



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

**Before the  
Copyright Office, Library of Congress  
Washington, D. C.**

**Docket No. RM 98-1**

**REPLY COMMENTS OF THE STAFF OF THE  
FEDERAL TRADE COMMISSION(1)**

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**March 1998**

**I. Introduction**

The staffs of the San Francisco Regional Office and the Bureau of Economics of the Federal Trade Commission are pleased to respond to the Notice of Inquiry ("NOI") issued by the Copyright Office of the Library of Congress.<sup>(2)</sup> The NOI solicits comments on whether the satellite carrier compulsory license should be interpreted to permit Direct Broadcast Satellite ("DBS") operators to retransmit local broadcast signals into their home markets, and if so, whether regulations governing the conditions under which franchised cable operators deliver these local broadcast signals should apply to DBS. The satellite carrier compulsory license provides the legal framework through which satellite systems distribute broadcast signals directly to consumers' homes.<sup>(3)</sup>

The Federal Trade Commission is responsible for maintaining competition and safeguarding the interests of consumers. The staff of the FTC has extensive experience in reviewing competition issues in the area of telecommunications.<sup>(4)</sup> Our purpose in responding to the NOI is to identify the policy considerations that we believe the Copyright Office should carefully evaluate. The NOI also seeks comments concerning statutory interpretation and legislative history of the Satellite Home Viewer Act.<sup>(5)</sup> We express no view on the technical issues of statutory construction.

Absent compulsory licensing, in order to retransmit any broadcast station, a multichannel video programming distributor would need to negotiate copyright licenses for all the individual programs broadcast by the station. This is because broadcast stations, unlike cable programmers such as Nickelodeon or TNT, lack the ability to sublicense their individual programs for retransmission. The advantage of compulsory licensing is that it allows multichannel video programming distributors to avoid the transaction costs associated with negotiating with the owners of the copyright to each program on broadcast signals they desire to retransmit. There is, however, a disadvantage of compulsory licensing. Like other prices that are set administratively rather than by market forces, compulsory licenses may allocate resources inefficiently.

primary reason why consumers continue to subscribe to franchised cable systems instead of switching to DBS.<sup>(15)</sup> Consequently, allowing DBS operators to retransmit the local network affiliates may make DBS a better substitute for cable and tend to lower cable prices.

#### **IV. The Application of Retransmission Rules to DBS**

If the Copyright Office does conclude that the satellite compulsory license extends to the retransmission of local broadcast channels into their home markets, the question remains as to what rules would appropriately govern these

Conversely, the "retransmission consent" rules apply to all multichannel video programming distributors. Under these rules, property rights to a broadcast signal are vested in the broadcaster, and a multichannel video programming

