observer is available for at least 90 percent of the time at the best 70 percent of receiver locations at the outer limits of the Grade A service area. A Grade B contour exists when a quality acceptable to the median observer is available for at least 90 percent of the time at the best 50 percent of receiver locations at the outer limits of the Grade B service area.

Unless a household is within an area which does not meet the standard of a Grade B contour, a DBS provider may not offer broadcast signals to the subscriber. DBS

providers claim that this limited exception effectively prevents them from carrying broadcast programming, which accounts for more than 50 percent of the video programming viewed by Americans, and precludes DBS providers from competing against cable television providers, who are permitted to carry broadcast programming.

Under the terms of the settlement, announced 12 March 1999, DBS provider DirecTV may transmit the programming of the four major American networks and their affiliates to subscribers predicted to receive a Grade A signal through 30 June 1999 and to subscribers predicted to receive a Grade B signal through 31 December 1999. Additionally, if subscribers request and obtain the consent of their local network affiliate, they will not lose receipt of distant network signals.

Several pieces of legislation which would permit DBS providers to retransmit network signals are currently being debated in the U.S. Congress. On 28 April 1999, the U.S. House of Representatives approved "The Satellite Copyright, Competition and Consumer Protection Act of 1999» (H.R. 1554) by a vote of 422-1. Under the bill, satellite television providers would be permitted to retransmit local broadcast channels in any market. However, by 2002, the satellite television providers would be required to carry all local broadcast channels within the particular market. Additionally, the bill directs the FCC to determine a better way to ascertain which satellite television customers are eligible to receive broadcast network programs from distant network affiliates. The U.S. Senate is expected to address a related bill in the near future.

CBS, Inc. et al. v. PrimeTime 24 Joint Venture, Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendations, 9 F.Supp.2d 1333 (S.D. FL., May 13, 1998).

Satellite Home Viewers Act, 17 U.S.C. § 119.

Satellite Copyright, Competition, and Consumer Protection Act of 1999 (H.R. 1554).

